

Varun Soneja & Ors vs State Of Nct Of Delhi And Anr on 11 November, 2024

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 8606/2024, CRL.M.A. 32892/2024 and
CRL.M.A. 33634/2024
VARUN SONEJA & ORS.

Through: Ms.Veena Ralli, Mr.Pra
Mr.Yuvraj Bansal and Mr.Ravi Ka
with petitioners in person

STATE OF NCT OF DELHI AND ANR

Through: Mr. Nawal Kishore
with SI Vikash
Mr.K.K. Manan, Sr. Advocat
Ms.Karmanya Singh, Ms.Yaks
Ms.Savita Sethi, Advocates
with respondent No.2 in pe

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
ORDER

% 11.11.2024

1. By way of present petition, the petitioners seek quashing of FIR No.73/2021 registered under Sections 354/354A/354B/328/406/498- A/506/509/34 IPC at P.S. Naraina, Delhi, on the ground that the parties have amicably settled their disputes. During the investigation, Section 376 read with Section 511 IPC was added.

2. The present FIR is an outcome of a matrimonial dispute between the complainant/respondent No. 2 (wife) and the petitioners wherein petitioner No.1 is the husband and petitioner Nos. 2 to 4 are the in-laws of the complainant.

3. Learned APP for the State submits that the petitioners are the only 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 29/11/2024 at 23:22:43 accused persons and respondent No.2 is the complainant/victim in the present case. He further submits that the chargesheet in the present case has been filed. It is also submitted that Section 376

read with Section 511 IPC was subsequently added during investigation against the father-in-law of the complainant/petitioner No.4. However, it is submitted that the charges are yet to be framed against the petitioners.

Learned APP opposes quashing of the FIR qua petitioner No.4, stating that Section 376 IPC read with Section 511 IPC is involved in the present matter, which is not only a serious and heinous offence, but also has a serious impact upon the society and therefore, the same cannot be quashed solely based upon the fact that the parties have settled their disputes. In support of his submission, he has referred to the Supreme Court decisions in *Gian Singh v. State of Punjab & Anr.*¹ and *State of Madhya Pradesh v. Laxmi Narayan & Ors.*²

4. Learned counsel for the petitioners submits that the parties have settled their disputes vide Agreement dated 10.08.2024 before the Delhi High Court Mediation and Conciliation Centre, Delhi High Court, Sher Shah Road, New Delhi. In terms of the settlement, it is submitted that respondent No.2 has no remaining claims or grievances against the petitioners.

It is further submitted that allegations of attempt to rape in the FIR qua the father-in-law/petitioner No.4 are vague in nature without any specific dates provided by the complainant/respondent No.2 and it was only subsequently, at the stage of recording of statement of the complainant under Section 164 Cr.P.C, did the complainant/respondent No.2, as an (2012) 10 SCC 303 (2019) 5 SCC 688 This is a digitally signed order.

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5. The petitioners and respondent No.2, who are present in the Court, have been identified by their respective counsels and the concerned Investigating Officer.

6. Respondent No.2 states that she has entered into the aforesaid mediation settlement out of her own free will, volition and without any coercion. She further states that she has no objection if the present FIR and consequent proceedings are quashed.

7. The power of High Court under Section 482 Cr.P.C. to quash proceedings in matters wherein non-compoundable offences are involved is well recognized. The Supreme Court in *B.S. Joshi v. State of Haryana*³ observed that Section 320 Cr.P.C. does not limit or control the powers vested in High Court under Section 482 Cr.P.C., and the High Court is empowered to quash criminal proceedings/FIR, even if non-compoundable offences are involved. The said view has been reiterated by the Supreme Court in *Nikhil Merchant v. CBI & Anr.*⁴, *Manoj Sharma v. State & Ors.*⁵ and *Shiji @ Pappu & Ors. v. Radhika & Anr.*⁶ In *Shiji (Supra)*, it was observed that:-

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17. It is manifest that simply because an offence is not compoundable under Section 320 IPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 (2003) 4 SCC 675 (2008) 9 SCC 677 (2008) 16 SCC 1 (2011) 10 SCC 705 This is a digitally signed order.

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18. Having said so, we must hasten to add that the plenitude of the power under Section 482 Cr.P.C. by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked. xxx"

8. In Gian Singh (Supra), while dealing with the power of High Court to 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 29/11/2024 at 23:22:44 quash criminal proceedings under Section 482 Cr.P.C., the Supreme Court observed as under:-

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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 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 F.I.R may be exercised where the offender and 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 serious impact on society....

xxx"

To a similar extent are the observations of the Court in Laxmi Narayan (Supra).

9. While the above-mentioned decisions put forth the view that Section 376 IPC being a serious and heinous offence cannot be quashed based upon settlement arrived at between the parties, however, the same is not set in stone. In appropriate cases, considering the facts of a particular case, the Supreme Court as well as this Court has exercised its power to quash the proceedings involving Section 376 IPC.

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"11. No doubt that the learned ASG is right in relying on various judgments of this Court which reiterate the legal position that in heinous and serious offences like murder or rape, the Court should not quash the proceedings. It will be relevant to refer to paras 29.5 to 29.7 of the judgment of this Court in Narinder Singh v. State of Punjab, which reads thus:

"29.5 While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

xxx 29.7 . While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement plays a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the (2022) 15 SCC 44 (2014) 6 SCC 466 This is a digitally signed order.

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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. xxx"

10. What emerges from the discussion undertaken above is that while as a matter of practice, serious and heinous offences ought not to be quashed by exercise of powers under Section 482 Cr.P.C., as it can have detrimental impact upon society, however, at the same time, the Court is not completely divested of the power to quash such proceedings. In appropriate cases, upon 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 29/11/2024 at 23:22:44 a consideration of the facts including the evidence available, the chances of conviction, the timing of the settlement as well as its actual

effect, the Court can exercise its power under Section 482 to quash such proceedings, in the interest of justice and to put a quietus to the entire incident. However, at the sake of repetition, it is clarified that there is no blanket rule that such quashing should or should not take place. While quashing of serious and heinous offence like rape solely based upon settlement may not always be warranted, it can be done in cases where the peculiar facts warrant the same.

11. A perusal of the FIR would show that the allegations are vague in nature and not date-specific. At no point in time did the complainant/respondent No.2 allege the commission of the offence of rape and only alleged an attempt to commit rape against the father-in-law/petitioner No.4. After going through the initial statement as well as Section 164 Cr.P.C. statement of the complainant, it can be concluded that the said allegations are vague, non-descriptive and not date-specific. Moreover, as per the supplementary chargesheet filed in the present matter, upon petitioner No.4 being given a notice under Section 41(A) Cr.P.C., he duly joined investigation and was later released after preparation of an Interrogation Report, as no concrete evidence was found against him. Furthermore, the respondent No.2/complainant, who is present in Court, has reiterated that she does not want continuation of any criminal proceedings against the petitioner No.4.

12. Considering the facts of the present case including the fact that the High Court is well within its right to quash proceedings emanating from Section 376 read with Section 511 IPC, if the facts so warrant, and further considering that no useful purpose will be served in continuance of the This is a digitally signed order.

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13. The petition is disposed of in the above terms alongwith the pending applications.

MANOJ KUMAR OHRI, J NOVEMBER 11, 2024 na This is a digitally signed order.

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