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

+ **CRL.M.C. 2721/2024**

RAGHUBIR

.....Petitioner

Through: Mr. Akhlak Ali, Adv.
along with petitioner in
person.

versus

STATE NCT OF DELHI & ANR.Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State along
with Mr. Nishant Kumar,
Mr. Prateek Kumar Shahi,
Mr. Rohit Sharma & Ms.
Renu Dalal, Advs.
R2 and R-3 in person.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

18.07.2024

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1. The present petition is filed seeking quashing of the FIR No. 32/2021 dated 18.01.2021 registered at Police Station Seemapuri, for offences under Sections 363/376/366 of the Indian Penal Code, 1860 ('**IPC**'), Sections 4/6 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO**') and Section 9 of the Prohibition of Child Marriage Act, 2006 and any consequential proceedings arising therefrom.

2. The FIR was registered on a complaint given by the father of the victim, who alleged that his daughter had gone missing since 17.01.2021. The victim later came back on her own and stated that she got married with the petitioner. The chargesheet was thereafter filed for the offences punishable under Sections

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363/366/376 of the IPC as well as Section 4/6 of the POCSO and Section 9 of the Prohibition of Child Marriage Act, 2006.

3. The present petition is filed on the ground that the petitioner and Respondent Nos. 2 and 3 have settled all their disputes amicably of their own free will, without any pressure coercion or undue influence.

4. The learned counsel for the petitioner submits that the daughter of the complainant, at the time of incident, was almost 18 years of age. He submits that the prosecution has erroneously filed the chargesheet relying upon the school certificate since as per the complainant's own stand, the same was made only to secure the admission for his daughter.

5. He submits that the actual date of birth of the daughter of the complainant is 09.02.2003. He submits that the parties got married the moment the victim turned 18 years of age. He submits that Respondent No. 3 had gone with the petitioner on her own. He submits that the father of the victim has realized his mistake and has accepted the petitioner as his son-in-law. The petitioner and victim have also given birth to two children since then. A copy of the Aadhaar Card has been placed on record and has not been disputed by the State.

6. It is apparent that at the time of incident, the victim was almost 18 years of age.

7. The victim and father of the victim are present in person. On being asked, the victim states that she had gone with the petitioner of her own free will. She further states that she got married to the petitioner after she turned 18 years of age. The father of the victim, on being asked, states that he has since accepted his daughter's relation with the petitioner and has



forgiven the petitioner as well as his daughter. When the victim categorically states that she was over 18 years of age when the physical relations were established and that she had gone with the petitioner on her own, no case under Section 363 of the IPC and Section 4/6 of the POCSO is made out. The victim also does not allege that any sexual relationship was established without her will, therefore, the petitioner could not have been charged for offence under Section 376 of the IPC. The petitioner belongs to the poor strata of the society. The petitioner and the victim are present in Court and have been blessed with two children.

8. The offences under Sections 363/366/376 of IPC, Sections 4/6 of the POCSO and Section 9 of Prohibition of Child Marriage Act, 2006 are non-compoundable in nature.

9. In ***State of Haryana v. Bhajan Lal* : 1992 Supp (1) SCC 335**, the Hon'ble Apex Court has laid down the test to discern when quashing is appropriate in exercise of the discretion under Section 482 of the CrPC. The relevant portion of the said judgment is reproduced hereunder:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.



(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and



personal grudge.”

(emphasis supplied)

10. In *Narinder Singh & Ors. v. State of Punjab & Anr.*, (2014) 6 SCC 466, the Hon’ble Apex Court laid down the guiding principles for the exercise of discretion under Section 482 of the CrPC. These principles pertain to quashing of proceedings in cases where there has been a settlement between the parties:

“29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or*
- (ii) to prevent abuse of the process of any court.*

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity



are not to be quashed merely on the basis of compromise between the victim and the offender.

X-X-X

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.



29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

(emphasis supplied)

11. The Hon’ble Apex Court, in **Kapil Gupta: 2022 SCC Online SC 1030**, while quashing an FIR under Section 376 of the IPC, had observed as under:

“12. It can thus be seen that this Court has
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*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.***

X-X-X

*15. In both the cases, though the charge-sheets have been filed, the charges are yet to be framed and as such, the trial has not yet commenced. **It is further to be noted that since Respondent 2 herself is not supporting the prosecution case, even if the criminal trial is permitted to go ahead, it will end in nothing else than an acquittal. If the request of the parties is denied, it will be amounting to only adding one more criminal case to the already overburdened criminal courts.***

(emphasis supplied)

12. It is not in doubt that the offences under Sections 376 of the IPC, Sections 4/6 of the POCSO and Section 9 of the Prohibition of Child Marriage Act, 2006 are heinous in nature and involve mental depravity. Offences of such nature cannot be quashed merely because the victim has settled the dispute. Such offences, in true sense, cannot be said to be offences *in personam* as the same are crimes against the society.

13. Looking at the statement given by the victim as well as by the complainant, it is improbable that the petitioner would be convicted for any of the offences as alleged against him. Even otherwise, since all the disputes are settled between the parties



and the parties are now residing together and have been blessed with two children, the continuance of the proceedings would be an abuse of the process of the Court. In view of the aforesaid, this Court is of the opinion that this is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

14. In view of the above, FIR No. 32/2021 and all consequential proceedings arising therefrom are quashed.

15. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

JULY 18, 2024
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