



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

% **Reserved on : 22.11.2023**
Pronounced on : 30.01.2024

+ **W.P.(CRL) 2869/2023 & CRL.M.A. 26639/2023 and CRL.M.A. 26640/2023**

PREM KUMAR Petitioner

Through: **Mr. Manish Kumar Salman,**
Advocate.

versus

THE STATE & ORS. Respondents

Through: **Mr. Sanjay Lao, Standing Counsel**
with Mr. Shivesh Kaushik, Mr.
Priyam Aggarwal and Mr. Abhinav
Kumar Arya, Advocates.
Mr. Anand Ranjan, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

J U D G M E N T

RAJNISH BHATNAGAR, J.

1. The present petition has been filed by the petitioner under Article 226 of Constitution of India read with section 482 Cr.P.C for quashing of FIR No. 274/2017 under Sections 363/376 IPC and Section 6 POCSO Act registered at Police Station R.K Puram, Delhi and all other proceedings emanating therefrom.

2. In brief the facts of the case are that on 26.08.2017, the above said FIR got registered on the complaint of respondentno.2/complainant, who is



the father of respondent no. 3/victim, against the petitioner wherein it is alleged that the petitioner enticed the daughter of the complainant and took off with her. On the basis of the said complaint the above mentioned FIR was registered under section 363 IPC. During the course of investigation, the victim girl/respondent no.3 came to Police Station Giri and thereafter her statement under section 161 Cr.P.C was recorded. It was stated by her that she left the house of her parents of her own free will because her parents objected to the relationship between her and the petitioner Prem Kumar and also threatened to kill her and the petitioner if she continued to be in contact with him. She further stated that during her time with the petitioner, they stayed at different guest houses and there was also physical relationship between them, with her consent and free will. It was also stated by her that during their time together they also got married, however there is no document, witness or photograph present to support the same. Further, the statement of the victim under section 164 Cr.P.C was recorded wherein she reiterated the facts stated by her in the statement under section 161 Cr.P.C. On further investigation, the age of the victim was verified to be about 16-17 years. On this, Sections 376 IPC and 6 POCSO were added in the present case. Thereafter, the accused was arrested on 12.10.2017.

3. I have heard the learned counsel for the petitioner, learned APP for the state and have perused the records of the case.

4. It is submitted by the counsel for the petitioner that the petitioner and respondent no. 3 were in a relationship because they loved each other. He further submitted that the sexual relationship between the petitioner and respondent no. 3 was made with free consent and will of respondent no. 3. It



is further submitted by him that the petitioner and the respondent no. 3 got married in a hotel in Meghalaya. He further submits that the petitioner and respondent no. 3 are now blessed with a baby boy and baby girl, aged 5 years and 1 year respectively. He also submits that respondent no. 3 has no objection if the FIR in question is quashed, affidavit regarding the same is also annexed. Lastly, it is submitted by him that both the petitioner and respondent no. 3 were living peacefully and enjoying their matrimonial life, thus, the FIR in question be quashed as it won't serve any fruitful purpose.

5. On the other hand, it is submitted by the learned APP, while opposing the present petition, that this is not a fit case to invoke the inherent jurisdiction of this Court to exercise its power on the basis of compromise arrived at between the parties with respect to an offence not compoundable under Section 320 Cr.P.C.

6. In the instant case, it is clear that the respondent no.3-victim has solemnized marriage with the petitioner and they both are living happily and harmoniously and it is also in the interest of society to settle and re-settle the family for their welfare.

7. The Hon'ble Supreme Court in ***Gian Singh v. State of Punjab, (2012) 10 SCC 303***, while explaining that the High Court has inherent power under Section 482 of the Code of Criminal Procedure with no statutory limitation, including Section 320 Cr.P.C., has held that these powers are to be exercised, to secure the ends of justice or to prevent abuse of process of any Court and these powers can be exercised to quash criminal proceedings or complaint or FIR inappropriate cases where offender and victim have settled



their dispute and for that purpose no definite category of offence can be prescribed.

8. Further, the Apex Court in ***Parbatbhai Aahir alias Parbathbhai Bhim singh bhai Karmur v. State of Gujarat, (2017) 9 SCC 641***, has observed that the High Court, as per Section 482 Cr.P.C., acknowledges the existence of inherent powers that are not restricted by the provisions outlined in Section 320 Cr.P.C. This means that the High Court has the authority to exercise its inherent powers independently of the limitations set forth in Section 320 Cr.P.C.

9. Reliance can be placed upon ***Madan Mohan Abbot v. State of Punjab, (2008) 4 SCC 582***, wherein the Hon'ble Supreme Court, in its guidance, highlighted the importance of adopting a practical approach in criminal proceedings when considering compromises. Taking into account the nature of the case and aiming to optimize the Court's time for addressing more impactful and meaningful litigation, a common-sense approach that considers practical aspects rather than legal technicalities should be employed.

10. No doubt Section 376 IPC and Section 6 of the POCSO Act are not compoundable under Section 320 Cr.P.C., however, as explained by Hon'ble Supreme Court in ***Gian Singh's, Narinder Singh's, Parbatbhai Aahir's and Laxmi Narayan's cases (supra)***, the authority of the High Court under Section 482 Cr.P.C. remains unrestricted by the provisions of Section 320 Cr.P.C. It can use its inherent powers under Section 482 Cr.P.C. to quash FIRs and criminal proceedings if deemed necessary based on the specific



facts and circumstances of the case, either to serve the interests of justice or to prevent the misuse of the court process. This power can even be exercised in cases where the offenses are non-compoundable, but the parties have reached a settlement among themselves.

11. The Hon'ble Supreme Court in ***Kapil Gupta v. State of NCT of Delhi***, **2022 SCC Online SC 1030**, had observed, while quashing an FIR under Section 376 of IPC, that:

“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.

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17. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succour to Respondent No. 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.”



12. In the present case, the parties have already married each other, as stated by the learned counsel for the petitioner. Attention of this Court has been drawn to the Affidavit-cum-No-objection given by respondent no.3, where she has stated that she has no objection in case the FIR is quashed. One cannot lose sight of the fact that both the petitioner and the respondent no.3 are happily residing together with their two minor children and are considering to restart their lives together with a new beginning. This Court cannot be a silent spectator to or turn its back on the distressed family. If the impugned FIR is not quashed, the petitioner will have to face incarceration for at least 10 years which will negatively impact their lives, including their two minor children. The mistake or blunder, which otherwise constitutes an offence, has been committed due to immature act and uncontrolled emotions of two persons, out of whom, one was a minor, on the verge of majority, at the time of incident as claimed by the state.

13. The petitioner's prosecution and conviction will lead to pain and tears in the eyes of the family members of both the parties and future of two families will be at stake, whereas, if the impugned FIR is quashed, it would serve the ends of justice and would bring joy to both the families and two minor children as well.

14. Therefore, looking into the peculiar facts and circumstances of the case and considering the lives and future of two minor children, I am of the opinion that the present petition deserves to be allowed for ends of justice. Accordingly, the petition is allowed and FIR No. 274/2017 under Sections 376/363 IPC and Section 6 of POCSO Act registered at Police Station R.K



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Puram, Delhi and all other proceedings initiated therefrom are hereby quashed.

15. Petition along with pending applications stands disposed of in above terms.

RAJNISH BHATNAGAR, J

JANUARY 30, 2024/ib