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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5666/2019, CRL.M.A. 39770/2019 &**
CRL.M.A. 12897/2024

SARTHAK TRIPATHY

.....Petitioner

Through: Mr. Nitish Banka, Adv.
with petitioner in person.

versus

STATE & ANR

.....Respondents

Through: Mr. S.K. Gautam, APP for
the State with SI Suraj PS-
Hauz Khas.
Complainant / R-2 through
V.C.
Mr. Rajan Kr. Prasad &
Ms. Pratika Jha, Advs. for
R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

04.10.2024

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1. The present petition is filed seeking quashing of FIR No. 216/2019 dated 31.07.2019, registered at Police Station Hauz Khas, for offences under Sections 328/376/506 of the Indian Penal Code, 1860 ('IPC'). Chargesheet has been filed in the present case.
2. The FIR in the present case was registered on a complaint made by Respondent No.2 alleging that she was in a relationship with the petitioner who deceived her by promising to marry and then by committing sexual assault upon her.
3. The learned counsel for the petitioner submits that during the pendency of the proceedings, the parties have settled all their disputes.

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4. He submits that the parties were in a live-in relationship with each other and the FIR was registered pursuant to a misunderstanding between the parties.

5. He submits that the affidavit has already been filed by the complainant before this Court wherein she has deposed that she has no objection if the present FIR is quashed.

6. The learned Additional Public Prosecutor for the State opposes the quashing of the present FIR. He submits that the offences alleged are heinous in nature and ought not to be quashed on the basis of a compromise between the parties.

7. The offence under Section 506 of the IPC is compoundable whereas the offence under Section 376 of the IPC is non compoundable.

8. 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)



9. The Hon'ble Apex Court, in ***Kapil Gupta v. State (NCT of Delhi)*** : (2022) 15 SCC 44, 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.

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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)

10. It is not in doubt that the offence under Section 376 of the IPC is heinous in nature and involves mental depravity. The same cannot be quashed merely because the victim has settled the dispute. Such an offence, in true sense, cannot be said to be an offence *in personam* as the same is a crime against the society.

11. The present case, however, the statement of Respondent No.2, clearly mentions that she was in a consensual relationship



with the petitioner. Respondent No.2 has also annexed her No-Objection Affidavit for quashing of the proceedings arising out of the present FIR. 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.

12. In reference to the remaining offence under Section 506 of the IPC, the same is compoundable.

13. In view of the stance of Respondent No.2 on affidavit, this Court feels that no useful purpose would be served by keeping the dispute alive and the continuance of the proceedings would amount to abuse of the process of Court.

14. Keeping in mind the peculiar facts of the case and I am of the considered opinion that it is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

15. In view of the above, FIR No. 216/2019 and all consequential proceedings arising therefrom are quashed.

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

AMIT MAHAJAN, J

OCTOBER 4, 2024

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