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

+ **CRL.M.C. 6718/2024**

SH. VIKASH KUMAR & ANR.Petitioners
Through: Mr. R.D. Singh, Ms.
Divya Tripathy, Ms. Jyoti
Thakur & Mr. Abhimanyu
Kumar, Advocates
alongwith Petitioners-in-
Person.

versus

**THE STATE (GOVT. OF NCT OF DELHI)
& ANR.**Respondents
Through: Mr. Naresh Kumar
Chahar, APP for the State
with Mr. Abhimanyu, Mr.
Kartikey Bhardwaj, Mr.
Ambar Kaushik & Mr.
Kaushal Sharma,
Advocates.
SI Jeetendra Kumar (P.S.
Mukherjee Nagar).
Mr. Gurtinder Singh
Gujral, Advocate for R-2.
Respondent No.2-in-
Person (Through V.C.).

**CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN**

% **ORDER**
28.08.2024

CRL.M.A. 25639/2024 (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 under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('**BNSS**') seeking quashing of the FIR No. 495/2022 dated 27.04.2022, registered at Police Station Mukherjee Nagar, for offences under Sections 376/506/509 of the Indian Penal Code, 1860 ('**IPC**').

4. The present FIR was registered on a complaint given by Respondent No.2/ complainant alleging that she met with Petitioner No.1 on Jeevansathi.com in the year 2019.

5. It is alleged that Petitioner No.1 established sexual relations with Respondent No. 2 on a number of occasions for almost three years on the false pretext of marriage. It is alleged that even though Respondent No.2 repeatedly asked the petitioner to marry her, however, he kept evading her. It is alleged that when Respondent No.2 found out about the marriage of Petitioner No.1, she confronted Petitioner No.1 at his residence. It is alleged that Petitioner No.1 along with Petitioner No.2 (friend of Petitioner No.1) threw Respondent No.2 out of the house and threatened to kill her if she tried to contact Petitioner No.1.

6. Chargesheet has been filed against Petitioner No.1 for the offences under Sections 376/506/509 of the IPC.

7. The learned counsel for Respondent No.2/complainant states that the parties were in a consensual relationship and Respondent No.2 has since realized that due to certain unavoidable reasons, marriage between the parties could not take place.

8. The present petition is filed on the ground that the parties have resolved their misunderstanding on their own free will,



without any coercion, misunderstanding or pressure. In terms of the settlement, the parties have agreed to cooperate for quashing of the present FIR.

9. The present petition is supported by a duly signed affidavit of Respondent No.2 wherein she has deposed that she has no remaining grievance against the petitioners and that the dispute has been settled.

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

11. Respondent No.2/complainant, on being asked, states that she does not wish to pursue any proceedings arising out of the present FIR and she has no objection if the proceedings are quashed.

12. The offences under Sections 506/509 of the IPC are compoundable in nature whereas offence under Section 376 of the IPC is non-compoundable in nature.

13. In *Narinder Singh & Ors. v. State of Punjab & Anr.*, (2014) 6 SCC 466, the Hon'ble Apex Court laid down the guiding principles for the exercise of discretion under Section 482 of the CrPC. These principles pertain to quashing of proceedings in cases where there has been a settlement between the parties:

“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.

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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)

14. 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)

15. 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 underscored the difference between breach of promise to marry and non-fulfillment of a false promise that was given with the understanding that it will be broken. It was held that to vitiate the consent of a woman, it is necessary that the promise to marry was false and given in bad faith with no intention of following through.

16. 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

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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.”

17. 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.

18. In the present case, the complainant's statement indicates that she was in a consensual relationship with Petitioner No.1. It is undisputed that the parties were familiar with each other and, at one point, intended to marry. The marriage could not take place for some reason, leading to the registration of the present FIR. It does not seem that the promise of marriage at the outset was made in bad faith to induce the consent of Respondent No.2.

19. In view of the fact that the complainant has herself stated
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that the parties were in consensual relationship and she does not wish to pursue any proceedings arising out of the present FIR, it is unlikely that the present case will result in conviction of the petitioners. Under these circumstances, allowing the criminal trial to proceed would cause undue harassment and heartburn to the parties. This Court is of the opinion that it is a fit case to exercise discretionary jurisdiction under Section 528 of the BNSS.

20. In view of the above, FIR No. 495/2022 and all consequential proceedings arising therefrom are quashed.

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

AMIT MAHAJAN, J

AUGUST 28, 2024

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