

Tauheed Khan vs State (Nct Of Delhi) & Anr on 8 May, 2023

\$~21

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 3225/2023

TAUHEED KHAN

.....

Through: Mr. Nitin Joshi, Adv.

versus

STATE (NCT OF DELHI) & ANR.

.....

Through: Ms. Shubhi Gupta, APP.
Mr. Keshav Kant Sharma,
R-2.
Inspector Deepak Sharma
Kalindi Kunj

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN
ORDER

% 08.05.2023 CRL.M.A. 12094/2023 (Exemption)

1. Allowed, subject to all just exceptions.

2. The present petition has been filed by the petitioner praying for quashing of FIR No. 409/2022 dated 30.08.2022 under Sections 323/325/341/354/354B/354C/377/506 IPC read with 66-E/67/67-A IT Act registered at P.S. Kalindi Kunj, District South-East and the consequential proceedings emanating therefrom.

3. Issue notice.

4. Learned APP appearing for the State accepts notice. She submits that since the FIR is an outcome of a matrimonial dispute and the parties have amicably settled their differences, the State has no objection if the FIR is quashed.

5. The petitioner and the respondent no. 2 / wife are present before this court who have been identified by their respective counsels and the Investigating Officer, Inspector Deepak from P.S. Kalindi Kunj.

6. The petitioner and respondent no. 2 were married as per Muslim rites on 05.01.2020. A complaint was filed by the respondent no. 2 against the petitioner with certain allegations which led to the registration of the aforesaid FIR.

7. However, with the intervention of the respectable members of the society and their family members, a settlement has been arrived at between the petitioner and the respondent 2, pursuant to which a Memorandum of Understanding dated 24.04.2023 has been entered into between the parties, whereby the parties have amicably settled all their disputes.

8. It has been agreed between the parties that a total sum of Rs. 3,00,000/- shall be paid by the petitioner to the respondent no. 2 inclusive of raqam-ae-iddat and raqam-se-meher and the said amount shall be paid in 3 instalments; the first instalment of Rs. 1,00,000/- is to be paid at the time of quashing of the FIR.

9. Accordingly, a Demand Draft bearing No. 386121 in the sum of Rs. 1,00,000/- issued by the Union Bank of India, Friends Colony, New Delhi has been handed over by the petitioner to the respondent no. 2 today in the court.

10. The second instalment of Rs. 1,00,000/- is to be paid by way of demand draft in favour of the respondent no. 2 along with the third / last notice of pronouncement of talaq. The third instalment of Rs. 1,00,000/- by way of demand draft in favour of the respondent no. 2 is to be paid by the petitioner at the time of declaration of validity of talaq by the learned Family Court, South East District, New Delhi.

11. On a query made by this court, the respondent no. 2 states that she has entered into compromise out of her own free will and without any pressure, coercion or threat. The respondent no. 2 states that the entire dispute has been amicably settled between the parties, the terms whereof have been recorded in writing in the above mentioned Memorandum of Understanding dated 24.04.2023. She further states that she has no objection in case the FIR is quashed.

12. A coordinate bench of this court in 'Rifakat Ali & Ors Vs. State & Anr.' [CRL.M.C. No. 599/2021, decided on 26.02.2021] after referring to three decisions of the Supreme Court, has taken a view that an offence under Section 377 IPC, is though a heinous offence, but where such an offence is invoked in a matrimonial dispute and where the parties have decided to part ways and move ahead in their lives without acrimony against each other, power under Section 482 Cr.P.C. can be exercised even for an offence under Section 377 IPC on the ground that the dispute is private in nature. The material part of the said decision reads as under:-

"....10. A perusal of the three judgments which shows that the Supreme Court has consistently held that the power under Section 482 CrPC should not be used for quashing heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. since these offences are not private in nature and have a serious impact in society. An offence under Section 377 IPC is a heinous offence and points to the mental depravity of the accused and hence ought not to be quashed by the High Court on the basis of compromise by exercising its jurisdiction under Section 482 CrPC.

11. The present case arises out of matrimonial dispute and the allegation has been made by the wife against the husband. The parties have decided to part ways and get ahead in their lives without having any acrimony against each other. In the facts and circumstances of the case, this Court is inclined to exercise its powers under Section 482 CrPC even for an offence under Section 377 IPC on the ground that the dispute is private in nature.

12. The learned counsel for the petitioners has placed reliance on orders of this Court in CRL.M.C.830/2019 titled as Dinesh Kumar & Ors. v. State & Anr., CRL.M.C.1613/2019 titled as Anmol Katyal & Ors. v. State (NCT of Delhi) & Anr., CRL.M.C. 5216/2018 titled as Gajender Singh & Ors. v. State (NCT of Delhi) & Ors. and CRL.M.C. 4117/2018 titled as Joginder Singh Bote & Ors. v. NCT of Delhi & Anr. In all these cases wife has levelled allegation of the husband committing an offence under Section 377 IPC. This Court has exercised its jurisdiction under Section 482 CrPC and has quashed the FIRs on the basis of the compromise entered into between the husband and wife.

13. It is made clear that this Court is exercising its powers under Section 482 CrPC to quash an offence of Section 377 IPC on the ground that the parties have compromised the matter with each other only because it arises out of a matrimonial dispute, the allegation has been levelled by wife against her husband of committing an offence under Section 377 IPC and the parties have decided to move ahead in life."...

13. I am of the view that the same analogy will apply to offences under Sections 354B and 354C IPC and under Sections 66-E/67/67-A of the IT Act.

14. It is also apposite to note that an FIR under Section 67 of the IT Act was quashed by a coordinate bench of this court in Mohit Chhabra v. State, 2019 SCC Online Del 11160, on the basis of a compromise between the parties.

15. There is thus, no legal impediment in quashing the FIR in question.

16. In view of the above fact that the parties have amicably settled their differences of their own free will and without any coercion, no useful purpose will be served by continue the proceedings; rather the same could create further acrimony between them. It would be thus, in the interest of justice to quash the aforementioned FIR and the proceedings emanating there from.

17. Accordingly, the FIR No. 409/2022 dated 30.08.2022 under Sections 323/325/341/354/354B/354C/377/506 IPC read with 66-E/67/67-A IT Act registered at P.S. Kalindi Kunj, District South-East and all proceedings emanating therefrom are hereby quashed.

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

19. The order be uploaded on the website of the court.

VIKAS MAHAJAN, J MAY 8, 2023/N.S. ASWAL