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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 2892/2024**

SH VIRENDER KHANEJA AND ANRPetitioners
Through: Mr. Satytanarayan Padhi
and Mr. Amit Kumar,
Advts. along with
petitioners in person

versus

THE STATE AND GOVT OF NCT OF
DELHI AND ANR & ANR.Respondents
Through: Mr. Anand V. Khatri,
ASC for the State (Crl.)
GNCTD for State with SI
Jitendra, PS GK-I
Complainant through VC

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
% **19.09.2024**

CRL.M.A. 28267/2024 (exemption)

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.164/2023 dated 07.08.2023, registered at Police Station Greater Kailash, for offences under Sections 498A/406 of the Indian Penal Code, 1860 ('IPC'), including all consequential proceedings arising therefrom. The said FIR was registered on a complaint filed by Respondent No.2. Later on, Sections 323/509/377/34 of the IPC were added.

4. It is averred that the marriage between Petitioner No. 1 and Respondent No.2 was solemnized on 03.02.2005 as per Hindu rites and ceremonies. Two children were born out of the
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said wedlock. Petitioner No. 2 is the brother of Petitioner No.1. Thereafter, due to matrimonial discord, some misunderstandings took place between the parties, due to which Petitioner No.1 and Respondent No. 2 started living separately.

5. Subsequently, Respondent No.2 made a complaint against the petitioners alleging that she was subjected to cruelty by them. It was also alleged that Petitioner No.1 used criminal force on the complainant when they were cohabitating and forced her to have unnatural intercourse and also repeatedly outraged the modesty of the complainant by forcing her to replicate porn and other unnatural actions against her will. The same culminated into the registration of the aforementioned FIR.

6. The present petition is filed on the ground that the matter is amicably settled between the parties with the intervention of the Mediation Centre, Saket Courts, New Delhi, on their own free will, without any force, coercion, misrepresentation or pressure and a settlement dated 31.05.2024 has been signed by the parties to that effect. Pursuant to the settlement, the parties have obtained a decree of divorce by mutual consent.

7. It is stated that the entire settlement amount of Rs. 70,00,000/- has already been paid to Respondent No. 2.

8. The petitioners are present before this Court in person and Respondent No. 2 is present through video conferencing. The parties have been duly identified by the Investigating Officer.

9. Respondent No.2, on being asked, submits that she does not wish to pursue any proceedings arising out of the said FIR and she has no objection if the same is quashed.

10. She submits that the pendency of the proceedings is only causing undue harassment and heart burn.

11. Offences under Sections 323/406/509 of the IPC are



compoundable, whereas offences under Sections 476A/377 of the IPC 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 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.

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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)

13. 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)

14. It is not in doubt that the offence under Section 377 of the IPC is heinous in nature and involves mental depravity. The same cannot be quashed only because the victim has settled the dispute. Such offences, in true sense, are not private in nature.

15. The present case, however, arises out of a matrimonial dispute and the allegation of forceful unnatural sex has been made by Respondent No.2 against Petitioner No.1, who was her
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husband at that time. Respondent No.2 has also explicitly stated that she does not wish to pursue the proceedings arising out of the FIR. The parties have decided to amicably part ways and move ahead in their lives by burying the acrimony they had against each other.

16. This Court, in cases of *Dinesh Kumar & Ors. v. State & Anr. : CRL.M.C.830/2019*, *Anmol Katyal & Ors. v. State (NCT of Delhi) & Anr. : CRL.M.C.1613/2019* and *Gajender Singh & Ors. v. State (NCT of Delhi) & Ors. : CRL.M.C. 5216/2018*, while exercising power under Section 482 of the Code of Criminal Procedure, 1973, had quashed the FIRs registered for offence under Section 377 of the IPC on the basis of compromise entered into between the husband and the wife.

17. Keeping in view the nature of the disputes and that the parties have amicably settled all their disputes, 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. I am of the considered opinion that this is a fit case to exercise extraordinary discretionary jurisdiction under Section 528 of the BNSS.

18. In view of the above, FIR No.0164/2023 and all consequential proceedings arising therefrom are quashed.

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

AMIT MAHAJAN, J

SEPTEMBER 19, 2024

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