



2024:DHC:5507



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CRL.M.C. 3032/2024**  
**MESHAR JAHAN & ORS.** .....Petitioners

Through: Mr. Shahrukh Inam, Mr. Yashdeep  
Sethi and Ms. Aditya Sharma, Advs.

versus

**STATE (N C T OF DELHI) & ANR.** .....Respondents

Through: Ms. Kiran Bairwa, APP for State with  
SI Preeti, PS Seemapuri.  
Mr. Umardeen, Advocate for R-2 with  
R-2 in person.

**CORAM:**

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

**ORDER**

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**24.07.2024**

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioners for quashing of FIR No. 0778/2023 dated 28.10.2023, under Section 376 IPC, registered at PS: Seemapuri. Sections 323/506 IPC were subsequently invoked.

2. In brief, as per the case of prosecution, present FIR was registered on 28.10.2023, on statement of prosecutrix 'R', who alleged that she was married to 'N' in October, 2021 and her brother-in-law 'I' (*nandoi*/petitioner No. 2) had a bad eye on her since marriage. In the month of March, 2022, petitioner No. 2 established forcible sexual relations with her which was disclosed by her to husband but he insisted to keep quite in order to save matrimonial home of his sister. On 25.10.2023, petitioner No.2 repeated the same, on which she disclosed the same to her sister. Thereupon, her sister took her back from the matrimonial home. A PCR call was also made on



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behalf of the prosecutrix on 26.10.2023 but she did not give statement due to her condition.

3. Learned counsel for the petitioner submits that present FIR was lodged out of matrimonial differences and in view of amicable settlement between the parties, proceedings be quashed. Reliance is further placed upon ***Kapil Gupta vs. State of NCT of Delhi & Anr.***, SLP (CRL.) No. 5806/2022, wherein, proceedings under Section 376 IPC were quashed by the Hon'ble Apex Court.

4. Respondent No. 2, who is present in person, submits that she stands by the allegations, though she has no objection to quashing of FIR.

5. Learned APP for the State opposes the petition and submits that offences are serious in nature and there is nothing on record to reveal, if the allegations levelled by respondent No. 2 have been concocted due to matrimonial differences. He further points out that investigation was commenced on PCR Call on 26.10.2023 and FSL report is still awaited though the chargesheet has been filed before the learned Trial Court. He also contends that prosecutrix duly supported her statement under Section 164 Cr.P.C. and appears to be exploited by petitioner No.2 at matrimonial home.

6. The principles for exercise of power under Article 226 of the Constitution of India and Section 482 Cr.P.C. for quashing of proceedings as laid down by the Hon'ble Supreme Court in paragraph 102 in ***State of Haryana and Others vs. Bhajan Lal and Others***, 1992 Supp (1) SCC 335, may be beneficially reproduced :

*“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.”*

7. Petitioners in the present case seek 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.

8. It may be noticed that in ***Kapil Gupta vs. State of NCT of Delhi & Anr.*** (supra) relied upon by learned counsel for the petitioner, the principles for quashing, after consideration of observations in ***Narinder Singh vs. State of Punjab***, (2014) 6 SCC 466 were referred in para 13 and 14, which may be beneficially reproduced:

*“13. 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.*

*14. The Court has further held that it is also relevant to consider as to what is 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.”*

9. Perusal of aforesaid judgment reveals that though the FIR under Section 376 IPC was quashed by the Hon'ble Apex Court but it reiterated that in heinous and serious crimes like rape, the Court should not normally exercise the powers of quashing the proceedings. On facts, it was observed that the prosecutrix was the complainant in one case, while she was an accused in another case wherein allegations of extortion were made against her. In the peculiar facts and circumstances, keeping in view that the prosecutrix was merely aged about 23 years and in the prime of her youth, would also have to face the trial in other case and undergo agony, both the FIRs were quashed.

10. However, so far as the present case is concerned, a PCR call was made on behalf of the prosecutrix on 26.10.2023 but she did not give her statement due to her condition. The same cannot be a ground to disbelieve her at this stage since several factors prevail desisting to make allegations against family members in a settled matrimonial life. It cannot be presumed that the allegations were levelled due to matrimonial differences since the prosecutrix, on query by this Court, stands by the allegations. Categorical allegations were levelled by respondent No. 2 against petitioner No. 2 with



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respect to forcible establishment of sexual relations even on an earlier date. The allegations were further reiterated by respondent No. 2 in her statement under Section 164 Cr.P.C., which was recorded during the course of investigation. The FSL report is still awaited. The discrepancies, if any, in the initial FIR as well statement under Section 164 Cr.P.C., can be duly appreciated only after the statement of the victim is recorded before the learned Trial Court. Considering the serious and heinous nature of offence affecting the society at large, this Court is of the considered opinion that the case is not fit for quashing. ***Kapil Gupta vs. State of NCT of Delhi & Anr*** (supra) relied upon by the learned counsel for the petitioner is distinguishable on facts, as already discussed above.

For the foregoing reasons, petition is dismissed. Pending applications, if any, also stand disposed of.

Nothing stated herein shall tantamount to expression of opinion on the merits of the case.

**ANOOP KUMAR MENDIRATTA, J.**

**JULY 24, 2024/R**