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

+ CRL.M.C. 6075/2022, CRL.M.A. 4672/2023

SANDEEP SHARMA

..... Petitioner

Through: Mr.Sandeep Sharma, Mr.Mohit
Kr.Sharma, Mr.Amit Chaudhary and
Mr.Agniwesh Singh, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.Hemant Mehla, APP for the state
with Mr.Dipanshu Meena, Advocate
Insp.Subhash Kumar, PS Gazipur
Mr.Pankaj Kapoor, Mr.Nikhil Bahri,
Mr.Ajay Pal Singh and Mr.Anil
Kumar, Adv. for R-2 with R-2 in
person.

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Date of Decision: 21.02.2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present petition has been filed seeking quashing of FIR No. 213/2013 dated 20.05.2013 registered under Sections 323/342/506/376 IPC at P.S. Gazipur. The said FIR was lodged at the instance of the respondent No.2/complainant.

2. Briefly stated the allegations as per the FIR are that the respondent No.2/complainant and the petitioner met online around 10 years before the filing of the FIR and developed a relationship. It has been alleged that the petitioner committed to marry the complainant and had an intimate relationship with the complainant on the false pretext of marriage. The petitioner tried to have sex with the complainant several times however she refused his advances and told him that they should get married first. It has been alleged that whenever they met, he forced her to indulge in intercourse forcibly and the same happened without her consent several times. It has been alleged that on 04.06.2012 the petitioner fooled the complainant of getting married to her and got married, however the petitioner did not get the marriage registered and continued to have oral sex with the complainant. It has been alleged that as the petitioner was avoiding the complainant for the last 10 days prior to the registration of the FIR, the complainant reached his house on 18.05.2013 at around 12:45 pm to inform his parents about his behavior and to seek support. However, the parents of the petitioner denied sharing the petitioner's whereabouts, locked the complainant, beat her up and threatened her of dire consequences. Somehow the complainant got out of the room and thereafter called the police to get the petitioner and his family members arrested. It has been alleged that even the brother of the petitioner misbehaved with the complainant. Basis the said complaint the present FIR was lodged against the petitioner herein and his family members.
3. Learned counsel for the petitioner submits that the present complaint had arisen out of misunderstandings between the parties. Learned

counsel submits that the petitioner and complainant were both majors, known to each other and in a consensual relationship for several years before the registration of the FIR. It has been submitted that when the relationship turned sour, the present FIR came to be lodged. Briefly stated the facts as alleged in the petition are that when the petitioner joined his college, he came in contact with the complainant over Yahoo messenger in 2003 and a friendship developed between the parties. Thereafter the petitioner got placed elsewhere for work and the parties continued to remain in contact with each other through calls/Yahoo messenger. As time passed, the parties developed feelings for each other and wanted to marry each other. It has been alleged that the respondent No.2 pressurized the petitioner for marriage. However, due to fear and pressure from society and community, the petitioner refused the same. Learned counsel submits that as the petitioner was preparing for various government exams, he was unable to give time to the respondent No.2, which was misunderstood by her as him ignoring her, and she went to the house of the petitioner on 18.05.2013 in his absence and an altercation between her and his family members occurred which was reported as an incident of domestic violence.

4. Learned counsel submits that the petitioner moved an anticipatory bail application which was allowed by the learned ASJ vide order dated 07.06.2013. During the proceedings, the complainant placed on record certain documents regarding the alleged marriage between her and the petitioner on 04.06.2012. The same is also recorded in the order dated 01.06.2013. Complainant supplied the police authorities with CD's, affidavits, and photographs of the alleged marriage between the parties.

Investigation was complete and revealed that the marriage was solemnised between the parties. Thereafter, the Chargesheet was filed.

