



2024:DHC:1605



\$~37

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 16th February, 2024+ CRL.REV.P. 626/2023

VIJAY KUMAR SHARMA & ANR. Petitioner

Through: Mr. Navin Prakash, Mr.
Ved Vyas Tripathi & Mr.
Kumar Shubham, Advs.

versus

STATE OF DELHI Respondent

Through: Mr. Utkarsh, APP for the
State
SI Manisha Yadav & ASI
Harwinder Kaur, PS-
Dwarka North
Mr. Naresh K. Daksh,
Adv. for R2

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J.CRL.M.A. 15077/2023 (delay of 26 days in filing the petition)

1. For the reasons mentioned in the application, the same is allowed and the delay in filing the present petition is condoned.
2. The application stands disposed of.

CRL.REV.P. 626/2023 & CRL.M.A. 15076/2023 (Stay)

3. The present petition is filed under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking setting aside of the order on charge dated 21.12.2022 (hereafter '**impugned order**'), passed by the learned

Additional Sessions Judge ('ASJ'), South West District, Dwarka Courts, in SC No. 293/2022, arising out of FIR No.780/2021, registered at Police Station Dwarka North.

4. By the impugned order, the learned ASJ framed charges for offences under Sections 376(2)(n)/506 of the Indian Penal Code, 1860 ('IPC') against Petitioner No.1 and charge under Section 509 of the IPC against Petitioner No.2.

5. The learned ASJ noted that Petitioner No.1 had allegedly established sexual relations with Respondent No.2/ prosecutrix on the pretext of false promise of marriage. It was further noted that Petitioner No.2 had allegedly threatened to kill Respondent No.2 and her son.

6. On 28.10.2021, the present FIR was lodged on a complaint given by Respondent No.2 to SHO, Dwarka (North), New Delhi. Petitioner No.1 is the brother of Respondent No. 2's aunt (*chachi*).

7. It was alleged that Petitioner No.1 had represented to Respondent No.2 that he would marry her after divorcing his wife (Petitioner No.2). Subsequently, Respondent No.2 and Petitioner No.1 established sexual relations with each other on multiple occasions.

8. It was also alleged that Petitioner No.1 took a sum of ₹9.5 lakhs from Respondent No.2 due to certain financial problems. Petitioner No.1 returned ₹6.5 lakhs due to pressure from Respondent No.2's aunt to return the money. Respondent No.2 took a personal loan and gave another ₹2 lakhs to Petitioner No. 1 to clear his credit card dues.

9. It is further alleged that Petitioner No.2 verbally abused Respondent No.2 and her son on call and told her that she and Petitioner No.1 were not getting divorced.

10. It is alleged that Petitioner No.1 gave two cheques of ₹4,62,000/- and ₹2,13,000/- to Respondent No.2 to clear his dues.

11. Respondent No.2, in her statement, under Section 164 of the CrPC, stated that the sexual relations between her and the applicant were consensual. She has further stated that Petitioner No.1 had informed her that he was under pressure from his family to not divorce Petitioner No.2 whereafter she ended her relationship with Petitioner No.1. She stated that she had subsequently entered into sexual relations with Petitioner No.1 as well.

12. The learned counsel for the petitioners submits that the petitioners have been falsely implicated in the present case. He further submits that Respondent No.2 has contradicted the case of the prosecution in her statement under Section 164 of the CrPC.

13. The learned counsel for Respondent No.2 submits that, even though, no allegation of rape was ever made by Respondent No.2, the Police officials, on their own whims and fancies, recorded an FIR under Section 376 of the Indian Penal Code, 1860.

14. He submits that Respondent No.2 only wanted to lodge a complaint of cheating, dishonesty and mental harassment against Petitioner No.1, and a complaint against Petitioner No.2 for using abusive language against Respondent No.2.

15. It has also been stated in Respondent No.2's reply, which is supported by her duly sworn affidavit, that she has no objection if the impugned order is set aside and the FIR No.780/2021 is quashed.

16. The offences under Sections 506 and 509 are compoundable whereas the offence under Section 376 is non compoundable.

17. 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)

18. In *Narinder Singh & Ors. V. State of Punjab & Anr. : (2014) 6 SCC 466*, the Hon'ble Supreme Court has observed as under :-

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

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.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

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)

19. The Hon’ble 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 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.”

20. While it is correct that the Court ought to exercise caution and reluctance in quashing proceedings when heinous and serious offences are involved, this Court cannot lose sight of the fact that Respondent No.2 has repeatedly reiterated that that she did not intend to allege the crime of rape against Petitioner No.1.

21. In the peculiar circumstances of this case, it is unlikely that the present FIR will result in a conviction when Respondent No.2 is not supporting the case of the prosecution.

22. At this stage, in light of the stance of Respondent No.2 that she was in a consensual relationship with Petitioner No.1 and noting that Respondent No.2 was aware that Petitioner No.1 is a married man and continued the relationship with him for a significant amount of time without marriage, this Court is of the opinion that *prima facie* the offence punishable under Section 376 of the IPC is not made out.

23. In reference to remaining offences under Section 506 and 509 of the IPC, the same are compoundable.

24. In light of the aforesaid discussion and keeping in mind that Respondent No.2 has specifically stated that she doesn't wish to pursue the proceedings out of the present FIR, this Court feels that no useful purpose would be served by keeping the dispute alive and continuance of the proceedings would amount to abuse of the process of Court. I am of the considered opinion

that it is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

25. In view of the above, FIR No.780/2021 is quashed, and consequently, the impugned order is also set aside.

26. The present petition is allowed in the aforesaid terms. Pending application is also disposed of.

AMIT MAHAJAN, J

FEBRUARY 16, 2024
“ssfi”