

Brijesh @ Angrej vs The State (N.C.T. Of Delhi) & Anr. & Ors on 29 January, 2024

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 673/2024
BRIJESH @ ANGREJ

Through:

THE STATE (N.C.T. OF DELHI) & ANR.
& ORS.

Through: Mr. Hitesh Vali
the State
SI Neeti, PS-
Mr. Ranjan Sha
for R2
Complainant in

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN
ORDER

% 29.01.2024 CRL.M.A. 2752/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.

2. The application stands disposed of.

3. The present petition is filed for quashing of the FIR No. 389/2018 dated 01.09.2018, under Sections 377/323/509 of Indian Penal Code, 1860 (IPC), at Police Station Jahangir Puri, Delhi. The FIR was registered on a complaint filed Respondent No. 2.

4. It is averred that marriage between petitioner and Respondent No.2, was solemnized on 17.02.2016 as per Hindu rites and ceremonies. A girl child was born out of the said wedlock.

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5. Owing to some misunderstanding and temperamental differences, both Respondent No.2 and the petitioner started living separately.

6. The Respondent No.2 made a complaint at Police Station, Jahangir Puri, Delhi against the petitioner, which later culminated into above mentioned FIR 389/2018, alleging that Respondent No. 2 was subjected to cruelty and harassment for dowry. The charge sheet has already been filed.

7. The present petition has been filed on the ground that the parties have amicably resolved their disputes on their own free will and volition, without any pressure, coercion, undue influence or duress of any nature.

8. The complainant is present in person and submits that the complaint was given on a misunderstanding, however, the disputes have been settled, and she does not wish to pursue the proceedings emanating from the said FIR.

9. The petitioner is present in court and states that the legal rights of minor child will not be affected in any manner whatsoever.

10. The petitioner is bound down to the said undertaking.

11. In terms of settlement dated 15.02.2023, the decree of divorce has already been obtained. The balance amount of settlement, that is, 1,50,000/- is handed over in Court today by way of Demand Draft No. 373298 dated 23.01.2024 drawn on Bank of Baroda, Shahbad, Daulatpur, Delhi-110042, to Respondent No. 2.

12. The parties state that dispute arose because of matrimonial discord and the complaint was lodged on a misunderstanding.

13. Offence under section 377 of the IPC is a non-compoundable whereas offences under Sections 323 and 509 of This is a digitally signed order.

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14. It is well settled that the High Court while exercising powers under Section 482, CrPC, can compound offences which are non-compoundable under CrPC on the ground that there is a compromise between the accused and the complainant. The Hon'ble Supreme Court has laid down parameters and guidelines for High Courts exercising jurisdiction under Section 482 for quashing of proceedings on the ground of settlement. In Narinder Singh & Ors. V. State of Punjab & Anr. reported as (2014) 6 SCC 466, the Hon'ble Supreme Court has observed as under:-

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or
- (ii) to prevent abuse of the process of law.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, 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 01/02/2024 at 21:34:46 etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

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."

15. Similarly, in Parbatbhai Aahir & Ors v. State of Gujarat & Anr. reported as (2017) 9 SCC 641, the Hon'ble Supreme Court has observed as under :-

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-

compoundable.

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16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall

for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and This is a digitally signed order.

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16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

16. It is not in doubt that the offence under Section 377 of IPC is a heinous offence involving mental depravity and cannot be quashed though the victim has settled the dispute. Such offences, in true sense, are not private in nature.

17. The present case, however, arises out of matrimonial disputes and the allegation has been made by the wife against the husband. The complainant, who was present in person also, stated that the allegations were made on a misunderstanding and because of disputes which had arisen on account of matrimonial discord. The parties have decided to part ways and move ahead in their lives burying the acrimony they had against each other. Therefore, even though the offence under Section 377 in general cannot be termed as a private dispute but keeping in view the fact that the allegations are made by the wife against the husband, the same, in the present case, can be called as the personal / private dispute.

18. This Court, in cases 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., while 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 01/02/2024 at 21:34:47 exercising power under Section 482 of CrPC had quashed the FIRs registered for offences under Section 377 of the IPC on the basis of compromise entered into between the husband and the wife.

19. Keeping in view the nature of allegations, considering the facts that petitioner and Respondent No. 2 were married to each other and have decided to live separately and have settled all their disputes, this Court feels that no useful purpose will be served by keeping the dispute alive and continuance of the proceedings would amount to abuse of the process of Court. I am of the considered opinion that this is a fit case to exercise extraordinary discretionary jurisdiction under Section 482 of CrPC.

20. However, keeping in mind, the fact that chargesheet has already been filed in FIR 389/2018 and the State machinery has been put to motion, this court feels that ends of justice would be served if the parties are put to cost.

21. In view of the above, FIR No. 389/2018 and all consequential proceedings arising therefrom are quashed, subject to payment of cost of 10,000/- (Rupees Ten Thousand Only) by the petitioner, to be deposited with the Delhi Police Welfare Fund, within a period of four weeks from today.

22. It is made clear that this Court has not gone into the legality of the compromise deed or any rights in relation to custody or visitation of the minor child.

AMIT MAHAJAN, J JANUARY 29, 2024 "SS"

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