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

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Date of Decision: 03.04.2024

+ W.P.(CRL) 1059/2024

‘I S’

..... Petitioner

Through: Ms. Ambika, Adv.

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Rupali Bandhopadhyya, ASC for
State with Mr. Abhijeet Kumar, Adv.
SI Nisha Sharma, PS Pandav Nagar.
Mr. Lucky Upadhyay, Adv. for R-2
with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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J U D G M E N T

ANOOP KUMAR MENDIRATTA, J (ORAL)

CRL.M.A. 9996/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

W.P.(CRL) 1059/2024

1. Petition under Article 226 of the Constitution of India read with 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.090/2024 under Section 376 IPC registered at P.S.: Pandav Nagar.

2. Issue notice. Learned ASC for the State and learned counsel for respondent no. 2 alongwith respondent no.2 in person appear on advance notice and accept notice.



3. In brief, as per the case of prosecution, present FIR was registered on 17.02.2024 on complaint of respondent no.2, who alleged that she had come in touch with petitioner during '*Prabhat Pheri*' and both had gradually developed liking for each other. She further alleged that petitioner on pretext of marriage, repeatedly established physical relations with her but on 15.02.2024, petitioner expressed his inability to marry respondent no.2 since he had been engaged as his family members had fixed his marriage at some other place. FIR was accordingly registered.

4. Learned counsel for the petitioner submits that after registration of FIR and release of petitioner on bail vide order dated 21.02.2024, petitioner and respondent no.2 mutually agreed to marry and Court marriage was solemnized on 23.02.2024.

5. Learned ASC for the State on instructions of IO submits that the marriage between the petitioner and respondent no.2 has been verified, which was solemnized during investigation itself.

6. Respondent no.2, who is also present in person alongwith counsel, submits that they have since been happily married and she does not wish to proceed with the FIR, which was registered under misconception since there was reluctance on the part of petitioner for marriage due to resistance from his family.

7. Petitioner in the present case seeks to invoke the powers under Section 482 of Code of Criminal Procedure, 1973. The same is to be used to secure the ends of justice or to prevent the abuse of process of any 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



generalised 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.

8. 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.”

Reliance may also be placed upon ***Ananda D.V. v. State and Anr., Criminal Appeal Nos.394-395 of 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.

9. The gravamen of the allegations in the present FIR is that under the assurance of marriage, respondent no.2 had voluntarily established physical relations with the petitioner but later on petitioner expressed his inability to



marry the complainant/respondent no.2 as his marriage had been fixed with someone else by his family.

10. It is pertinent to observe that whensoever a woman makes a reasoned choice to establish physical relations after fully understanding the consequences of such action, the 'consent' cannot be said to be based on misconception of fact until and unless there is a clear evidence that a false promise with no intention of upholding the same was given by the maker at the time of making the promise. The said promise must be of immediate relevance and bear a direct nexus to a decision by the woman to engage in sexual act.

Given the nature of relationship between the petitioner and respondent no.2, it does not appear that any such alleged promise was in bad faith or to deceive respondent no.2 but for the subsequent developments in the family of the petitioner. It is pertinent to observe that within a short period during the process of investigation itself, petitioner voluntarily married respondent no.2. In the facts and circumstances, it cannot be construed that the promise made by the petitioner initially was with an intention to not fulfill the same. It cannot be ignored that quashing of proceedings shall result in better harmony in the matrimonial relationship between the parties, rather than continuing with the proceedings under Section 376 IPC. Also, the chances of any conviction in proceedings/trial are remote and bleak in view of settlement between the parties.

11. Considering the facts and circumstances, since the matter has been amicably settled between the parties, no useful purpose shall be served by keeping the case pending. Continuation of proceedings would be nothing but an abuse of the process of Court and cause prejudice and disruption in



harmony between the parties. Consequently, FIR No.090/2024 under Section 376 IPC registered at P.S.: Pandav Nagar, Delhi and the proceedings emanating therefrom stand quashed.

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

ANOOP KUMAR MENDIRATTA, J.

APRIL 03, 2024/akc/sd