5. Thereafter, matter was listed for framing of charge and learned ASJ, KKD Courts vide order on charge dated 03.10.2016 in SC No. 392/2016 framed the charge for the offences under section 376/376(2)(n) & 377 IPC against the petitioner and under sections 323/342/506/34 IPC against the parents of the petitioner and under sections 323/342/506/34/354 IPC against the brother of the petitioner. The said order on charge was assailed by way of Revision petition No. 821/2016 before this Court. Learned counsel submits that, after receipt of notice in the aforementioned petition, a compromise deed dated 03.02.2017 was entered into between the respondent no. 2/ complainant and the parents and brother of the petitioner namely Smt. Nirmal Sharma, Sh. Mani Ram Sharma and Sh. Hemant Sharma.
6. On the basis of the aforesaid settlement, the family members of the Petitioners filed a quashing petition bearing Crl. M.C. No. 533/2017 before this Court seeking to quash the FIR No. 213/2013 dated 20.05.2013 qua them. Subsequently, a quashing petition bearing Crl. MC 530/2017 was filed by the petitioner herein seeking to quash FIR No. 213/2013 dated 20.05.2013 qua him.
7. It has been submitted that the Revision petition No. 821/2016 filed by the petitioner was dismissed vide judgement dated 25.04.2017. Moreover, the petition bearing Crl.M.C.No.533/2017 filed by the family members of the petitioner and the petition bearing Crl. M.C. No. 530/2017 filed by the petitioner were both dismissed by this court vide judgement dated 26.04.2017. Learned counsel submits that aggrieved

of this an SLP was preferred by the family members of the petitioner bearing SLP (CrI) No. 5564/2017 before the Hon'ble Supreme Court wherein the settlement deed dated 03.02.2017 was placed and the Hon'ble Supreme Court accepted the settlement and quashed the proceedings against Smt. Nirmal Sharma, Sh. Mani Ram Sharma and Sh. Hemant Sharma vide order dated 17.05.2018.

8. Thereafter the petitioner, also aggrieved of the order dated 25.04.2017 dismissing the Revision petition No. 821/2016 and the judgement dated 26.04.2017 in CrI. M.C. 530/201, moved another SLP (CrI) No. 9325-9326/2017 challenging the same. However, the same was dismissed vide order dated 09.05.2019. After the dismissal of SLP (CrI) No. 9325-9326/2017, learned ASJ framed the charge against the petitioner in terms of the order dated 03.10.2016 and the same is pending trial and is at the stage of prosecution evidence.
9. Learned counsel for the petitioner further submits that however subsequently with the intervention of well-wishers and common friends a settlement has taken place between the petitioner and respondent no.2/complainant which was duly recorded on 21.12.2022. Learned counsel submits that since now the respondent No. 2/complainant has entered into an amicable settlement with the petitioner and a compromise deed has also been executed between them, the same may be accepted and the FIR No.213/2013 dated 20.05.2013 under Sections 323/342/506/376 IPC at P.S. Gazipur and all consequent proceedings emanating therefrom may be quashed qua the petitioner.
10. It has been submitted that the settlement qua the parents and brother of the petitioner has already been accepted by the Hon'ble Supreme Court

in SLP (Crl.) 5664/2017. Learned counsel submits that there has been a change of circumstance pursuant to the order dated 09.05.2019 passed by the Hon'ble Supreme Court, in as much as the Ld. Trial Court has framed the charge against the petitioner only, as the charge against the other accused persons (family members of petitioner) already stand quashed by the Hon'ble Supreme Court of India, vide order dated 17.05.2018. Moreover, prosecution evidence has commenced, and summons had been issued to the respondent No. 2/complainant. Learned counsel submits that however, the respondent No.2/complainant has not been appearing before the Ld. Trial Court as duly reflected in orders dated 18.01.2020, 12.03.2021, 14.07.2021, 08.10.2021, 12.10.2021 and 02.02.2022 passed by Ld. ASJ, East, Karkardooma Courts, New Delhi.

11. Learned counsel for the petitioner submits that now, the respondent No.2/complainant and the petitioner have resolved all their disputes by way of a settlement deed dated 21.12.2022 on the following terms and conditions:

“1. That the Second Party shall file an appropriate application for bringing on record this settlement deed, affidavit and necessary documents before Hon'ble High Court of Delhi in Crl. M.C. No. 6075/2022, titled as Sandeep Sharma vs. State NCT of Delhi & Anr., for quashing of FIR No. 213/2013 dated 20.05.2013 under Section 323/ 342/ 354/ 506/ 376(1) / 34 IPC, P.S. Gazipur, Delhi and all other consequent proceedings i.e. charge under Section 376/376(2)(n)/377 IPC.

