

Mohd Sagir vs The State Of Nct Of Delhi And Anr on 1 August, 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. 8193/2023 and CRL.M.A. 30489/20
MOHD SAGIR

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THE STATE OF NCT OF DELHI AND ANR
Through: Mr. Aashneet Sing
with SI Pinki
Mr.Lalit Kumar, Advocate f
with respondent No.2 in pe

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% 01.08.2024

1. The present petition has been filed seeking quashing of FIR No.1024/2023 registered under Sections 376 (2) (n)/323 IPC Section 6 POCSO Act at P.S. Nihal Vihar, Delhi and the consequent proceedings arising therefrom.

2. Learned counsel for the petitioner contends that the present case was registered with the allegations that the physical relations between the prosecutrix and the applicant were established on a promise to marry, however, later on, the petitioner reneged from his promise to marry. It is stated that the present FIR was registered purely on a misunderstanding and that both the parties have subsequently married each other on 18.10.2023. It is also stated that though the FIR was registered under Section 6 POCSO Act, however, there is no age proof of the prosecutrix collected during the investigation. In this regard, learned counsel for the This is a digitally signed order.

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3. Respondent No.2, who is present in the Court, has been identified by her counsel as well as by the Investigating Officer.

4. The petition is opposed by learned APP for the State, who states that Section 376 IPC & 6 POCSO 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 married each other or settled the disputes. He concedes that during investigation no documentary proof of age could be found, however, bone ossification test was carried out, as per which age of the prosecutrix was opined to be 18-19 years. In this regard he has placed reliance on the case of Jarnail Singh v. State of Haryana reported as 2013 SCC OnLine SC 507. On the factum of parties having married each other at Arya Samaj Vedic Sanskar Trust on 18.10.2023, stands verified. He further submits that the charge is yet to be framed.

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

5. 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 Haryana3observed 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 (2012) 10 SCC 303 (2019) 5 SCC 688 (2003) 4 SCC 675 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 30/08/2024 at 20:36:06 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 Cr.P.C. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of an offence by the parties before the trial court or in appeal on one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Cr.P.C. on the other. While a Court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offences based on a settlement arrived at between the parties in cases where the offences are non-compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non- compoundable. The inherent powers of the High Court under Section 482

Cr.P.C. are not for that purpose controlled by Section 320 Cr.P.C.

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 (2008) 9 SCC 677 (2008) 16 SCC 1 (2011) 10 SCC 705 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 30/08/2024 at 20:36:07 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.

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6. In Gian Singh (Supra), while dealing with the power of High Court to 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....

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

7. 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.

Reference, in this regard, may be made to the decision of the Supreme Court in Jatin Agarwal v. State of Telangana &Anr.7, wherein while quashing an FIR registered under Section 417, 420 and 376 IPC, it was stated:-

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5. Considering the aforesaid facts and keeping in view that the respondent no.2/complainant has herself made a statement before us that she has married the appellant and now living happily, we exercise our powers under Article 142 of the Constitution of India and to do complete justice in the matter, we quash the FIR dated 16.08.2020 lodged by the respondent no.2 against the appellant under Sections 417, 420 and 376 IPC.

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Further, in Kapil Gupta v. State (NCT of Delhi) &Anr.8, the Supreme Court, while dealing with a case wherein a petition for quashing an FIR registered under Section 376 was dismissed by the High Court, and after due consideration of its previous decision in Narinder Singh 2022 SCC OnLine SC 1969 (2022) 15 SCC 44 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 30/08/2024 at 20:36:07 &Ors. v. State of Punjab &Anr.9 observed:-

"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 High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a (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.

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8. Positive reference may also be made to the decision of Co-ordinate Benches of this Court in Amar Kumar &Anr. v. State (Govt. of NCT of Delhi) &Anr.¹⁰, Prem Kumar v. State &Ors.¹¹, Rihan v. State (Govt. of NCT Delhi) &Anr.¹², Anshuman v. State

&Anr.13, Yojan Sharma v. State &Anr.14, Mohit v. Govt. of NCT Delhi &Anr.15, wherein while noting the factum of settlement/marriage between the prosecutrix and the accused as well as the facts of the respective case, the FIR registered under Section 376 IPC (as well as other Sections mentioned therein) have been quashed.

2023 SCC OnLine Del 8452 2024 SCC OnLine Del 628 2023 SCC OnLine Del 4436 2023 SCC OnLine Del 2050 2023 SCC OnLine Del 5612 2024 SCC OnLine Del 1222 This is a digitally signed order.

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9. 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 a consideration of the facts including the evidence available, the chances of conviction, the timing of the settlement/marriage 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/marriage may not always be warranted, it can be done in cases where the peculiar facts warrant the same.

10. The present case arises out of the FIR lodged by respondent No. 2 wherein she had levelled allegations under Sections 376 (2) (n)/323 IPC and Section 6 POCSO Act. It has been alleged that the petitioner made physical relations on the pretext of marriage. Admittedly, respondent No.2 got married to the petitioner on 18.10.2023 and since then they have been living together. In the present proceedings, respondent No. 2 has stated that she does not want continuation of any criminal proceedings/present FIR against the petitioner, as the same were lodged purely on a misunderstanding.

11. The petitioner and respondent No. 2, who are present in Court, have been identified by their respective counsels as well as the I.O. Respondent No.2 states that she has married the petitioner and joins in the prayer for quashing of the FIR.

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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 IPC, and the fact that the parties got married to each other, the present petition is allowed and FIR No.1024/2023 registered under

Sections 376 (2) (n)/323 IPC Section 6 POCSO Act at P.S. Nihal Vihar, Delhi and proceedings emanating therefrom are quashed.

13. With the above directions, the petition is disposed of alongwith the pending application.

MANOJ KUMAR OHRI, J AUGUST 01, 2024 na This is a digitally signed order.

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