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

+ **CRL.M.C. 8109/2024**

KAILASH CHAND & ORS.

.....Petitioners

Through: Ms. Nidhi Saxena & Mr.
Parveen, Advs. along with
petitioners.

versus

STATE NCT OF DELHI & ANR.Respondents

Through: Mr. Rajkumar APP for the
State with ASI Sushil
Kumar PS- Gokalpuri
Delhi.

Mr. Netrik Bhardwaj, Adv.
for R-2 along with R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **15.10.2024**

CRL.M.A. 31030/2024 (delay in re-filing)

1. For the reasons mentioned, the delay in re-filing the petition is condoned.

2. The application stands disposed of.

CRL.M.A. 31029/2024 (exemption)

3. Exemption allowed, subject to all just exceptions.

4. The application is disposed of.

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5. The present petition is filed seeking quashing of FIR No. 0238/2019 dated 21.08.2019, for offences punishable under Sections 323/354/377/498A/406/34 of the Indian Penal Code, 1860 ('IPC') and Section 4 of Dowry Prohibition Act, 1860, registered at Police Station Gokulpuri, including all consequential proceedings arising therefrom. The said FIR was

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registered on a complaint filed by Respondent No. 2.

6. The chargesheet has already been filed in the present case. As per chargesheet, there are eight accused persons. Three accused persons have already been discharged at the stage of charge. The allegations now against Petitioner No. 1 are under Section 377 of IPC and against Petitioner No. 4 under Section 354 of IPC.

7. It is averred that Petitioner No. 1 and Respondent No. 2 got married on 06.03.2018 as per Hindu rites and customs. Due to matrimonial discord both of them started living separately from 12.05.2018.

8. The learned counsel for the petitioners submits that the FIR was registered pursuant to matrimonial acrimony and misunderstandings between the parties.

9. The present petition is filed on the ground that the matter is amicably settled between the parties before Mediation Cell, Karkardooma Courts by way of settlement dated 21.11.2023, on their own free will, without any threat, force, coercion, misrepresentation or influences.

10. In terms of settlement dated 21.11.2023, an amount of ₹3,00,000/- already stands paid to Respondent No. 2 and the balance settlement amount of ₹2,00,000/- has been handed over to Respondent No. 2 in Court today by way of Demand Draft bearing no. 521970 dated 13.09.2024 drawn on ICICI Bank.

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

12. On being asked, Respondent No. 2 / complainant states that she does not wish to pursue any proceedings arising out of the present FIR. She states that she has no remaining grievance or grudges against the accused persons and all misunderstandings



have been clarified.

13. She further states that she has no objection if the proceedings arising out of the present FIR are quashed since the pendency of the same is only causing undue harassment and heart burn.

14. Offences under Sections 323/406 of the IPC are compoundable whereas offences under Sections 354/498A/377 of the IPC are non-compoundable.

15. It is well settled that the High Court while exercising its powers under Section 528 of the Bhartiya 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.**

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)



16. 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)



17. The Hon'ble Apex Court, in ***Kapil Gupta v. State of NCT of Delhi*** : 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)

18. It is not in doubt that the offences under Sections 354/377 of the IPC are heinous in nature and involve mental depravity upon the victim. Such offences cannot be quashed merely because the victim has settled the dispute. Such offences, in true sense, are not private in nature.

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19. In the present case, however the allegations has been made by the wife against the husband and his family members and the same arise out of a matrimonial dispute and misunderstandings. The parties have decided to part ways and move ahead in their lives, burying the acrimony they had against each other.

20. A coordinate Bench of this Court, in the case of **Luv Sharma & Ors. V. State & Anr. : CRL.M.C.1603/2021**, while exercising power under Section 482 of CrPC had quashed the FIR registered for offences under Sections 376/377/354/506/509 of the IPC by the complainant against her in-laws on the basis of compromise entered into between the parties. The relevant portion of the said Judgment is reproduced hereunder:

“4... The present case arises out of a matrimonial dispute. This Court is pained to note that in matrimonial cases, there is an increasing tendency of filing such complaints for an offence under Section 376 IPC against the father-in-law, brother-in-law or any other male member of the family of the husband just to exert pressure on the family of the husband.

5. This Court is exercising its jurisdiction under Section 482 Cr.P.C. to quash the instant FIR in view of the settlement arrived at between the parties and in view of the fact that matrimonial disputes have been settled before the Delhi High Court Mediation & Conciliation Centre and the marriage stands dissolved. Even though there was an allegation of rape against the father-in - law of the complainant, this Court is of the opinion that no useful purpose would be served in continuing with the present proceedings...”

21. This Court in the case of **Hari Ram & Ors. v. State Govt. of NCT of Delhi and Anr. : CRL.M.C. 3143/2024** had also quashed the FIR registered for offences punishable under Sections 498A/406/376/377/506/34 of the IPC, where grave allegations of rape had been made by the complainant against her
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father-in-law. It was noted that although it is an abysmal state of affairs that litigants have resorted to making a mockery of the judicial system by preferring false complaints of such a serious nature to gain leverage in matrimonial disputes, however, continuation of proceedings after the parties had moved on in life would serve no purpose.

22. Insofar as the allegations for the offence under Section 377 of the IPC against Petitioner No.1 are concerned, it is pertinent to note that this Court, in ***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, Gajender Singh & Ors. v. State (NCT of Delhi) & Ors. : CRL.M.C. 5216/2018 and Joginder Singh Bote & Ors. v. NCT of Delhi & Anr. : CRL.M.C. 4117/2018***, while exercising power under Section 482 of CrPC, had quashed the FIRs registered for offences under Section 377 of the IPC on the basis of compromise entered into between the husband and the wife.

23. In the present case, Respondent No.2 has stated that she has moved on in her life and she does not wish to pursue the proceedings arising out of the present FIR. In such circumstances, the chances of conviction are bleak. As noted in the case of ***Kapil Gupta v. State of NCT of Delhi (supra)***, continuation of proceedings would only amount to addition of one more criminal case to the burden of Courts.

24. Keeping in view the nature of dispute and 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 ***CRL.M.C. 8109/2024***



BNSS.

25. In view of the above, FIR No. 238/2019 and all consequential proceedings arising therefrom are quashed.

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

AMIT MAHAJAN, J

OCTOBER 15, 2024

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