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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 7543/2024**

GIRISH KUMAR JAIN

.....Petitioner

Through: Mr. Prakash Khandelwal,
Adv. along with petitioner
in person.

versus

STATE OF NCT OF DELHI & ANR ...Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State with SI
Hari Krishan PS- Nehru
Palace Metro and SI- Ram
Vigilance Branch.
Respondent No. 2 & 3 in
person.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
22.10.2024

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1. The present petition is filed seeking quashing of FIR No. 0004/2019 dated 30.05.2019, registered at Police Station Nehru Place Metro for offences under Sections 294/509 of the Indian Penal Code, 1860 ('IPC') and Section 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').
2. The FIR was filed on a complaint given by Respondent No. 2. It is alleged that on 30.05.2019, while the petitioner and Respondent Nos. 2 and 3 were travelling in metro, the petitioner who was seated beside Respondent No. 3 (daughter of Respondent No. 2) was playing obscene videos on his phone. The same culminated into the registration of the subject FIR.
3. Chargesheet has already been filed in the present case.
4. The learned counsel for the petitioner submits that the FIR

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was registered owing to a misunderstanding between the parties. It is stated that the parties have since resolved their disputes and want to live their lives peacefully.

5. The present petition is filed on the ground that with the intervention and efforts of well-wishers, friends and relatives, the parties have amicably settled all their disputes of their own will, without any undue influence or duress by way of a Settlement/Compromise Agreement dated 27.07.2024.

6. The parties are present in person and have been duly identified by the Investigating Officer.

7. On being asked, the complainant / Respondent No.2 and victim / Respondent No. 3 state that they have resolved all disputes and have no objection if the proceedings arising out of the present FIR are quashed. They state that the FIR was lodged due to a misunderstanding and they have resolved all the disputes with the petitioner and wish to live peacefully in the future.

8. The petitioner undertakes that he will not indulge in such activities in the future. The petitioner is bound to the said undertaking.

9. Offence under Section 509 of the IPC is compoundable, whereas offences under Section 294 of the IPC is non-compoundable and Section 12 of the POCSO Act are non-compoundable.

10. In ***State of Haryana v. Bhajan Lal*** : 1992 Supp (1) SCC 335, the Hon'ble Apex Court has laid down the test to discern when quashing is appropriate in exercise of the discretion under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'). The relevant portion of the said judgment is reproduced hereunder:

“102. In the backdrop of the interpretation of

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the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding



against the accuse

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) **Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”**

(emphasis supplied)

11. In **Narinder Singh & Ors. V. State of Punjab & Anr. : (2014) 6 SCC 466**, the Hon’ble Supreme 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.

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 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)

12. It is not in doubt that the offences under Section 294 of the IPC and Section 12 of the POCSO Act of the IPC 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.

13. However, it is relevant to note that in the present case, the complainant and victim have stated that they do not want to proceed with the complaint and they have also stated that the FIR was registered due to a misunderstanding.

14. The parties have decided to live peacefully in the future. In the peculiar circumstances of this case, it is unlikely that the present FIR will result in a conviction when the complainant does not wish to pursue the case.

15. In such circumstances, continuation of the proceedings would only cause ill will to fester between the parties and undue



harassment especially since the parties have now settled their disputes and decided to live their lives peacefully in the future.

16. Keeping in view the fact that the parties have amicably entered into a settlement, this Court feels that no useful purpose would 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 opinion that this is a fit case to exercise discretionary jurisdiction under Section 528 of the BNSS.

17. However, keeping in mind the fact that the chargesheet has already been filed in the present case and the State machinery has been put to motion, ends of justice would be served if the petitioner is put to cost.

18. In view of the above, FIR No. 0004/2019, and all consequential proceedings arising therefrom are quashed, subject to payment of cost of ₹10,000/- by the petitioner, to be deposited with the Delhi Police Welfare Society, within a period of twelve weeks from date.

19. Let the proof of deposit of cost be deposited with the concerned SHO.

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

AMIT MAHAJAN, J

OCTOBER 22, 2024

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