2. That the First Party who is the complainant in the aforesaid FIR No. 213/2013 dated 20.05.2013 under Section 323/342/354/ 506/376(1)/ 34 IPC, P.S. Gazipur, Delhi shall file required affidavit of having no objection of the same and other required documents.

3. That the parties to this deed undertakes to file requisite documents, to sign, to file affidavits, to give statement in support of the quashing of aforesaid FIR and to appear before the Hon'ble High Court of Delhi in aforesaid Crl. M.C. No. 6075/2022, titled as Sandeep Sharma Vs. State NCT of Delhi & Anr.

4. That it has been further agreed and decided to end all their disputes fully and undertake to live peacefully without disturbing and interfering with each other.

5. That all issues between the parties have resolved and settled, and the parties do hereby agree that they will not file any proceedings against each other whatsoever (save and except stated hereinabove).

6. That both the parties have compromised with each other and signed the present compromise deed voluntarily and out of their own will and consent and also without any pressure, coercion or force from any side.

7. That the present deed is irrevocable and violation of the terms of this deed shall be deemed to be a violation of the compromise.”

12. Respondent No. 2/complainant and petitioner are present in person and have been duly identified by the IO. Respondent No.2/complainant states that she has entered into the settlement dated 21.12.2022 at her own free will, without any undue force, fear or pressure. She states that now she wants to move on with her life and does not want to pursue the present complaint. She states that the present proceedings arose out of misunderstandings and that she has no grievance against the petitioner and wants to put a quietus to the present dispute. She states that on account of the settlement arrived, she has no objection if the present FIR No. 213/2013 dated 20.05.2013 and all proceedings emanating therefrom are quashed qua the petitioner. An affidavit of respondent No. 2 to this effect has also been placed on record.

13. Learned APP for the State submits that the settlement accepted by the Hon'ble Supreme Court was not in respect of the offence under Section 376 IPC.
14. I have considered the submissions. It is an admitted position that the parties were in a consensual relationship with each other for several years prior to the registration of the FIR. The statement of respondent No.2 u/s 164 Cr.P.C. reflects that they were in a relationship and the petitioner expressed his desire to marry the complainant and on such pretext of marriage made physical relations with her. Thereafter she refused to have any physical relation with the petitioner before marriage. It has been stated that subsequently the petitioner agreed for marriage and the parties got married on 04.06.2012 as per Hindu rites and rituals. After the marriage also the petitioner forced the complainant and had natural and unnatural sex with her. However, the complainant refused to have any physical relation with the petitioner till the registration of the marriage. It has been stated that whenever the complainant told him to get the marriage registered, he would make excuses to avoid the same. It has been stated that thereafter, when the petitioner started to ignore the respondent No.2, she went to his house to speak with his parents, which is when they locked her in a room and beat her. It has been stated that she got out somehow and called the police.
15. The statement of the complainant u/s 164 Cr.P.C. reveals that the parties were in a consensual relationship and even got married prior to the registration of the said FIR. Even the order dated 01.06.2013 of the

learned Spl. Judge CBI (PC Act) East District, KKD Courts records that the complainant got married to the petitioner.

16. Although, as per the directions enumerated by the Hon'ble Supreme Court in *Parbatbhai Aahir and Ors. vs. State of Gujrat & Ors.*(2017) 9 SCC 641, that FIRs in cases of rape and other such heinous offences such as rape, dacoity, murder should not be quashed as such offences are not private in nature and have serious ramifications on the society at large. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.
17. The contents of the FIR and the statement of respondent No.2/complainant under section 164 Cr.P.C. reveals that petitioner and the respondent No.2/complainant got married, however the marriage was never registered. Thus, four important facts that emerge from the FIR and the statement of the respondent No.2/complainant u/s 164 Cr.P.C. are that firstly the parties were admittedly in a consensual relationship with each other. Secondly the parties knew each other for a long time i.e. since 2003 after which they developed a relationship and the FIR was lodged in 2013. Thirdly, the parties were even stated to be married to each other however, although their marriage was not registered. Fourthly, the FIR was registered pursuant to the alleged marriage between the parties, after an altercation took place between the complainant and the family members of the petitioner.
18. In *Sonu @ Subhash Kumar vs. State of Uttar Pradesh & Anr.*, 2021 SCC OnLine SC 181, the parties were admittedly known to each other and were in a consensual relationship. It had been alleged that the

