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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: September 14, 2023*

+ **CRL.M.C. 6601/2023 & CRL.M.A. 24757/2023**

VINOD KUMAR PANDEY **Petitioner**

**Through: Harish Bhardwaj, Advocate
with petitioner in person**

versus

THE STATE (GOVT. OF NCT OF DELHI)

& ORS. **Respondents**

**Through: Mr. Utkarsh, APP for State
with Aarti Yadav, P.S.
Sagarpur.
R-2 & R-3 in person**

**CORAM:
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN
JUDGMENT (oral)**

1. The present petition is filed under section 482 Cr.P.C for quashing of FIR bearing no. 0289/2016 dated 21.05.2016 registered under section 363 IPC at P.S Sagarpur at the instance of the respondent no. 2 along with the consequential proceedings stated to be pending in the court of the Court of Ms. Chhavi Kapoor, ASJ, Patiala



House Courts, New Delhi titled as **State V Vinod Kumar Pandey** in SC bearing no.264/2021 under sections 363/376/366 IPC.

2. Issue notice.

3. Ms. Utkarsh, Additional Public Prosecutor assisted by investigating officer SI Aarti Yadav, P.S Sagarpur accepts notice on behalf of the respondent no.1/State and the respondents no.2& 3 are present in the court along with counsel and accepts notice.

4. FIR was got registered on the basis of complaint made by the respondent no. 2 wherein he suspected that some unknown person has kidnapped his daughter i.e. respondent no. 3 after taking out from his Guardianship. During the investigation the petitioner was arrested and after conclusion of the investigation Final Report as per section 173 Cr.P.C/charge sheet was filed for the offences punishable under sections 363/376/366 IPC and under section 6 of the Protection of Children from Sexual Offences, Act 2012 (POCSO) wherein the petitioner was implicated. The trial is stated to be pending in the Court of Ms. Chhavi Kapoor, ASJ, Patiala House Courts, New Delhi.

5. The statement of the respondent no. 3 was recorded under section 164 Cr.P.C during the investigation by Ms. Jyoti Maheshwari,



Duty Magistrate, Patiala House Courts, New Delhi vide proceedings dated 15.09.2020 wherein the respondent no. 3 stated that she does not want to pursue with the judicial proceedings as she got married with her consent and her parents are now happy with the marriage. The respondent no. 3 was found to be minor at the time of the incident.

6. The counsel for the petitioner stated that the petitioner and the respondent no. 3 got married on 21.05.2016 and have become parents of a child. The petitioner is working as a labourer and is taking care of the respondent no. 3 and their child. The respondent no. 3 also stated that she is leading a happy married life with the petitioner who is taking her care as well as of the child. The respondent no. 2 also stated that consequential judicial proceedings arising out of FIR bearing no. 0289/2016 may be quashed.

7. The Additional Public Prosecutor appearing on behalf of the respondent no. 1/State stated that the petitioner and the respondent no. 3 got married with each other and the offences are complained of are non-compoundable offences.

8. The extraordinary power under section 482 Code of Criminal Procedure, 1973 should be exercised sparingly and with great care and



caution and can be used to prevent abuse of the process of the court or to secure ends of justice and the exercise of inherent powers entirely depends on facts and circumstances of each case.

9. The Supreme Court in **B.S. Joshi V State of Haryana** (2003) 4 SCC 675 held that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under section 482 of the Code. The power of compounding and quashing of criminal proceedings in exercise of inherent powers are not equal or interchangeable in law. The Supreme Court in **Shiji alias Pappu and others V Radhika and Anr**, (2011) 10 SCC 705 observed that simply because an offence is not compoundable under section 320 Code of Criminal Procedure is by itself no reason for the High Court to refuse exercise of its power under section 482 Code of Criminal Procedure.

10. The Supreme Court in **Gian Singh V State of Punjab and Others**, (2012) 10 SC C 303 laid down following principles:-

57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the



offences Under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil favour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote



and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

11. The Supreme Court in **Daxaben V. The State of Gujrat & Ors.**, SLP Criminal No.1132-1155 of 2022 decided on 29.07.2022 also observed as under:-

38. However, before exercising its power under Section 482 of the Cr.P.C. to quash an FIR, criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the offence. Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim. Crimes like murder, rape, burglary, dacoity even abetment to commit suicide are neither private nor civil in nature. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.



