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

+ CRL.M.C. 6689/2019 & CRL.M.A. 43443/2019

IBADAT HASAN KHAN & ANR Petitioners
Through: Mr. Sulaiman
Mohd. Khan,
Advocate with Ms.
Taiba Khan, Mr.
Bhanu Malhotra,
Mr. Gopeshwar
Singh Chandel, Mr.
Shamaul Haq Khan
& Mr. Abdul Bari
Khan, Advocates.

versus

THE STATE (NCT OF DELHI) & ANR Respondents
Through: Mr. Naresh Kumar
Chahar, APP for the
State along with SI
Sajid Hussain (PS
Malviya Nagar).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
12.03.2024

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking quashing of FIR No. 349/2019 dated 16.11.2019, registered at Police Station Malviya Nagar, for offences under Sections 376D/506/323 of the Indian Penal Code, 1860 ('IPC'). Chargesheet has been filed in the present case.

2. The brief facts of the present case are as follows:



2.1 On 13.11.2019, Respondent No.2 made a complaint to the SHO, Malviya Nagar Police Station, New Delhi-110017. It is stated that Respondent No. 2 and Petitioner No.1 got acquainted with each other in April, 2019. Petitioner No.1 proposed to Respondent No.2, whereafter, they entered into a live-in-relationship in June, 2019. It is alleged that after living together for a period of three months, both of them shifted to the home of Petitioner No.2 (friend of Petitioner No.1).

2.2 It is alleged that Respondent No.2 told Petitioner No.1 that she was pregnant, whereafter Petitioner No.1 slapped Respondent No.2 and both the petitioners pressurised her to get an abortion. It is alleged that in the evening on the same day, the petitioners started beating Respondent No.2 and threatened of dire consequences if she did not get an abortion. It is alleged that Respondent No.2 left the house on 16.10.2019 due to the threats. It is alleged that thereafter Petitioner No.1 assured Respondent No.2 that he will fix everything, due to which, Respondent No.2 went back to their flat in 08.11.2019. It is alleged that when Respondent No.2 reached there, the petitioners, who were highly intoxicated, raped her. It is alleged that Petitioner No.1 again threatened Respondent No.2 to abort the child.

2.3 The present FIR was registered on the basis of the written complaint made by Respondent No.2 on 16.11.2019.

2.4 Respondent No.2 was medically examined on



16.11.2019 at AIIMS Hospital, where her MLC indicated that Urine Pregnancy Test of Respondent No.2 was positive, that is, Respondent No.2 was pregnant. On the same date, the petitioners were arrested.

2.5 On 18.11.2019, Respondent No.2 in her statement under Section 164 of the CrPC stated that she had gone to meet Petitioner No.1 on 08.11.2019 at the flat which they used to share. She stated that Petitioner No.1 met her warmly but insisted her to get an abortion at the instance of Petitioner No.2. She stated that she used to take medication as she had suffered from depression and had an issue falling asleep since a long time. She stated that the said medication used to make her feel inebriated. On 08.11.2019, she had taken the medication before going to meet Petitioner No.1. She had an altercation with the petitioners over the issue of abortion due to which she fell unconscious and when she gained consciousness, she felt pain in her lower side, due to which, she apprehended that the petitioners had raped her. She stated that she had lodged the FIR merely on the basis of suspicion.

2.6 Subsequently, the learned Additional Sessions Judge ('ASJ') granted bail to Petitioner No.1 *vide* order dated 20.11.2019. The order records that Respondent No.2 appeared in Court in person and stated that she planned to marry Petitioner No.1 and had no objection if he was granted bail.

2.7 The marriage between Respondent No.2 and Petitioner No.1 was solemnised on 20.11.2019.



2.8 The learned ASJ granted bail to Petitioner No.2 *vide* order dated 21.11.2019 noting the submission of Respondent No.2 that she had married Petitioner No.1 and no objection if Petitioner No.2 was granted bail.

