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

+ CRL.M.C. 9376/2024

RAJ ALIAS SURAJ

.....Petitioner

Through: Mr. R P Pandey, Adv. with petitioner
in person

versus

THE STATE NCT OF DELHI AND ANRRespondents

Through: Mr. Amit Ahlawat, APP for the State
with Ms. Shehnaz Khan, Adv.
SI Khushbu, SI Pankaj P.S. Nangloi
Mr. Prince Singhal, Adv. for R-2
with R-2 in person

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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19.12.2024

1. This petition has been filed seeking quashing of FIR No.794/2021 registered at P.S. Nangloi, under Sections 363/366/376 IPC and Section 6 POCSO, based on No Objection by the respondent no.2
2. Respondent no.2, who is present in the Court, states that she was in a relationship with the petitioner, which fact is confirmed by petitioner who is present in the Court and is duly identified by the IO and the counsel.
3. Respondent no.2 on query raised by this Court states that she had not filed the complaint but the same was filed by her mother. The FIR itself states that the mother of respondent no.2 stated that her younger daughter had left the house and had filed the missing report.
4. As per the Aadhar Card, date of Respondent no.2 is 7th July 2006 and upon attaining majority, she has solemnized marriage with petitioner on 10th July 2024. Marriage Certificate, as issued by the Office of District



Magistrate, Hauz Khas, has also been appended along with this petition.

5. It is also stated that the respondent no.2 is now pregnant with a child and is living in peace and harmony, as a married couple with the petitioner. Respondent no.2 states that she has no objection to quashing of the FIR, and looking forward to a happy married life in future.

6. APP for the State however objects to the same on the ground that the complaint was registered at the time when respondent no.2 was a minor, therefore, her consent would be immaterial.

7. 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 SkhemborlandSuting 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)

8. This Court, vide order dated 19th September 2024 in, **Mr. Sujit Kumar v. State (Govt. of NCT of Delhi) and Anr.** Crl. M.C. No. 7406/2024, in similar circumstances, involving a prosecutrix who was living with her parents along with her new born child, quashed the FIR, considering that if the FIR is not quashed, it will adversely affect the minor



child who needs protection and care from his parents, and destroy the lives of three individuals, the couple and the new born.

9. A Co-ordinate Bench of this Court in, **Sonu v. State (NCT of Delhi)** 2024 SCC OnLine Del 3254, in the context quashing of POCSO Act litigations arising out of adolescent relationships, held as under:

“26. Of late, however, the Courts are faced with petitions where children, who are about to attain the age of majority, in ignorance of the statutory prohibitions and restrictions and consequences, in the name of love, commit acts which would otherwise amount to offence under the provisions of the Child Marriage Act, POCSO Act, and the IPC. Though, being minor, their consent is immaterial, however, factually it is there. This situation makes the Courts face with two consequences, either to go strictly by the mandate of the statute and convict the boy and impose punishment on him, which is rather severe in these statutes, or to exercise its power under Section 482 of the Cr. P.C. to protect the otherwise innocent children/adult by quashing the criminal proceedings. The Courts when faced with such a dilemma, has been adopting the route of exercising its power under Section 482 of the Cr. P.C., to quash such criminal proceedings where it finds that the girl was nearing the age of majority; had gone with the boy of her own free will (though it may be immaterial in law); is happily living with the boy, either in matrimony or otherwise, after attaining the age of majority; and in some circumstances where such relationship has also resulted in children being born. The Court, in such circumstances, is persuaded to save the lives of such an accused, rather than to make him undergo trial and eventual punishment, which would not only ruin innocent lives of the parties to such a relationship, but may be, also of the children that are born therefrom. In this regard, apart from the judgments that have been cited by the learned Amicus, I may also refer to the judgment of the Supreme Court in Kapil Gupta v. State of NCT of Delhi, 2022 SCC OnLine SC 1030, wherein the Supreme Court, while quashing an FIR and consequential proceedings where the accused had been charged with offence under Section 376 of the IPC, observed as under:—

“13. 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.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.”

27. Reference should also be had to the judgments of this Court in Rahul Verma v. State, 2013 SCC OnLine Del 469 and Vijay Kumar v. The State Govt. of NCT of Delhi (judgment dated 22.05.2023 in Crl.M.C. 2153/2021).

28. As noted hereinabove, though the respondent no. 3 was a minor when she eloped with the petitioner, and may be when they solemnized their marriage, she states that she is happily living with the petitioner, and the two children, who have been born from the wedlock. In such a scenario, to continue to prosecute the petitioner would in fact be to punish the respondent no. 3, who the law sees as a victim. It would also punish the two children for no fault of theirs. It will ruin four lives and no person shall gain therefrom.”

(emphasis added)

10. Needless to state that these are exceptional circumstances which invite Court’s inherent powers under Section 482 Cr.P.C. to modulate the relief and take a view on humanitarian grounds.

11. 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.794/2021 registered at P.S. Nangloi, under Sections 363/366/376 IPC and Section 6 POCSO and proceedings emanating therefrom are quashed.

12. Parties shall abide by the terms of settlement.

13. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

14. Order be uploaded on the website of this Court

ANISH DAYAL, J

DECEMBER 19, 2024/sm/kp