petitioner/accused and the complainant voluntarily developed relationship of husband and wife and subsequently the petitioner refused marriage with the complainant. Consequently, FIR was registered under section 376 IPC. The Hon'ble Supreme Court while referring to the principles enunciated in **Pramod Suryabhan Pawar** (supra) quashed the charge-sheet and held as under:

“11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established.”

19. Moreover, this Court in a plethora of cases has quashed the FIR and consequent proceedings under section 376 of IPC, whereby the parties were stated to be in a consensual relationship for several years prior to the registration of the FIR, had arrived at an amicable settlement and the complainant had filed an affidavit supporting the case of the petitioner stating that she does not wish to pursue the complaint.
20. In CrI MC 1727/2019 titled **Danish Ali vs State and Ors.** the parties were known to each other and were in a relationship spanning six years. The parties wanted the relationship to culminate into marriage but the same could not get materialized on account of disapproval of

parents and misunderstandings between the parties which prompted into lodging of the FIR u/s 323/376/384/506 IPC. This Court vide its judgement dated 26.11.2019 held as under:

“16. It is not in dispute that heinous and serious offences such as murder, rape and dacoity etc. cannot be quashed despite the fact that the victim or the family of the victim have settled the dispute.

17. It is also not in dispute that such offences are, truly speaking, not private in nature but have a serious impact upon society. But at the same time, quashing of the FIR, in such cases the Court has to see whether actually crime has taken place or due to some other malafide purpose or intention, the complaint has been made which subsequently, has culminated into an FIR. If court comes to the conclusion, as in the present petition, that in fact the rape has not been committed by the accused in the case, in my considered opinion, there is no bar to quash the FIR even in case of rape or other heinous offences.”

21. Similarly, in ***Vivek Kumar Yadav vs. State and Ors.***, CrI. MC 1034/2021 whereby the parties were stated to be in a consensual relationship, and it had been alleged that the petitioner made physical relations with the complainant on the false pretext of marriage. FIR was lodged pursuant to the subsequent refusal on the part of the petitioner. However later the matter was amicably settled between the parties by way of a settlement. This Court vide its judgement dated 28.04.2021 quashed the proceedings under section 376 IPC.
22. Further, in CrI.MC 2384/2020 titled ***Lalit Kumar Vats vs. State of NCT of Delhi and Ors.***, whereby again the parties were stated to be in a consensual relationship and the matter stood settled between the parties, this Court vide its judgement dated 04.12.2020 quashed the FIR under section 376 IPC.

23. In ***Danish Ali*** (supra), ***Vivek Kumar Yadav*** (supra) and ***Lalit Kumar Vats*** (supra), this Court quashed the proceedings under 376 IPC and held that although as per the directions of the Hon'ble Supreme Court in ***Parbatbhai Aahir*** (supra), the FIR should not be quashed in case of rape as it is an heinous offence, but when the respondent no. 2/complainant/prosecutrix herself takes the initiative and files affidavits before the Court, stating that she made the complaint due to some misunderstanding and now wants to give quietus to the misunderstanding which arose between the petitioner and respondent no. 2. In such cases, there will be no purpose in continuing with the trial. Ultimately, if such direction is issued, the result will be of acquittal in favour of the accused, but substantial public time shall be wasted.
24. In ***Capt. Simranjit Singh Sambhi vs. State (NCT of Delh) and Anr.*** 2022 (289) DLT 473, whereby the parties were in a consensual relationship and the FIR was lodged on account of petitioner's subsequent refusal, this Court vide judgement dated 07.03.2022 relying on ***Deepak Gulati*** (supra), ***Pramod Suryabhan Pawar*** (supra), ***Sonu @ Subhash Kumar*** (supra) quashed the FIR under section 376 IPC.
25. Further, this Court in CrI. MC 4655/2022 titled ***Salman Rahman vs. State, Govt of NCT of Delhi & Anr.*** vide judgement dated 16.09.2022 and in WP (CrI) 1185/2022 titled ***Arshad Ahmad and Ors. Vs State NCT of Delhi and Anr.***, vide judgement dated 02.06.2022, quashed the FIRs under section 376 IPC. In these matters also the parties were known to each other, were allegedly married, and arrived on an amicable settlement.

