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

+ CRL.M.C. 5278/2024 & CRL.M.A. 20191/2024

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.....Petitioner

Through: Ms. Anailu Hakung, Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI) & ORS....Respondents

Through: Mr. Aman Usman, APP with S.I.
Mahesh Kumawat, P.S. Bhalswa
Dairy, Delhi.
R-2 in person.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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15.01.2025

1. The present petition has been filed under Section 482 of CrPC seeking quashing of FIR No.290/2016 under Sections 363/376 IPC and Section 4 POCSO Act registered at Police Station Bhalswa Dairy, Delhi and all consequential proceedings emanating therefrom on the ground that the parties have arrived at a settlement.
2. Notice was issued vide order dated 12.07.2024.
3. The brief facts of the case are that the FIR under consideration was registered on the basis of the complaint filed by the mother of the respondent no.2/prosecutrix alleging that on 27.05.2016, her daughter, who is aged about 17 years, has gone missing from her home and she suspects the present petitioner for luring her minor daughter.
4. The learned counsel appearing on behalf of the petitioner submits that in a statement recorded under Section 164 CrPC, the respondent no.2 has not



alleged any sexual assault committed by the petitioner upon the respondent no.2. She further submits that the respondent no.2 has now married someone else and has also been blessed with two children.

5. The petitioner, as well as, respondent no. 2 are present in the Court and they have been identified by the Investigating Officer i.e. S.I. Mahesh Kumawat, P.S. Bhalswa Dairy, Delhi.

6. The respondent no.2, on a query posed by the Court, states that she does not wish to pursue the present case and that the FIR under consideration was registered by her mother under some misconception.

7. The learned APP, on instructions from the IO, states that the mother of the respondent no.2 has also stated that she has no objection in case the FIR is quashed.

8. In the present case, two of the offences which are alleged against the petitioner pertain to Section 376 IPC and Section 4 POCSO Act. Though, it is a trite law that ordinarily the High Courts must show restraint in quashing FIRs involving offences under Section 376 IPC and Section 4 POCSO Act but in peculiar facts and circumstances, the High Courts can quash FIRs in which offences like Section 376 IPC and Section 4 POCSO Act have been involved. In this regard, reference may advantageously be made to a decision of coordinate bench of this Court in '**Kundan & Anr. Vs. State & Ors.**¹' wherein it was held as under:-

"7. Ordinarily the High Courts must show restrain in quashing FIRs for offences under Sections 376 IPC and POCSO Act. In the instant case the FIR was registered under Section 363 IPC and Section 376 IPC and Section 6 of the POCSO Act were added later on. The victim/Petitioner No.

¹ 2022 SCC OnLine Del 4809.



2 has stated in her 164 statement that she was in love with the Petitioner No. 1 and she eloped with him out of her own volition. It is stated they got married in a temple in Uttar Pradesh on the very next day and the Petitioner No. 2/victim has given birth to a baby boy. The families of the Petitioners No. 1 & 2 have accepted the marriage.

8. Considering the fact that the whole life of Petitioner No. 1 and Petitioner No. 2 and their child would be ruined, this Court asked the learned APP as to whether she has any objections if this Court exercises its jurisdiction under Section 482 Cr. P.C. and quash the FIR. Learned APP for the State very fairly and taking humanitarian approach stated that she has no objections if the instant FIR is quashed.

9. In view of the peculiar facts and circumstances of this case, this Court is inclined to quash the FIR. Resultantly, FIR No. 275/2019 dated 30.10.2019 registered at Police Station Delhi Cantt for offences under Section 363/366/376 IPC and Section 6 of the POCSO Act and the proceedings emanating therefrom are hereby quashed.

10. Accordingly, the petition is disposed of along with the pending application(s), if any.”

9. In this regard, reference may also be had to a decision of the Supreme Court in **Kapil Gupta v. State of NCT of Delhi, (2022) SCC OnLine SC 1030** wherein it was held 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.



13. The Court has further held that it is also relevant to consider as to what is the 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.

14. The facts and circumstances as stated hereinabove are peculiar in the present case. Respondent 2 is a young lady of 23 years. She feels that going through trial in one case, where she is a complainant and in the other case, wherein she is the accused would rob the prime of her youth. She feels that if she is made to face the trial rather than getting any relief, she would be faced with agony of undergoing the trial.

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.

16. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succour to Respondent 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.”

(emphasis supplied)



10. In facts and circumstances of the case, it does not seem to be a case of rape. Further, having regard to the fact that the respondent no.2 is now major and has married someone else and has also been blessed with two children, and she is not supporting the case of the prosecution, even if the criminal trial is permitted to go ahead, the chances of conviction are bleak. Therefore, continuation of criminal proceedings will be an exercise in futility.

11. It is, thus, in the interest of justice that the present FIR and all the other proceedings emanating therefrom be quashed.

12. Consequently, the petition is allowed and the FIR No.290/2016 under Sections 363/376 IPC and Section 4 POCSO Act registered at Police Station Bhalswa Dairy, Delhi and all consequential proceedings emanating therefrom, is quashed.

13. The petition stands disposed of in the above terms.

14. Order be uploaded on the website of this court.

VIKAS MAHAJAN, J

JANUARY 15, 2025

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