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

+ **CRL.M.C. 5866/2024**

SAMEER ANSARI

.....Petitioner

Through: Mr. Lakshay Joshi,
Advocate alongwith
Petitioner-in-Person.

versus

**STATE NCT OF DELHI
AND ANR**

.....Respondents

Through: Mr. Satish Kumar, APP for
the State.

Mr. Vaibhav Jain, Mr.
Shailendra Bhatnagar &
Mr. Maruti Nandan,
Advocates for R-2
alongwith R-2-in-Person.
SI Khushbu (P.S. Laxmi
Nagar).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

14.11.2024

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CRL.M.A. 22414/2024 (*exemption from filing certified copies of annexures*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present petition is filed seeking quashing of FIR No. 509/2023 dated 13.09.2023, registered at Police Station Laxmi Nagar, for offences under Sections 376(2)(n)/328 of the Indian Penal Code, 1860 ('IPC'), including all consequential proceedings arising therefrom. The said FIR was registered on a
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complaint filed by Respondent No.2.

4. It is alleged that the petitioner and Respondent No.2 were in a live-in relationship during which the petitioner established forceful physical relations with Respondent No.2 on the false pretext of marriage and also used to beat her. Respondent No.2 further alleged that the petitioner used to threaten her which led to the registration of the present FIR.

5. This Court, in order dated 31.07.2024 had noted the submissions of the petitioner that the parties were in a consensual relationship and the FIR was registered when the marriage between the parties could not take place. The complainant was present in Court and had given a statement that the present complaint was filed on misunderstanding and she does not wish to pursue any proceedings arising out of the present FIR.

6. The present petition is filed on the ground that the parties have amicably settled all the disputes by way of Memorandum of Understanding dated 25.06.2024, of their own free will, without any pressure, coercion, or undue influence.

7. The petition is duly supported with sworn affidavit of Respondent No. 2 wherein she has stated that she has no objection if the present FIR and the proceedings arising out of the same are quashed.

8. The parties are present in person before this Court today and they have been duly identified by the Investigating Officer.

9. On being asked, Respondent No.2 states that she has since moved on in life. She states that the parties were in a consensual relationship and does not wish to pursue any proceedings arising out of the present FIR and have no objection if the present FIR and the proceedings arose out of the same are quashed.

10. Offences under Sections 376(2)(n)/328 of the IPC are

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non-compoundable in nature.

11. It is well settled that the High Court while exercising its powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') (erstwhile Section 482 of the Code of Criminal Procedure, 1973) can quash offences which are non-compoundable 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 the case of *Narinder Singh & Ors. v. State of Punjab & Anr.:(2014) 6 SCC 466*, the Hon'ble Supreme Court had 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 the case of ***Parbatbhai Aahir & Ors. v. State of Gujarat & Anr.:(2017) 9 SCC 641***, the Hon’ble Supreme Court had 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. The Hon’ble Apex 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.***

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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)

14. The Hon'ble Apex Court in ***Pramod Suryabhan Pawar v. State of Maharashtra: AIR 2019 SCC 4010*** has held that consent involves an active understanding of the circumstances, actions, and consequences of the proposed act. The Court placing reliance on ***Uday v State of Karnataka: (2003) 4 SCC 46***, observed that when the complainant's consent to enter into sexual relations was not dependent on the promise to marry but was guided by other factors, then an offence under Section 376 of the IPC cannot be made out.

15. A coordinate bench of this under similar circumstances in ***I S v. Government of NCT of Delhi & Anr. : 2024:DHC:2667***, noted that when parties have settled the dispute, the chances of conviction are bleak. Accordingly, the court quashed the



proceedings to prevent the abuse of the process of court and to maintain harmony between the parties. The court held as under :

“10. It is pertinent to observe that whensoever a woman makes a reasoned choice to establish physical relations after fully understanding the consequences of such action, the ‘consent’ cannot be said to be based on misconception of fact until and unless there is a clear evidence that a false promise with no intention of upholding the same was given by the maker at the time of making the promise. The said promise must be of immediate relevance and bear a direct nexus to a decision by the woman to engage in sexual act.

Given the nature of relationship between the petitioner and respondent no.2, it does not appear that any such alleged promise was in bad faith or to deceive respondent no.2 but for the subsequent developments in the family of the petitioner. It is pertinent to observe that within a short period during the process of investigation itself, petitioner voluntarily married respondent no.2. In the facts and circumstances, it cannot be construed that the promise made by the petitioner initially was with an intention to not fulfill the same. It cannot be ignored that quashing of proceedings shall result in better harmony in the matrimonial relationship between the parties, rather than continuing with the proceedings under Section 376 IPC. Also, the chances of any conviction in proceedings/trial are remote and bleak in view of settlement between the parties.

11. Considering the facts and circumstances, since the matter has been amicably settled between the parties, no useful purpose shall be served by keeping the case pending. Continuation of proceedings would be nothing but an abuse of the process of Court and cause prejudice and disruption in harmony between the parties. Consequently, FIR No.090/2024 under Section 376 IPC registered at P.S.: Pandav Nagar, Delhi and the proceedings emanating therefrom stand quashed.”

16. It is not in doubt that the offence under Sections 376(2)(n) of the IPC is heinous in nature and involve mental depravity.



Offences of such nature cannot be quashed merely because the victim has settled the dispute. Such offences, in true sense, cannot be said to be offences *in personam* as the same are crimes against the society.

17. However, in view of the fact that the complainant has herself stated that the parties were in consensual relationship and she does not wish to pursue any proceedings arising out of the present FIR, this Court is of the considered opinion that it is a fit case to exercise discretionary jurisdiction under Section 528 of the BNSS. The pendency of the proceedings would only cause harassment to the parties and would be an abuse of the process of law. The complainant has since moved on in life and has categorically stated to be in a consensual relationship at the relevant time. The proceedings would cause unnecessary heartburn and prejudice to the future life of the parties.

18. In view of the above, FIR No. 509/2023 and all consequential proceedings arising therefrom are quashed.

19. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 14, 2024

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