12. The Co-ordinate Bench of this court in **Mohd. Sufiyan & Ors. V. State of NCT of Delhi & Anr.**, W.P. (CRL.)2568/2021 decided on 11.05.2021 has declined to quash offence punishable under section 376 IPC despite statement given by the wife to the effect that she lodged FIR in anger and out of vengeance without paying due attention as to the consequences of FIR and settlement between the concerned parties. In **Pawan Gaur V State (NCT of Delhi)**, CrI. M.C. 981/2021 decided on 26.03.2021, the Coordinate Bench of this court declined to quash FIR pertaining to offence punishable under section 376 IPC despite compromise between the parties.

13. In **Kundan & Anr. V. State & Ors.**, CRL.M.C. 27/2022 dated 21.02.2022, the Coordinate Bench of this Court has quashed FIR pertaining to offences punishable under section 363/366/376 IPC and section 6 of the Prevention of Children from Sexual Offences Act, 2012 on the ground that the victim/prosecutrix and the accused got married and the victim/prosecutrix delivered a baby boy. The victim/prosecutrix in statement under 164 of the Code also stated that she was in love with the accused and due to opposition of marriage by her parents, she decided to go with the accused. This Court in **Jaimeet**



Singh Kalra & Ors. V. State & Anr., CRL.M.C. 1474/2019 decided on 02.06.2022 also quashed FIR under sections 328/498A/406/376/377/506/34 as registration of FIR originated from matrimonial dispute. This Court in **Sunny Kumar @ Mukesh & Ors. V the State & another**, CRL.M.C 3561/2022 vide order dated 02.08.2022 has quashed the judicial proceedings under section 363/366/376 IPC and section 4 of POCSO under the facts & circumstances similar to facts and circumstances of present case.

14. The High Court may also quash criminal proceedings where possibility of conviction is remote and bleak and continuation of criminal case may cause great oppression and prejudice to the accused and extreme injustice would be caused to him and to put an end to criminal case would be appropriate. The Supreme Court in **State of Madhya Pradesh V Laxmi Narayan & Others** besides reiterating principles laid down in **Gian Singh** case observed that while exercising the power under section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding



and why he was absconding, how he had managed with the complainant to enter into a compromise, etc.

15. The **Gian Singh** in broad perspective prohibits quashing of FIR pertaining to rape. The petitioner and the respondent no.3 were known to each other and were having liking for each other. The petitioner and the respondent no.3 married with each other and with the passage of time, they have been blessed with a child who is of tender age. The petitioner and the respondent no.3 belong to lower strata of the society. The petitioner and the respondent no.3 are leading happy married life without any discord and trouble between them. The petitioner and the respondent no.3 have become the part of the main stream of the society. The petitioner and respondent no.3 have undertaken to build the future life of their children by mutual love, affection and understanding. Under given facts and circumstances of case, there is remote and bleak possibility of conviction and continuance of legal proceedings arising out of FIR bearing no. 0286/2016 shall cause great oppression and prejudice to the petitioner and the respondent no. 3 as they shall be subjected to extreme injustice and as such to put an end to legal proceedings arising out of FIR



bearing no. 0286/2016 would be appropriate and be in the interest of society. The petitioner is also taking care of the respondent no.3 and children.

16. As observed in **Ramgopal & another V State of Madhya Pradesh**, Criminal Appeal No. 1489 of 2012 decided on 29th September, 2021 the High Court need to adopt a pragmatic approach to ensure that quashing is not paralyze the very object of the administration of criminal justice system and a restrictive construction of inherent powers under Section 482 of the Code may lead to rigid or specious justice which may lead to grave injustice. The antecedents of the petitioner are clear and never been indulged in criminal activities. This court also relied on the judgment of the Supreme Court in **K. Dhandapani V State by the Inspector of Police**, 2022 SCC OnLine SC 1056.

17. After considering all facts and totality of the circumstances, the present petition is allowed and FIR bearing no. 0286/2016 registered under section 363 IPC at P.S. Sagarpur is quashed along with all consequential judicial proceedings under sections 363/376/366 IPC



and under section 6 of Protection of Children from Sexual Offences Act, 2012.

18. The petition along with pending applications, if any, stands disposed of.

DR. SUDHIR KUMAR JAIN, J

SEPTEMBER 14, 2023

J/sd

