



\$~4

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

+ **CRL.M.C. 273/2024**

SHANKAR

..... Petitioner

Through: Mr. Rajesh Kumar Bidhuri, Advocate
alongwith petitioner in person

versus

THE STATE NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Naresh Kumar Chahar, APP for
the State with Mr. Ripundam Shahi,
Mr. Mahender Kumar Anand and Mr.
Ajay Yadav, Advocates and with SI
Anil Kumar, P.S. Mundka, Delhi.
Respondent nos. 2 and 3 in person

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

25.04.2024

%

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the petitioner seeking quashing of FIR bearing no. 337/2016 dated 30.08.2016, registered at Police Station ('PS') Mundka, Delhi for the offences punishable under Sections 363/366/366A/376 of the Indian Penal Code, 1860 ('IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. Issue notice. Mr. Naresh Kumar Chahar, learned APP accepts notice on behalf of the State.



3. Petitioner is present before this Court and has been identified by his counsel Mr. Rajesh Kumar Bidhuri and Investigating Officer (IO) SI Anil Kumar from Police Station Mundka, Delhi.

4. The brief facts of the case are that a complaint was filed by the complainant i.e., father of the prosecutrix, that his daughter/prosecutrix who was 16 years of age was missing from home on 30.08.2016. It is further stated by the complainant that he tried to find the prosecutrix but was unable to find her. On the basis of the aforesaid complaint, an FIR bearing no. 337/2016 dated 30.08.2016 was registered at PS Mundka, Delhi for the offence punishable under Section Sections 363 of IPC. During investigation, petitioner herein was arrested and Section 366/366A/376 of IPC as well as Section 6 of POCSO Act were added. Thereafter, petitioner had moved an application for grant of bail which was granted by the learned Trial Court *vide* order dated 21.08.2021 on the statement of prosecutrix and since then, the petitioner and the prosecutrix/respondent no. 3 are living together with their two children.

5. On a query made by this Court, respondent no. 2 who has been identified by the IO, has categorically states that dispute between the parties was amicably settled as the marriage between prosecutrix and petitioner was solemnized in the temple, as per Hindu rites on 28.08.2016.

6. Today, respondent no. 2 as well as prosecutrix are present in Court and both of them state that they have no objection, if the FIR in question is quashed.

7. The petitioner is present alongwith the victim. This Court notes that the FIR in this case was registered was registered on the basis of complaint lodged by the complainant under Section 363 of IPC and subsequently



Section 366/366A/ 376 of IPC and Section 6 of POCSO Act were added. The victim at the time of her recovery and arrest of the petitioner herein had given statement under Section 164 of Cr.P.C. to the learned Magistrate that she had willingly gone with the petitioner and had got married to him. Parties have been blessed with two children i.e., one daughter, who is 07 years old and a son, who is 04 years old now.

8. Generally, the Courts do not quash FIRs for the offences punishable under Section 376 of IPC and POCSO Act but, the Hon'ble Supreme Court in *Kapil Gupta v. State of NCT of Delhi*, 2022 SCC OnLine SC 1030, had observed, while quashing an FIR under Section 376 of IPC, that:

"13. 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.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power."



9. A co-ordinate bench of this Court in *Dr. Aamir Khan v. State &Anr.*, *CRL.M.C. 175/2022*, has held that:

"7.A coordinate bench of this Court in the matter of Kundan &Anr. Vs. State &Ors..Crl.M.C. 27/2022 decided on 21.02.2022 has held as under:-

"5. It is well settled that Section 482 Cr.P.C gives inherent powers to the High Court and the purpose of Section 482 Cr.P.C is to prevent the abuse of the process of law and more particularly, to secure the ends of justice. The opening words of Section 482 Cr.P.C "nothing in this Code" shows that Section 482 Cr.P.C is an over-riding provision. These words indicate that none of the provisions of the Code limits or restricts the inherent powers of Section 482 Cr.P.C.

6. The purpose of Section 482 Cr.P.C is primarily to secure the ends of justice. In *Gian Singh v. State of Punjab*, (2012) 10 SCC 303, the Supreme Court has observed as under:

"55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquidalicuiconcedit, conceditur et id sine qua res ipsaesse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude



but requires exercise with great caution and circumspection.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided."

(emphasis supplied)

7. Ordinarily the High Courts must show restraint in quashing FIRs for offences under Sections 376 IPC and POCSO Act. In the instant case the FIR was registered under Section 363 IPC and Section 376 IPC and Section 6 of the POCSO Act were added later on. The victim/Petitioner No.2 has stated in her 164 statement that she was in love with the Petitioner No.1 and she eloped with him out of her own volition. It is stated they got married in a temple in Uttar Pradesh on the very next day and the Petitioner No.2/victim has given birth to a baby boy. The families of the Petitioners No.1 & 2 have accepted the marriage.

8. Considering the fact that the whole life of Petitioner No.1 and Petitioner No.2 and their child would be ruined, this Court asked the learned APP as to whether she has any objections if this Court exercises its jurisdiction under Section 482 Cr.P.C and quash the FIR. Learned APP for the State very fairly and taking humanitarian approach stated that she has no objections if the instant FIR is quashed. 9. In view of the peculiar facts and circumstances of this case, this Court is inclined to quash the FIR. Resultantly, FIR No.275/2019 dated 30.10.2019 registered at Police Station Delhi Cantt for offences under Section 363/366/376 IPC and Section 6 of the POCSO Act and the proceedings emanating therefrom are hereby quashed".



10. Considering the overall facts and circumstances of the present case and the fact that the parties are living happily together, this Court is of the view that in case the FIR is not quashed, it will have adverse consequences not only on their lives but also the lives of their minor children, who are born out of this wedlock.

11. Accordingly, FIR bearing no. 337/2016 dated 30.08.2016, registered at Police Station Mundka, Delhi for the offences punishable under Sections 363/366/366A/376 of IPC and Section 6 of POCSO Act and all consequential proceedings emanating therefrom are quashed.

12. In view of above, the present petition stands disposed of.

13. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 25, 2024/ns

Click here to check corrigendum, if any