

Asif Khan vs Nct Of Delhi & Ors on 27 May, 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. 4355/2024
ASIF KHAN

Through: Mr. L. K. Dixit,
petitioner in pe

NCT OF DELHI & ORS.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
ORDER

% 27.05.2024 CRL.M.A. 16539/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CRL.M.C. 4355/2024 & CRL.M.A. 16540/2024

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks quashing of FIR No.397/2017 registered under Sections 363/366/376 of IPC & Section 6 POCSO Act at P.S. New Ashok Nagar, Delhi and proceedings emanating therefrom.

2. Learned counsel for the petitioner states the FIR came to be registered by the father of the respondent No.3 and that petitioner and respondent No.3 This is a digitally signed order.

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married her. He submits that since the parties have married each other and are happily living together, quashing of the FIR is sought. Respondent No.3 is stated to be around 24 years now.

3. The petition is opposed by learned APP for the State, who states that Sections 363/366/376 IPC and Section 6 POCSO are involved in the present matter, which are not only serious and heinous, but which also have 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 has further stated that the investigation has been completed and the chargesheet has also been filed in the present case. Further, the trial is stated to be pending, however the prosecutrix has not been examined yet.

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. 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 (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 03/06/2024 at 20:35:34 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:-

"xxx

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 which the exercise of power under Section 482 may be justified. All that we need to say is that the (2008) 9 SCC 677 (2008) 16 SCC 1 (2011) 10 SCC 705 This is a digitally signed order.

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5. 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:-

"xxx

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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6. 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. xxx"

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 & Ors. v. State of Punjab & Anr.9 observed:-

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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 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 (2014) 6 SCC 466 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 03/06/2024 at 20:35:35 would be in a position to decide the case finally on merits..."

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"

7. 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 cases, the FIR registered under Section 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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8. 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.

9. The present case arises out of the FIR lodged by respondent No. 2 wherein he had stated that his daughter was missing and that he suspected the petitioner of kidnapping her. Subsequently, respondent No.2 was found and her medical examination was conducted wherein she was found to be 7 months pregnant, whereafter, Section 376 IPC and Section 6 POCSO were added. In her statement under Section 164 Cr.P.C., respondent No.3 has stated that she loves and had gotten married to him and was happily living with him.

10. Admittedly, during the pendency of the proceedings under the said FIR, the petitioner and respondent No.3 have married each other and they are living happily with each other.

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11. 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 Section 6 POCSO Act, if the facts so warrant, the present petition is allowed and FIR No.397/2017, registered under Sections 363/366/376 of IPC & Section 6 POCSO Act at P.S. New Ashok Nagar, Delhi and proceedings emanating therefrom are quashed.

12. Petition is disposed of in the above terms.

MANOJ KUMAR OHRI, J MAY 27, 2024/ssc This is a digitally signed order.

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