



\$~68

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 7535/2024 CRL.M.A. 28770/2024 CRL.M.A. 28771/2024
ABID ALIPetitioner

Through: Ms. Hem Lata Chaudhary, Mr. Ram
Naresh Sharma and Mr. Jogendra
Kumar, Advs.
versus

STATE THROUGH SHO PS NARAINA AND ANRRespondents
Through: Mr. Hitesh Vali, APP for the State
with SI Nivedita, PS Naraina.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
23.09.2024

%

1. This petition has been filed seeking quashing of FIR No. 91/2018 dated 20th April, 2018 under Sections 363/376 IPC & Sections 4/6 of POCSO Act Police Station- Naraina, New Delhi on the basis that the petitioner no.1 and respondent no.2 were in a romantic relationship since many years and were living together. Thereafter, they have got married on 24th April, 2019, the *Nikahnama* being on record of this Court. Thereafter, two male children were born out of wedlock and the parties have been living happily since. Respondent No.2, who is present in Court, states that she is happily married for five years now and they are living a peaceful family life and she has no objection to the quashing of the FIR.
2. The APP for the State, however, raises an objection considering the date of the incident as per the birth certificate respondent no.2 was a minor.



3. Counsel for the petitioner, however, points out to the deposition of the respondent no.2 where she states her date of birth was 15th August, 1999.

4. In any event aside from this issue, considering these facts and circumstances, in the opinion of this Court, the lives of the individuals involved shall be ruined if the proceedings emanating out of the said FIR are continued to progress.

5. The FSL result, as far as the two children are concerned, has confirmed that the children have been born out of the petitioner and respondent no.2.

6. Additionally, it may be noted that various High Courts have quashed FIRs in similar such circumstances, one such decision being ***Tarun Vaishnav v. State of Rajasthan through PP & Anr.*** 2022 SCC OnLine Raj 2237 by the Jodhpur Bench of the Rajasthan High Court. Said decision has attained finality as a Special Leave Petition against the same was dismissed by the Apex Court on 03rd March 2023 vide SLP (Crl.) No. 1890/2023. Decision of the Rajasthan High Court was rendered in a case where prosecutrix delivered a baby in the hospital and the FIR was lodged pursuant to statement of the minor girl. Statement recorded by IO revealed a romantic relationship between the 16-year-old prosecutrix and 22-year-old accused. Court, in that case, took into consideration the facts and circumstances of that case and noted that there was a love affair involving a physical relationship out of immaturity, and quashed the FIR against the accused/petitioner therein. Relevant portions of this decision are extracted as under:

“13. This Court is not oblivious of the legal position that in cases concerning sexual act with a minor, consent, if any, has no legal sanctity



and it cannot be used as a defence. Needless to mention that this Court cannot and does not accord any approval or sanction to the sexual act of petitioner with the prosecutrix but then, it is a hard reality that their love affair has traversed beyond the legal and moral bounds, consequence whereof has begotten a child.

14. This Court cannot be a silent spectator to or turn its back on the distressed family. If the impugned FIR is not quashed, the petitioner will have to face incarceration for at least 10 years. The mistake or blunder which otherwise constitutes an offence has been committed due to immature act and uncontrolled emotions of two persons, out of whom, one is still a minor.

15. The petitioner's prosecution and conviction will lead to pain and tears in the eyes of the family members of both the parties and future of two families, and above all, an innocent child will be at stake, whereas, if the impugned FIR is quashed, it would serve the ends of justice.

16. It is to be noted that in almost similar circumstances, different High Courts have quashed the FIR/proceedings. The following are to mention a few:—

(i) *Vijayalakshmi v. State (Crl.M.P. No. 109/2021)*, decided on 27.01.2021 by Hon'ble High Court of Madras;

(ii) *Kundan v. State (Crl.M.C. No. 27/2022)*, decided on 21.02.2022 by Hon'ble High Court of Delhi;

(iii) *Shri Skhemborland Suting v. State of Meghalaya (Crl. Petition No. 63/2021)*, decided on 23.03.2022 by Hon'ble High Court of Meghalaya.

17. Different High Courts have given different reasonings dealing with medical, psychological, social angles of the situation; analysing the statement of objects and reasons of the POCSO Act; considering practical realities including future of the newborn child involved.”

(emphasis added)

7. Considering the above settlement between the parties and the chances



of conviction of the petitioners being remote and bleak, there is no use continuing with proceedings of the present FIR as it would be a misuse of the process of the Court and an unnecessary burden on the State exchequer. Accordingly, the petition is allowed. Consequently, the FIR No. 91/2018 dated 20th April, 2018 under Sections 363/376 IPC & Sections 4/6 of POCSO Act Police Station- Naraina, New-Delhi and proceedings emanating therefrom are quashed.

8. Parties shall abide by the terms of settlement.
9. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
10. Order be uploaded on the website of this Court.

ANISH DAYAL, J

SEPTEMBER 23, 2024/MK/kp