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

+ CRL.M.C. 7186/2024

**RAHUL AND OTHERS**

.....Petitioners

Through: Ms. Naiem J. Heena, Adv. along with  
petitioners through VC.

versus

**STATE OF NCT OF DELHI AND ANR.** .....Respondents

Through: Mr. Utkarsh, APP for State with W/SI  
Neelsee, P.S. Nabi Karim, Delhi.  
R-2 in person (through VC)

**CORAM:**

**HON'BLE MR. JUSTICE VIKAS MAHAJAN**

**ORDER**

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**31.01.2025**

1. The present petition has been filed under Section 528 of BNSS, 2023 seeking quashing of FIR No.237/2019 under Sections 376/323/34 IPC and Section 6 of POCSO Act registered at Police Station Nabi Karim, Delhi and all consequential proceedings emanating therefrom on the ground that the petitioner no.1 and respondent no.2/complainant have arrived at a settlement.
2. Issue notice. The learned APP appearing on behalf of the State accepts notice. Likewise, the respondent no.2, who has joined through VC, accepts notice.
3. The petitioners, as well as, the respondent no.2, have been identified by the learned counsel for the petitioners, as well as, by the Investigating Officer i.e. W/SI Neelsee, P.S. Nabi Karim, Delhi.



4. The case of the prosecution is that the petitioner no.1 and the respondent no.2/complainant had got engaged, however, subsequently, the petitioner no.1 refused to marry the respondent no.2. It is also alleged that the petitioner no.1 established physical relationship with the respondent no.2 on the pretext of marrying respondent no.2.

5. The learned counsel appearing on behalf of the petitioners submits that the respondent no.2/complainant was examined as PW-3 and she has not supported the case of prosecution. In support of her contention, the learned counsel has invited attention of the court to the testimony of PW-3 where she has clearly stated that no physical relation had been established between the petitioner no.1 and respondent no.2. She further stated that since the sisters of the petitioner no.1 were not agreeing to the marriage of the petitioner no.1 and respondent no.2, therefore, the petitioner no.1 had taken a stand not to marry respondent no.2.

6. The learned counsel submits that quashing of the present FIR is being sought on the peculiar facts and circumstances of the present case where, during the pendency of proceedings, the marriage between the petitioner no.1 and respondent no.2 was solemnised in the year 2020 and now, they are blessed with two children. This position is also not disputed by the learned APP, on instructions from the IO, who is present in court.

7. At this stage apt would it be to refer to the judgment dated 19.09.2024 passed by the Coordinate Bench of this court in Crl.M.C. 7406/2024 titled ***Sujit Kumar v. State (Govt. of NCT of Delhi) & Anr.***, wherein relying upon a decision of Rajasthan High Court in ***Tarun Vaishnav v. State of Rajasthan through PP & Anr., 2022 SCC OnLine Raj 2237***, this court had quashed FIR under Sections 363/366/376/506 IPC and Section 6 POCSO



Act regard being had to the peculiar circumstances of the case as the petitioner therein was 19 years of age while the victim/respondent no.2 was 17 years of age and they had also married of their own free will and were blessed with a child. The relevant part of the said decision reads as under:

“8. 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)*

9. *In the present case as well, parents of the prosecutrix have expressed concern for the prosecutrix, as also her baby, and are mindful of the lack of maturity and mistake of the daughter which ultimately led to the delivery of the baby."*

8. In ***Tarun Vaishnav*** (*supra*) as well, the Rajasthan High Court on similar facts had quashed the FIR was under Section 376 IPC read with Sections 3 and 4 of POCSO Act though the complainant was a minor and she had married the accused and they were blessed with a child. This Court in ***Sujit Kumar*** (*supra*) has recorded that SLP filed against the decision in ***Tarun Vaishnav*** (*supra*) also came to be dismissed by the Hon'ble Supreme Court.

9. The decisions in ***Sujit Kumar*** (*supra*) and ***Tarun Vaishnav*** (*supra*) squarely apply to the facts of the present case. Like the said two decisions,



the present is also a case of romantic relationship where the petitioner no.1 and respondent no.2 married despite the fact that the respondent no.2 had not attained legal age of marriage.

10. Concededly, the respondent no.2 has now attained the age of majority. The respondent no.2, who is present in Court, on a query posed by the Court, affirms the factum of her marriage with the petitioner no.1 and further states that they have been blessed with two children. She further states that apart from the petitioner no.1, there is no one to look after her and their children and she thus, urges the Court that the FIR may be quashed.

11. Having regard to the peculiar features of the present case where the petitioner no.1 and the respondent no.2 have two minor children out of their consensual relationship, this Court is of the view that not only the life of the victim but the minor children will also be ruined in case the present criminal proceedings are allowed to continue.

12. Consequently, the petition is allowed and the FIR No.237/2019 under Sections 376/323/34 IPC and Section 6 of POCSO Act registered at Police Station Nabi Karim, Delhi along with all other 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 31, 2025/aj**