



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

% ***Reserved on: December 08, 2023***
Pronounced on: December 13, 2023

+ **W.P.(CRL) 1681/2023**

AMIT KUMAR **..... Petitioner**
Through: Mr. Hemant Gulati, Advocate
alongwith petitioner in person

Versus

STATE NCT OF DELHI & ORS **..... Respondents**
Through: Mr. Anand Khatri, APP for the
State
R-2 to 5 in person.

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. By way of present petition under Article 226 of the Constitution of India read with Section 482 of the Code of the Criminal Procedure, 1973 (**CrPC**), the petitioner is seeking quashing of FIR No.356/2023 dated 22.03.2023 registered under Sections 376/509 of the Indian Penal Code, 1860 (**IPC**) read with Section 4 of The Protection of Children from Sexual Offences Act, 2012 (**POCSO**) and Sections 9/10/11 of Prohibition of Child Marriage Act, 2006 (**PCM**) registered at P.S. Burari, Delhi and all proceedings emanating therefrom.

2. As per FIR, at the time of incident the prosecutrix, aged around 17 years old, felt pain in her stomach. An ultrasound revealed that she was almost 8 months pregnant. Then the FIR against the petitioner, who was

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alleged to be the father of the unborn child, was registered.

3. Notice was issued and Status Report was called for.

4. The learned counsel appearing for the petitioner while addressing final arguments submitted that the petitioner and prosecutrix were having an affair since long. In fact, they eloped and got married without the consent of their parents at Sanatan Dharma Mandir, Nanglipoona, Delhi on 03.07.2022. Then the prosecutrix moved to her matrimonial home with the petitioner. He further submitted that at the time of marriage, the prosecutrix had informed the petitioner and his family members that she was over the age of 18 years. Not only that, after her marriage to the petitioner, she has also conceived and delivered child on 19.05.2023. Presently, both petitioner and prosecutrix are living together as husband and wife under the same roof alongwith the male child born out of the wedlock.

5. The learned counsel appearing for the petitioner also submitted that in March, 2023 the parents of prosecutrix had also accepted her marriage with the petitioner and both the prosecutrix and her mother had written to the Delhi Women Council and S.H.O., Burari qua withdrawal of the present FIR. It was thence that the petitioner and the prosecutrix executed a Settlement Deed *inter-se* themselves on 12.08.2023. Learned counsel for the petitioner thus, sought quashing of present FIR.

6. This petition is supported by the affidavits of the petitioner and of respondent nos. 2, 3 and 5, alongwith proofs of their respective I.Ds.

7. On 08.12.2023, when the matter was finally heard and the orders reserved, the petitioner, as also respondent nos.2, 3 and 5 were present in Court and had been identified by the IO. Their credentials had also been



verified by this Court.

8. Learned ASC for the State relying upon the Status Report objected quashing of the present FIR considering the nature of the offence(s) involved.

9. This Court has heard the learned counsel for the parties and perused the documents on record.

10. The facts reveal that both the petitioner and prosecutrix were involved in a relationship since long. The same resulted in their marriage and cohabitation under the same roof with the parents of the petitioner. Eventually, they have since been blessed with a baby child as well. As on date, both their parents have also recognized the sanctity of their marriage and are supporting them and their marriage, as it is evident from the fact, none of them have raised any kind of objections regarding the marriage of the petitioner and the prosecutrix till date. Resultantly, this Court finds that the parents of the prosecutrix have no grievance/ remorse against the petitioner. Interestingly, all the aforesaid have happened despite the pendency of the present FIR.

11. While considering the facts and circumstances involved in the present case, though this Court, no doubt, is very much mindful of the fact that the allegations levelled against the petitioner involve heinous offences having grave punishments in case of conviction, however, keeping all the aforesaid factors in mind, particularly as the prosecutrix has herself supported the petitioner without any coercion, duress and pressure and that she was all throughout in a relationship with him and that now she is the wife of the petitioner and that they have been blessed with a son, this Court hardly sees any impediment in quashing the present FIR.



12. As such, pendency and continuance of the present FIR under the existing circumstances can surely have a negative impact not only upon the prosecutrix and the petitioner but especially on the upbringing and the future of the minor son born out of their wedlock.

13. Considering the existing peculiar facts and the overall events unfolding in their entirety, under the existing rare circumstances involved herein and even though this Court is mindful that the FIR has also been registered under Sections 376/509 IPC read with Section 4 POCSO and Sections 9/10/11 PCM, this Court is of the opinion that it would be in the interest of justice as also the parties and betterment of their future, especially that of their minor son to quash the present FIR in exercise of its inherent powers under Section 482 Cr.P.C.

14. More so, as no effective purpose would be served in case the FIR is kept pending as in view of the prevalent situation there is hardly any scope of the petitioner being convicted. [Re.: *State of Rajasthan vs Tarun Vasihnav & Anr.* dated 03.03.2023 SLP(Crl.) 1890/2023 arising out of *Tarun Vasihnav vs. State of Rajasthan & Anr.* dated 13.10.2022 S.B. Criminal Misc(Pet.) No.6323/2022 Rajasthan High Court of Judicature at Jodhpur; *Kundan & Anr. vs. State & Ors.* 2022 SCC OnLine Del 4809 and *Rihan @ Noor Mohammad vs. The State (Govt. of NCT Delhi) & Anr.* 2023:DHC:5271].

15. Accordingly, without going into the merits of the marriage inter-se the parties, the petition is allowed and FIR No. 356/2023 dated 22.03.2023 registered under Section 376/509 IPC read with Section 4 of POCSO Act and Section 9/10/11 PCM at PS Burari, Delhi and all proceedings emanating therefrom are quashed.



16. The petition alongwith the pending application stands disposed of
17. Needless to say, the observation and finding in the present petition arrived at by this Court has only been made upon consideration of the extremely rare and exceptional circumstances involved herein and thus they shall not be construed as a precedent.
18. In any event, the cases of the present nature are to be adjudicated individually upon the facts and circumstances involved therein.

SAURABH BANERJEE, J

DECEMBER 13, 2023

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