26. Furthermore, a Bench of Punjab and Haryana High Court vide its judgement dated 05.03.2020 in CRM-M No. 47266/2019, titled ***Pankaj @ Sikandar Kumar Vs.State of U.T., Chandigarh and another***, while quashing the proceedings for the offences under Section 376 IPC, has observed as under:

“5. In normal circumstances, the Court would not entertain a matter when the non-compoundable offences are heinous in nature and against the public. In the instant case, the offence, complained of is under Section 376 IPC, which is an offence of grave nature. In the eyes of law, the offence of rape is serious and non-compoundable and the Courts should not in ordinary circumstances interfere and quash the FIR that has been registered. However, there are always exceptions to the normal rules and certain categories of cases, which deserve consideration specially when it is a case of love affair between teenagers and due to fear of the society and pressure from the community one party alleges rape, cases where the accused and the victim are well known to each other and allegation of rape is levelled only because the accused refused to marry, as well as the age, educational maturity and the mental capacity, consequences of the same ought to be kept in mind when inclined to interfere.”

27. Thus, the law on this subject is well settled. In the present case the facts emerging out of the FIR and statement of respondent No.2/complainant are peculiar in nature. The parties were admittedly in a consensual relationship for several years and as per the statement of the respondent No.2/complainant the complaint arose due to misunderstandings between the parties. The affidavit of the Respondent No.2/complainant is also on record stating therein that she supports the petitioner for quashing of the present complaint and has no grievance against him. She has stated therein that she wants to put a quietus and does not wish to pursue the present complaint. This court while following the above

mentioned settled law on the subject, considers that even though in cases of rape and other such heinous offences, ordinarily the FIR should not be quashed. However, the Courts can exercise their inherent power to quash the proceedings on account of peculiar facts in order to secure the ends of justice and to prevent abuse of the process of the Court. Considering that the petitioner and respondent No.2/complainant were admittedly in a consensual relationship and were even alleged to be married prior to the registration of FIR and as the respondent No.2/complainant herself is taking the initiative and stating that she does not wish to pursue the present complaint and wants to put a quietus to the same on account of the settlement arrived between the parties. This Court considers that continuation of the present proceedings will serve no useful purpose as the chances of conviction would also be remote and bleak given the parties have settled and do not wish to pursue the complaint. I see no reason to reject the settlement, which is stated to have been arrived at between the parties voluntarily, without any force, fear or coercion.

28. It has been held in a catena of judgements of the Supreme Court as well as this Court that the High Court has the inherent power to quash criminal proceedings even in those cases which are not compoundable. Such power is to be used sparingly with caution and circumspection. It is imperative that while exercising such inherent power, the High Court must examine as to whether the possibility of conviction is remote and bleak and whether continuation of criminal proceedings would put the accused to great oppression and prejudice. Section 482 Cr.P.C. preserves the inherent powers of the High Court to prevent an abuse of

the process of any court or to secure the ends of justice. Thus, while adjudicating whether a FIR or criminal proceeding is liable to be quashed, the High Courts must evaluate and weigh if the ends of justice would be served and justify the exercise of such inherent power.

29. Taking into account the aforesaid facts and in view of the settled law mentioned above, the present FIR No. 213/2013 dated 20.05.2013 registered under Sections 323/342/506/376 IPC at PS Gazipur and all other proceedings emanating therefrom are quashed qua the petitioner.
30. The present petition along with the pending application is disposed of.
31. Next date fixed i.e. 28.03.2023 stands cancelled.

DINESH KUMAR SHARMA, J

FEBRUARY 21, 2023

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