3. The learned counsel for the petitioners submits that the present FIR was registered by Respondent No.2 due to a frivolous misunderstanding where Respondent No.2, due to pain in her lower body, had suspected that the petitioners had raped her when she was unconscious. He submits that the same is evident from the statement of Respondent No.2 under Section 164 of the CrPC.

4. He submits that Petitioner No.1 and Respondent No.2 are now happily married and the entire misunderstanding has been cleared between the parties.

5. He submits that the learned ASJ had also granted bail to the petitioners respectively, within five days of the registration of the FIR, taking into account the peculiar circumstances of the present case.

6. The present petition is duly supported by the affidavit of Respondent No.2 where she has deposed that she had married Petitioner No.1 on 20.11.2019. She has further stated that she does not wish to pursue any proceedings out of the present FIR and has no objection if the same is quashed.

7. 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.

8. The offences under Sections 323 and 506 are compoundable whereas the offence under Section 376D is non



compoundable.

9. 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)

10. 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)

11. 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)

12. The Hon'ble Apex Court in the case of ***Haji Iqbal @ Bala through S.P.O.A. v. State of U.P. & Ors. : 2023 INSC 686*** had quashed an FIR lodged under Section 376D of the IPC in regard to the appellant therein. The relevant portion of the judgment is reproduced hereunder:

"14. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would



ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation...”

13. It is not in doubt that the offence under Section 376 D 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.

14. The present case, however, as per the statement of Respondent No.2 recorded under Section 164 of the CrPC, was registered by Respondent No.2 merely because she suspected that she was raped due to the pain in her ‘lower side’. She has also clearly stated that she felt unconscious due to feeling drowsy from her medication and suspected the petitioners as she saw them on waking up. The said statement was recorded merely two days after the registration of the FIR.



15. It is also clearly mentioned in the FIR and the statement of Respondent No.2 that she was in a consensual relationship with Petitioner No.1 and the flat where the alleged incident occurred was one where the parties were cohabitating prior to the discord between Petitioner No.1 and Respondent No.2.

16. While it is not contended by the petitioners that the present FIR was lodged out of vengeance, the learned counsel for the petitioners has submitted that the same was lodged out of anger due to some personal misunderstandings. In light of the dictum in the case of **Haji Iqbal @ Bala through S.P.O.A. v. State of U.P. & Ors.** (*supra*), it is incumbent on this Court to look into the other circumstances emerging from the record. In this regard, it is relevant to note that the FIR was lodged when Respondent No.2 was aggrieved by the insistence of Petitioner No.1 to abort their child and the parties were arguing over marriage. It is also stated that Petitioner No.2 was instigating Petitioner No.1 to pressurise Respondent No.2 to get an abortion. In such a case, *prima facie*, it is not improbable that Respondent No.2 assumed the worst when she woke up with pain in her lower body due to the animosity between the parties and registered the present FIR.

17. It is also pertinent to note that Respondent No.1 has married Petitioner No.1, with whom she was in a consensual relationship. Respondent No. 2 in her affidavit has also affirmed that she got married to Petitioner No.1 on 20.11.2019.

18. This Court, in **Sh. Yatin Gaba v. The State & Ors. : CRL.M.C. 2/2023** and **Bitu Yadav @ Vikas Yadav v. State (NCT of Delhi) & Anr. : 2020:DHC:2712**, while exercising the power under Section 482 of the CrPC, had quashed the FIRs registered for the offence under Section 376 of the IPC as the parties had compromised the matter and subsequently gotten CRL.M.C. 6689/2019



married.

19. 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.

20. In reference to the remaining offences under Section 506 and 323 of the IPC, the same are compoundable.

21. In view of the stance of Respondent No.2 that the present FIR was registered merely on suspicion and noting that Respondent No.2 and Petitioner No.1 have been married since 20.11.2019 and are leading a happy matrimonial life, 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.

22. 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.

23. In view of the above, FIR No. 349/2019 and all consequential proceedings arising therefrom are quashed.

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

AMIT MAHAJAN, J

MARCH 12, 2024

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