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

+ **CRL.M.C. 5635/2019 & CRL.M.A. 12824/2024**

VIJAY KUSHWAHA

.....Petitioner

Through: Mr. M.R. Singh, Mr.
Yashvir Kumar & Mr.
Sanjeev Upadhyya, Advs.
Petitioner in person

versus

**THE STATE (NCT OF DELHI)
& ANR**

.....Respondents

Through: Mr. Ajay Vikram Singh,
APP for the State
SI Vivek Singh, PS-
Sarojini Nagar

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

22.07.2024

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1. The present petition is filed seeking quashing of FIR No. 262/2016 dated 23.05.2016, registered at Police Station Sarojini Nagar, for offence under Section 354A of the Indian Penal Code, 1860 ('IPC') and all other consequential proceedings arising therefrom. Chargesheet has already been filed in the present case against the petitioner for the offences under Sections 354/354A/509/34 of the IPC.

2. The FIR was registered on a complaint filed by Respondent No. 2. It was alleged that Respondent No.2 along with her husband had engaged in a heated quarrel with a shopkeeper in the market, which led to a crowd gathering there. It was alleged that the petitioner and another co-accused person, who were part of the crowd had misbehaved with Respondent



No.2 and outraged her modesty by taking advantage of the congestion in the market.

3. The learned counsel for the petitioner submits that the FIR was registered on a misunderstanding. He submits that, admittedly, a large number of people were present in the market and the complaint was filed against the petitioner because Respondent No.2 misunderstood that it was the petitioner who had misbehaved with her.

4. He points out that the other co-accused person is absconding and the proceedings under Section 82 of the CrPC have also been initiated against the other accused person.

5. He submits that the incident relates way back in the year 2016 and the parties have settled their dispute in the year 2019 by way of the Compromise Deed dated 30.10.2019, whereby the complainant/ Respondent No.2 had agreed to cooperate in quashing of the present FIR.

6. The petitioner is present in Court and has been duly identified by the Investigating Officer.

7. It is seen that the complainant was initially represented through different counsel in the present proceedings, however, no one has appeared on her behalf since 11.02.2020. This Court *vide* order dated 12.10.2023 had directed Respondent No. 2 to be present before this Court. Thereafter, the petitioner was permitted to serve Respondent No. 2 through substituted service as he could not locate her fresh address despite his best efforts.

8. Respondent No. 2 has now been served through publication in the newspaper and the proof of the same has also been filed before the Court. However, even today, no one has appeared before the Court on behalf of Respondent No.2.



9. Admittedly, the present petition is supported by the duly signed affidavit of Respondent No.2 wherein she has deposed that she has settled the matter with the petitioner and she has no objection if the proceedings arising out of the present FIR are quashed. The notarised Compromise Deed dated 30.10.2019 is also on record.

10. Offences under Sections 354/354A of the IPC are non-compoundable whereas the offence under Section 509 of the IPC is compoundable.

11. It is well settled that the High Court while exercising its powers under Section 482 of the CrPC can compound offences which are non-compoundable under the Code on the ground that there is a compromise between the accused and the complainant. The Hon'ble Apex Court has laid down parameters and guidelines for High Court while accepting settlement and quashing the proceedings. In ***Narinder Singh & Ors. v. State of Punjab & Anr. : (2014) 6 SCC 466***, the Hon'ble Apex 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.”

(emphasis supplied)

12. Similarly, in ***Parbatbhai Aahir & Ors v. State of Gujarat & Anr. : (2017) 9 SCC 641***, the Hon’ble Apex Court has observed as under :-

“16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the



High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

*16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. **Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.***



16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

(emphasis supplied)

13. In the present case, it is evident from the FIR that the incident happened in a busy market. The possibility that the complaint was filed against the petitioner because the complainant mistook him as the person who had misbehaved with her cannot be ruled out. It is also relevant to note that the parties have also executed a compromise deed where it is specifically mentioned that the parties had amicably settled the dispute with the intervention of respectable members of society without any pressure, coercion or misunderstanding. In the peculiar circumstances of this case, it is unlikely that the present



FIR will result in a conviction when the parties had settled the dispute.

14. As noted above, none has appeared on behalf of Respondent No.2 after 11.02.2020. A Coordinate Bench of this Court in *Sanjay Ahuja & Ors. v. State NCT of Delhi & Anr. : CRL.M.C. 2605/2021* had quashed the FIR, even though, the complainant had stopped appearing before the Court after settling the dispute. Thus, considering the affidavit of Respondent No.2 and the Compromise Deed, the absence of Respondent No.2 cannot alone act as a hindrance in quashing the FIR, especially since all reasonable efforts were made to secure her presence.

15. It is apparent that the complainant has no intention to pursue the proceedings arising out of the present FIR. In such circumstances, considering that the parties have settled the disputes, 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. In view of the same, I am of the opinion that this is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

16. However, keeping in mind the fact that chargesheet has already been filed in the case arising out of the present FIR, and the State machinery has been put to motion, ends of justice would be served if the petitioner is put to cost.

17. In view of the above, FIR No. 262/2016 and all consequential proceedings arising therefrom are quashed only *qua* the petitioner, subject to payment of a total cost of ₹20,000/- by the petitioner, to be deposited with the Delhi Police Welfare Society, within a period of twelve weeks from date.

18. Let the proof of deposit of cost be furnished to the concerned SHO.



19. The present petition is allowed in the aforesaid terms.
20. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

JULY 22, 2024
“SS”