

Kundan Kumar & Ors vs State Nct Of Delhi & Anr on 8 February, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 994/2024

KUNDAN KUMAR & ORS.

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Through: Mr. Shafiq Khan, Mr.
Sharma and Ms. Tanya Sharma,
Petitioners in person.

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STATE NCT OF DELHI & ANR.

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Through: Mr. Digam Singh D
State with SI Bhagwan Sing
Satyavir Sen, PS: Dabri.
Mr. Vinod, Advocate for R-
No. 2 in person.

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CRL.M.C. 1022/2024

KUNDAN KUMAR

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Through: Mr. Shafiq Khan, Mr.
Sharma and Ms. Tanya Sharma,
Petitioners in person.

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STATE NCT OF DELHI & ANR.

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Through: Mr. Digam Singh D
State with SI Bhagwan Sing
Satyavir Sen, PS: Dabri.
Mr. Vinod, Advocate for R-
No. 2 in person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

OR

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This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/02/2024 at 21:21:05 CRL.M.A. 3992/2024 (Exemption) in CRL.M.C. 994/2024 CRL.M.A. 4084/2024 (Exemption) in CRL.M.C. 1022/2024

1. Allowed, subject to all just exceptions.

2. Applications stand disposed of.

CRL.M.C. 994/2024 & CRL.M.A. 3991/2024 (stay) CRL.M.C. 1022/2024 & CRL.M.A. 4083/2024 (stay)

3. CRL.M.C. 994/2024 is filed on behalf of the Petitioners under Section 482 Cr.P.C. seeking quashing of FIR No. 482/2019 dated 03.08.2019 under Sections 498A/406/34 IPC registered at PS: Dabri including proceedings emanating therefrom.

4. CRL.M.C. 1022/2024 is filed on behalf of the Petitioner under Section 482 Cr.P.C. seeking quashing of FIR No. 554/2018 dated 12.10.2018 under Section 377 IPC registered at PS: Dabri including proceedings emanating therefrom.

5. Marriage between Petitioner No. 1 and Respondent No. 2 was solemnized on 09.03.2018 according to Hindu rites and ceremonies at Bihar and no child was born from the said wedlock. On account of disputes and differences arising between Petitioner No. 1 and Respondent No. 2, they have been living separately since 30.01.2019. Respondent No. 2 made a complaint against the Petitioners leading to the lodging of the FIR under Sections 498A/406/34 IPC. Respondent No. 2 also lodged FIR under Section 377 IPC against her husband/Petitioner in CRL.M.C. 1022/2024, in addition to complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

6. During the pendency of the criminal proceedings, parties have amicably resolved their disputes and differences with the intervention of This is a digitally signed order.

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and Respondent No. 2 has been dissolved by mutual consent by a Decree of Divorce dated 06.05.2023, copy of which has been annexed with the petition.

7. Issue notice.

8. Learned APP accepts notice on behalf of the State.

9. Mr. Vinod, learned counsel accepts notice on behalf of Respondent No.2.

10. Petitioners and Respondent No. 2 are present and are identified by their respective counsels as well as the Investigating Officers SI Bhagwan Singh, PS: Chhawla and SI Satyavir Sen, PS: Dabri. Respondent No. 2 states that balance amount of Rs. 3,00,000/- has been received by her today in Court by way of two Demand Drafts bearing Nos. 002696 and 002697 dated 15.01.2024 drawn on Axis Bank, Mahavir Enclave Branch, Delhi. Copies of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/02/2024 at 21:21:05 the Demand Drafts have been handed over in Court and are taken on record. Respondent No. 2 submits that she has no objection to the FIRs being quashed as the marriage between her and Petitioner No. 1 stands dissolved and all other disputes have been amicably resolved and settled. Learned APP also has no objection to the quashing of the FIR, in view of the settlement between the parties.

11. The Supreme Court in *Gian Singh v. State of Punjab and Another*, (2012) 10 SCC 303, observed that while exercising inherent powers under Section 482 Cr.P.C. in respect of quashing of an FIR where parties have entered into amicable resolution of the disputes, one of the considerations would be whether it would be unfair or contrary to the interest of justice to continue the criminal proceedings despite the compromise and if the answer to the question is in the affirmative, the High Court would be well within its jurisdiction to quash the criminal proceedings, in order to ensure that the disputes are put to an end and peace is restored as securing the ends of justice is the ultimate guiding factor. This was of-course with a caveat that heinous and serious offences of mental depravity or offences like murder, dacoity etc. cannot be fittingly quashed even though the victim or the victim's family settles the disputes with the offender. Relevant paragraphs of the judgment are as follows:-

"55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito iustitiae* is inbuilt in such exercise; the whole idea is to do real, complete This is a

digitally signed order.

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58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.

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61. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code.

Inherent power is of wide plenitude with no statutory limitation but it has to be exercised This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/02/2024 at 21:21:06 in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

12. In *Jitendra Raghuvanshi and Others v. Babita Raghuvanshi and Another*, (2013) 4 SCC 58, the Supreme Court deliberated on the scope and ambit of the power under Section 482 Cr.P.C. in the context of matrimonial disputes and observed that inherent powers of the High Court under Section 482 Cr.P.C. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/02/2024 at 21:21:06 482 Cr.P.C. are wide and unfettered and that it is the duty of the Courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and Court is satisfied that parties have settled the same amicably and without pressure, for the purpose of securing ends of justice, Section 320 Cr.P.C. would not be a bar to the exercise of power for quashing of FIR or subsequent proceedings. It would be relevant to quote few passages from the said judgment as follows:-

"14. The inherent powers of the High Court under Section 482 of the Code are wide and unfettered. In B.S. Joshi [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] , this Court has upheld the powers of the High Court under Section 482 to quash criminal proceedings where dispute is of a private nature and a compromise is entered into between the parties who are willing to settle their differences amicably. We are satisfied that the said decision is directly applicable to the case on hand and the High Court ought to have quashed the criminal proceedings by accepting the settlement arrived at.

15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed. We This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/02/2024 at 21:21:06 also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be

exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders."

13. There can be no cavil to the statement of law that an offence under Section 377 IPC is a heinous offence and ought not to be quashed by the High Court on the basis of a compromise but this Court is unable to gloss over the fact that complaint arose out of a matrimonial discord and now parties have decided to go ahead in their lives and part ways peacefully after their marriage has been dissolved by mutual consent. It is for this reason that the Court is inclined to exercise inherent powers under Section 482 Cr.P.C. to quash the FIR and put an end to the acrimony between the parties. Termination of the criminal proceedings will subserve the interest of justice and will enable the parties to make a new beginning and go ahead with their lives peacefully. This Court is fortified in its view by the orders of this Court in Rifakat Ali & Ors v. State (Govt. of NCT of Delhi) & Anr, Crl. M.C. 599/2021, decided on 26.02.2021 and Aneesh Gupta and Others v. State of NCT of Delhi and Another, 2022 SCC OnLine Del 2985, where FIRs under Sections 406/498A/377/34 IPC and 406/498A/354/377/34 IPC respectively were quashed as parties to matrimonial discords had decided to amicably resolve the issues and move on in their respective lives.

14. In view of the settlement between the parties, continuing the criminal proceedings will be an exercise in futility, with remote chances of conviction. In view of the compromise between the parties having its genesis in a matrimonial dispute, this Court in exercise of its inherent This is a digitally signed order.

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Dabri, along with all proceedings emanating therefrom.

15. Petitions stand allowed and disposed of in the aforesaid terms.

Pending applications also stand disposed of.

JYOTI SINGH, J FEBRUARY 08, 2024/shivam This is a digitally signed order.

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