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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 7103/2024 & CRL.M.A. 27089/2024**

MOHD TAUSIF KHANPetitioner
Through: Mr. Tushar Arora, Mr.
Sarhak Katyayen, Mr.
Sanjeev & Mr. Mohit,
Advs. along with
petitioner in person.

versus

STATE GOVT OF NCT OF DELHI AND ORS
.....Respondents
Through: Mr. Sunil Kumar Gautam,
APP for the State.
WSI Shailja, PS Prasad
Nagar.
R-2 & R-3 in person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
09.09.2024

CRL.M.A. 27088/2024 (exemption from filing the certified copies of annexures, legible / clear copies of some dim annexures with improper margin)

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. 603/2014 dated 05.11.2014 registered at Police Station Prasad Nagar, for offence under Section 363 of the Indian Penal Code, 1860 ('IPC'). Chargesheet in the present case has been filed under Sections 363/366/376 of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO')

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4. The FIR was registered on a complaint given by Respondent No. 2 alleging that on 08.10.2014, his elder daughter, aged 15 years had gone to attend tuition but did not return home. It is alleged that thereafter, Respondent No. 2 received a call from his daughter, who informed him that she was in Mumbai with Tausif. It is alleged further that after a few days, Respondent No. 2 again received a call from his daughter, who informed him that she was in Kolkata and would come back after some days. The FIR was registered at the instance of Respondent No. 2 alleging that the petitioner, who is stated to be residing in the vicinity, had lured Respondent No. 3 away.

5. Subsequently, Respondent No. 3, upon her return, informed that she had left the house of her own will without any force, coercion or undue influence. Respondent No. 3, in her statement under Section 164 of the CrPC, stated that she married Tausif on 13.10.2014 of her own accord. She further stated that her birth certificate, as given by Respondent No. 2, showed that at the time of the incident, her age was around 17 years.

6. The learned counsel for the petitioner submits that the petitioner and Respondent No. 3 are happily married and are living together in harmony. He submits that the possibility of conviction is remote and the continuation of criminal proceedings would cause prejudice to the parties. He further submits that the parties are blessed with a daughter. He submits that the petitioner had, on an earlier occasion, filed a petition before this Court being CRL. M.C. 439/2022 seeking quashing of the present FIR, but the same was withdrawn.

7. The learned counsel for the petitioner further submits that Respondent No. 2, in his cross examination on 08.04.2024, had himself admitted that he coerced his daughter to depose against

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the petitioner as he did not approve of their marriage. Respondent No. 2 further admitted that the actual age of Respondent No. 3 was misrepresented in order to facilitate her school admission. He admitted that Respondent No. 3, in reality, was born in March, 1995.

8. The present petition is filed on the ground that the parties have amicably settled all the disputes, of their own free will, without any undue influence or duress, and that Respondent No. 2 has already accepted the marriage of the petitioner and Respondent No. 3.

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

10. Respondent No. 2, on being asked, states that Respondent No.3 had left the company of her parents of her own will. He states that he has since realised the same. He further states that the complaint was initially given on an apprehension that the petitioner had lured Respondent No. 3 away. He submits that he has no objection if the proceedings arising out of the present FIR are quashed. The victim, on being asked, states that she had gone with the petitioner of her own will.

11. Offences under Sections 363/366/376 of the IPC and Section 6 of the POCSO Act are non-compoundable.

12. 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 compound 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.



13. In *Narinder Singh & Ors v. State of Punjab & Anr.* : (2014) 6 SCC 466, the Hon'ble Apex 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.”

(emphasis supplied)

14. Similarly, in **Parbatbhai Aahir & Ors v. State of Gujarat & Anr. : (2017) 9 SCC 641**, the Hon’ble Apex Court has 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)

15. 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)

16. It is not in doubt that the offences under Sections 376 of the IPC and Section 6 of the POCSO Act are 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. The present case, however, seems to have arisen on the objections raised by Respondent No.2. The victim/ Respondent No. 3, has however, categorically stated that she got married with the petitioner of her own free will. The family of the victim has now accepted the marriage of the petitioner and Respondent No. 3. A daughter is also born out of the said wedlock.

18. It is pertinent to mention that this Court, in cases ***Mithun Kori vs. State (NCT of Delhi) and Others : 2024 SCC OnLine Del 5383; Sonu @ Sunil vs. State of NCT of Delhi & Ors : 2024:DHC:3583; Kundan and Another vs. State and Others : 2022 SCC OnLine Del 4809*** while exercising power under Section 482 of the CrPC (now Section 528 of the BNSS) had quashed the FIRs registered for offences under Section 376 of the IPC & Section 6 of the POCSO Act on the basis of the compromise entered into between the families of the husband and the wife.

19. Many a time, this Court is faced with instances wherein the accused marries the victim in order to evade conviction. In the present case, however, Respondent No. 3 states that she left



her home of her own free will, and is happily married to the petitioner, and a daughter is also stated to be born out of the said wedlock. In such a scenario, while the allegations levelled against the petitioner are serious in nature, yet this Court cannot lose sight of the fact that the continuance of the proceedings would only cause undue disturbance in the happily married life of the petitioner and Respondent No. 3.

20. Even though the FIR was registered way back in the year 2014 and the chargesheet has already been filed, but keeping in view the facts of the case, and that the petitioner and Respondent No. 3 are happily married, this Court feels that no useful purpose will be served by keeping the dispute alive and continuance of the proceedings would amount to abuse of the process of Court. The parties have a long life ahead and have a minor child out of the wedlock, thus, a humanitarian approach is required to be taken in such peculiar facts. I am of the considered opinion that this is a fit case to exercise extraordinary discretionary jurisdiction under Section 528 of BNSS.

21. In view of the above, FIR No.603/2014 and all consequential proceedings arising therefrom are quashed.

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

AMIT MAHAJAN, J

SEPTEMBER 9, 2024

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