



2024:DHC:7924



\$~86

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 14.10.2024

+ CRL.M.C. 1228/2024

J

.....Petitioner

Through: Mr. S. K. Singh, Mr. Manish, Mr. Ankush, Mr. Prashant and Ms. Jyoti, Advts. alongwith petitioner in person.

versus

THE STATE (NCT OF DELHI) & ANR.Respondents

Through: Ms. Manjeet Arya, APP for the State with SI Priyanka, PS Shahdara. Respondent no. 2 in person.

CORAM:**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

%

J U D G M E N T**ANOOP KUMAR MENDIRATTA, J (ORAL)**

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for quashing of FIR No. 715/2014 under Section 363 IPC Act registered at P.S. Shahdara and proceedings emanating therefrom. Chargesheet has been filed under Sections 376/363/366/367 IPC and Section 4 of POCSO Act.

2. In brief, as per the case of prosecution, present FIR under Section 363 IPC was registered on 12.11.2014 on complaint of father of victim who alleged that his daughter 'B' aged about 17 years who is pursuing B.Com, First year course from University did not return from the college on 09.11.2014. Thereafter, on 21.11.2014, father of the prosecutrix appeared



along with his daughter 'B'/prosecutrix (respondent No.2) at the Police Station. After medical examination, statement of prosecutrix was got recorded under Section 164 Cr.P.C. wherein she stated that on 09.11.2014, she had asked the petitioner (J) to meet her at college, from where they proceeded to Secundrabad. From 10.11.2014 till 14.11.2014, they roamed in the streets and used to sleep at the bus stop during night. On 15.11.2014, petitioner (J) took her to the house of his sister wherein they got married and stayed till 19.11.2014. Thereafter, on 20.11.2014, they returned back to Delhi.

3. Learned counsel for the petitioner submits that petitioner and respondent No.2 got married on 07.05.2015, in Arya Samaj Mandir, Kasanganj, U.P. and the marriage was registered in the office of Registrar Farrukabad, U.P. on 19.05.2015. Further, petitioner and respondent No.2 were blessed with a child in the year 2016 and are happily residing together. He further contends that there is nothing to suggest in statement under Section 164 Cr.P.C., in case respondent No.2 had left the premises at instance or enticing of petitioner. Also the sexual relationship prior to marriage on 07.05.2015 could not be supported in the medical examination or FSL report. He emphasizes that as per school certificate dated 30.04.2022, which has been subsequently obtained from the concerned school by the prosecutrix, her date of birth is 11.08.1995. As such, she was a major on the alleged date of leaving her home i.e. 09.11.2014. He further submits that date of birth of the prosecutrix (i.e. 11.08.1995) was subsequently got changed by her father to 05.05.1997 at the time of filling the form in the High School. Reliance is further placed upon *Firoz And Anr. v. State of NCT of Delhi*



And Anr. CRL.M.C. 961/2023 decided on 06.09.2023 by a Co-ordinate Bench of this Court.

4. On the other hand, petition is opposed by learned APP for the State. She submits that as per the documents appended with marriage certificate, which was subsequently registered, the date of birth of prosecutrix is 05.05.1997, as mentioned in High School Certificate and as such she was aged about seventeen years and six months at the relevant time. Learned APP further submits that consent of respondent No.2 being a minor is immaterial and proceedings may not be quashed.

5. Petitioner in the present case seeks to invoke the powers under Section 482 of the Code of Criminal Procedure. The same is to be used to secure the ends of justice or to prevent the abuse of process of Court. In which cases, the power to quash the criminal proceedings or the complaint or FIR may be used when the offender as well as victim have settled their dispute, would depend upon the facts and circumstances of each case and no generalized list or categories can be prescribed. However, the Court is required to give due regard to the nature and gravity of the offence and consider the impact on the society.

6. In serious offences like rape, though the Court should be slow in exercising the powers of quashing but is not foreclosed from examining whether there is sufficient evidence, which if, pressed would lead to proving the charge. Further the stage of proceedings for exercising the powers under Section 482 Cr.P.C., the possibility of conviction in view of settlement between the parties need to be considered. It also needs to be kept in perspective, if the settlement would lead to harmony between the parties and



if, the continuation of trial would be adding agony to their life, despite settlement.

7. Observations in para 12 & 13 in ***Kapil Gupta v. State (NCT of Delhi) and Another***, (2022) 15 SCC 44, wherein the proceedings under Section 376 IPC were quashed by the Hon'ble Supreme Court, after referring to principles laid down in ***Narinder Singh v. State of Punjab***, (2014) 6 SCC 466 may be beneficially referred:

“12. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

13. The Court has further held that it is also relevant to consider as to what is the stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.”

Reference may also be made to ***Ananda D.V. v. State and Anr.***, **Criminal Appeal Nos.394-395 of 2021** decided on 12.04.2021, wherein FIR under Section 376/380 IPC was quashed by the Hon'ble Supreme Court



since the petitioner and respondent no.2 therein entered into a matrimonial alliance after registration of FIR.

8. On the face of record, the FIR was registered at the instance of father of prosecutrix, since she left her parental home on 09.05.2014. Perusal of statement of prosecutrix under Section 164 Cr.P.C. reveals that there was no enticing on behalf of the petitioner. Rather, prosecutrix, who was pursuing her first year studies in college called upon the petitioner to meet her, from where they proceeded to Farukhabad, U.P. Though prosecutrix claimed that they had married after reaching the house of petitioner's sister but sexual relationship could not be confirmed in the medical examination or FSL report as admitted by learned APP. Respondent No.2/prosecutrix formally married the petitioner on 07.05.2015 and got the marriage registered on 19.05.2015 which has not been disputed on behalf of the prosecution and, thereafter, couple has been blessed with a child who is presently aged about 07 years. Apparently the date of birth which was subsequently got recorded in High School Certificate is disputed by the prosecutrix on the basis of earlier School Leaving Certificate obtained by her.

In the facts and circumstances, it may be difficult to conclusively prove, if the prosecutrix was below 18 years on the date of registration of FIR. The High School Certificate appears to have been subsequently used by prosecutrix for registration of marriage in 2015, in view of the legal requirement of producing the High School Certificate, though the date of birth is disputed by her. It cannot be ignored that respondent No.2 had reached the age of discretion. Petitioner along with prosecutrix have been



2024:DHC:7924



happily married for more than 09 years and blessed with a child, which has been accepted by families of both parties.

Also, the chances of conviction are bleak and no useful purpose shall be served by keeping the case pending. In the facts and circumstances, continuation of proceedings would be nothing but an abuse of the process of Court and add agony to the life of parties. Consequently, FIR No.715/2014 under Sections 376/363/366/367 IPC and Section 4 of POCSO Act registered at P.S. Shahdara and proceedings emanating therefrom stand quashed.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to learned Trial Court for information.

ANOOP KUMAR MENDIRATTA, J

OCTOBER 14, 2024

p