

## Vishal vs State & Ors on 22 May, 2024

**Author: Manoj Kumar Ohri**

**Bench: Manoj Kumar Ohri**

\$~33

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CRL.M.C. 2188/2023

VISHAL

STATE & ORS.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

% 22.05.2024

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks quashing of FIR No.42/2021 registered under Sections 376/506/366 IPC and Section 6 of the POCSO Act at P.S. Dabri, Delhi and proceedings emanating therefrom.

2. Learned counsel for the petitioner states that the FIR came to be registered owing to some misunderstanding that had crept in between the parties. He has further referred to the statement of respondent No.2 recorded under Section 164 Cr.P.C., wherein she has stated that physical relations were established with her consent. He submits that since petitioner No.1 and respondent No.2 have married each other and are happily living together, quashing of the FIR is sought.

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 31/05/2024 at 22:49:38 Reference is also made to the Memorandum of Settlement dated 16.08.2022 arrived at between the parties, wherein the parties have settled their dispute and agreed to the quashing of the present FIR. A no-objection affidavit has been filed by respondent No.2 in support of the present petition, wherein respondent No.2 has stated:-

"2. That I had registered an FIR bearing no. 0042/2021 dated 26.01.2021, under section 376/506/366 IPC & 6 POCSO Act, police station Dabri, New Delhi.

3. That the above said FIR was registered against the petitioner on my complaint and we have amicably settled the matter with the petitions and I am living peacefully with my husband i.e. the petitioner alongwith his family members in the matrimonial house as per memorandum of understanding on dated 16.08.2022.

4. That being the complainant/respondent No.2, I have no objection to the quashing of the FIR bearing no. 0042/21 dated 26.01.2021, Under section 376/506/366 IPC & 6 Pocso Act Police Station Dabri, New Delhi."

3. The petition is opposed by learned APP for the State, who states that respondent No.2 was a minor at the time of the incident and therefore, provision of POCSO has also been invoked. However, it is stated that as per the Aadhar Card, date of birth of respondent No.2 is 01.01.2003. He further states that Section 376 and provision of POCSO are involved in the present matter, which are not only a serious and heinous, but which also have serious impact upon the society and therefore, the same cannot be quashed solely based upon the fact that the parties have settled the disputes or that they have married each other. He further states charges have been framed in the present case, however, respondent No.2 has not been examined yet.

In support of his submission that the offence under Section 376 IPC 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 31/05/2024 at 22:49:38 cannot be quashed based upon settlement arrived at between the parties, he has referred to the Supreme Court decisions in Gian Singh v. State of Punjab & Anr. 61 and State of Madhya Pradesh v. Laxmi Narayan & Ors. 62

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 63 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. 64, Manoj Sharma v. State & Ors.65 and Shiji @ Pappu & Ors. v. Radhika & Anr.66 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 (2012) 10 SCC 303 (2019) 5 SCC 688 (2003) 4 SCC 675 (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 31/05/2024 at 22:49:38 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 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"

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 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 31/05/2024 at 22:49:38 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).

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. 67, wherein while quashing an FIR registered under Section 417, 420 and 376 IPC, it was stated:-

2022 SCC OnLine SC 1969 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 31/05/2024 at 22:49:38 "xxx

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.68, 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.69 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 (2022) 15 SCC 44 (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 31/05/2024 at 22:49:38 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 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.

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 31/05/2024 at 22:49:39 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. 70, Prem Kumar v. State & Ors. 71, Rihan v. State (Govt. of NCT Delhi) & Anr. 72, Anshuman v. State & Anr. 73, Yojan Sharma v. State & Anr. 74, Mohit v. Govt. of NCT Delhi & Anr. 75, 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.

8. What emerges from the discussions 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 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 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 31/05/2024 at 22:49:39 where the peculiar facts warrant the same.

9. The present cases arises out of the FIR lodged by respondent No.2 wherein she alleged that the petitioner enticed her and then did wrong things with her. It was further stated that respondent No.2 had been in a relationship with petitioner and had stayed with him for months. Further, in her statement recorded under Section 164 Cr.P.C., respondent No.2 has herself stated that consensual relations were established between them and also stated that the petitioner should not be sent to jail.

10. Admittedly, during the pendency of the proceedings under the said FIR, the petitioner and respondent No.2 have married each other and out of their wedlock, 1 minor child has also been born.

The petition is accompanied by the no objection certificate of respondent No.2 wherein she has stated that she has settled all her disputes with the petitioner. Respondent Nos. 3 and 4 have also

filed their no- objection certificate in support of the petition.

Petitioner, who is present in Court, has been identified by his counsel as well as the I.O. Respondent No.2, who is a major now and is present in Court and also identified by the I.O., states that she is leading a happy married life with the petitioner and joins in the prayer for quashing of the FIR.

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 provisions of POCSO Act, if the facts so warrant, the present petition is allowed and FIR No.42/2021 registered under Sections 376/506/366 IPC and Section 6 POCSO Act at P.S. Dabri and the 2024 SCC OnLine Del 1222 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 31/05/2024 at 22:49:39 proceedings emanating therefrom are quashed.

12. Petition is disposed of in the above terms.

MANOJ KUMAR OHRI, J MAY 22, 2024 ga 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 31/05/2024 at 22:49:39