



\$~1

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

% *Date of decision: 20th October, 2023*

+ **CRL.M.C. 7690/2023 & CRL.M.A. 28650/2023**

AMAR KUMAR AND ANR

..... Petitioners

**Through: Ms. Sakshi Sachdeva, Advocate.
versus**

**THE STATE (GOVT. OF NCT OF DELHI)
AND ANR**

..... Respondents

**Through: Mr. Utkarsh, APP for the State
with Insp. Naveen, P.S. S.P. Badli.
Ms. Aayushi Gupta, Advocate for
R-2.**

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.0843/2020 dated 21.12.2020 registered under sections 376/506/34 IPC & section 4 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) at P.S. Samaipur Badli along with consequential judicial proceedings.
2. Issue notice.
3. Mr. Utkarsh, Additional Public Prosecutor assisted by the Investigating Officer Insp. Naveen, P.S. Samaipur Badli accepts notice on behalf of the respondent no.1/State. The respondent no.2/prosecutrix is present in person along with counsel and accepts notice.



4. The present FIR bearing no. 0843/2020 under sections 376/506/34 IPC & section 4 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) at P.S. Samaipur Badli was got registered at the instance of respondent no.2. It is reflecting that the petitioner no.1 and respondent no.2 after liking each other had developed intimacy. The respondent no.2 came to know about her pregnancy with petitioner no.1 and subsequently delivered a child. The respondent no.2 was stated to be a minor at the time of registration of FIR on 21.12.2020. The statements of the respondent no.2 were recorded under section 161 and section 164 Cr.P.C wherein the respondent no.2 primarily stated that she had a relationship with the petitioner no.1 out of her own free will and subsequently came to know about her pregnancy with the petitioner no.1 and thereafter they got married with each other. After conclusion of the investigation, the charge-sheet was filed and the trial is stated to be pending in the court of Ms. Richa Gusain Solanki, ASJ, North, Rohini Courts, Delhi.

5. The counsel for the petitioners stated that the petitioner no.1 and the respondent no.2 were known to each other and developed intimacy. The respondent no.2 got pregnant and has become the mother of the one child. The petitioner no.1 and the respondent no.2 got married with each other



after birth of the child. The petitioner no.1 and the respondent no.2 are living together and have become parents of one child. The counsel for the petitioners prayed that the present petition be allowed and FIR bearing no.0843/2020 be quashed.

6. The respondent no.2 stated that she is leading a happy matrimonial life with petitioner no.1 and has already settled in her matrimonial life as such she does not wish to pursue with the consequential judicial proceedings arising out of FIR bearing no. 0843/2020.

7. The Additional Public Prosecutor appearing on behalf of the respondent no. 1/State stated that although the petitioner no.1 and respondent no.2 got married with each other but the offences as complained are non-compoundable.

8. The extraordinary power under section 482 of Cr.P.C 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 Cr.P.C does not limit or affect the powers under section 482 of Cr.P.C. The power of compounding and quashing of criminal proceedings in exercise of inherent powers are not equal or inter-changeable 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 of Cr.P.C 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 regarding the quashing of FIR registered under section 376 IPC in **Gian Singh V State of Punjab and Others**, (2012) 10 SCC 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. A 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 declined to quash the FIR of the 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)**, Crl. 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 decided on 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 Protection 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 section 164 of Cr.P.C 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 IPC 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 Act under the facts & circumstances similar to facts and circumstances of the present case.



14. The High Court should quash criminal proceedings where possibility of conviction is remote and bleak and continuation of criminal case is causing 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. The Supreme Court in **Ramgopal & Another V State of Madhya Pradesh** observed that the High Court after considering peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 of the Code in aid to prevent abuse of the process of any Court and/or to secure the ends of justice. It was further observed that the High Court can quash non compoundable offences after considering nature of the offence and amicable settlement between the concerned parties. The High Court can evaluate the consequential effects of the offence and need to



adopt a pragmatic approach to ensure that quashing does not paralyze the very object of the administration of criminal justice system. It was further observed that a restrictive construction of inherent powers under Section 482 of Cr.P.C may lead to rigid or specious justice which may lead to grave injustice.

15. The **Gian Singh** in broad perspective prohibits quashing of FIR pertaining to offence under section 376 IPC. The petitioner no.1 and respondent no.2 were known to each other and developed intimacy with each other. The petitioner no.1 and respondent no.2 got married and have been blessed with one child. The petitioner no.1 and respondent no.2 belong to lower strata of the society. The petitioner no.1 and respondent no.2 are leading happy married life without any discord and trouble between them. The petitioner no.1 and respondent no.2 have become the part of the main stream of the society. The petitioner no.1 and respondent no.2 have undertaken to build the future life of their child by mutual love, affection and understanding. The petitioner no.1 is also taking care of the respondent no. 2 and the child. The respondent no.2 now has attained the age of majority. Under the 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. 0843/2020 shall cause great oppression and prejudice to the petitioner no.1 and respondent no.2 as they shall be subjected to extreme injustice and as such to put an end to legal proceedings arising out of FIR bearing no. 0843/2020 would be appropriate and be in the interest of society.

16. After considering all facts and totality of the circumstances, the present petition is allowed and FIR bearing no. 0843/2020 registered under section 376/506/34 IPC & section 4 of POCSO Act at P.S. Samaipur Badli along with all consequential judicial proceedings stated to be pending in the court of Ms. Richa Gusain Solanki , ASJ , North , Rohini Courts, Delhi is quashed.

17. The petition along with pending application, stands disposed of.

DR. SUDHIR KUMAR JAIN, J

OCTOBER 20, 2023

Sk/sd