

Sonu & Ors vs State (Nct Of Delhi) & Anr on 16 February, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 551/2024
SONU & ORS.

STATE (NCT OF DELHI) & ANR.

Through: Mr. Sanjay Lao, S
the State with SI Shallu,
Respondent No. 2 in person

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

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CRL.M.A. 5029/2024 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(CRL) 551/2024

3. This is a petition filed by the Petitioners under Section 482 Cr.P.C. for quashing of FIR No. 548/2018 dated 30.10.2018 under Sections 498A/406/ 506/34 IPC registered at PS: Kalyanpuri, Delhi along with proceedings emanating therefrom.

4. Marriage between Petitioner No. 1 and Respondent No. 2 was solemnized on 18.02.2017 as per Hindu rites and ceremonies at Delhi. No child was born out of the said wedlock. On account of matrimonial discord and misunderstandings between Petitioner No. 1 and Respondent No. 2, they 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 19/02/2024 at 23:55:36 have been living separately since 17.12.2017. Respondent No. 2 thereafter filed a complaint before CAW Cell against the Petitioners, which culminated in the present FIR.

5. During the pendency of the criminal proceedings, with the intervention of family, friends and well-wishers, parties have amicably resolved their disputes and differences and a Memorandum of

Understanding dated 15.07.2023 was executed between Petitioner No. 1 and Respondent No. 2. It was agreed that Petitioner No.1 shall pay a total sum of Rs.4,25,000/- to Respondent No.2 in full and final settlement of all her claims including permanent alimony, istridhan, dowry, maintenance etc. Out of the said amount, a sum of Rs.2,00,000/- was to be paid at the time of recording of statements during First Motion under Section 13B(1) of Hindu Marriage Act, 1955 and second instalment of Rs.1,00,000/- was to be paid at the time of recording of statements during the Second Motion under Section 13B(2) of the said Act. Balance amount of Rs.1,25,000/- was payable at the time of quashing of the present FIR. It was further agreed that after the First Motion, Respondent No.2 will withdraw her applications under Section 12 of Protection of Women from Domestic Violence Act, 2005 and Section 125 Cr.P.C. respectively, before the concerned Courts.

6. Pursuant to the said settlement, marriage between Petitioner No. 1 and Respondent No. 2 has been dissolved by mutual consent by a Decree of Divorce dated 09.11.2023, copy of which has been annexed with the petition. Other pending applications have been withdrawn by Respondent No.2 and sum of Rs.3,00,000/- stands paid to her by Petitioner No.1.

7. Issue notice.

8. Learned Standing Counsel accepts notice on behalf of the State.

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9. Respondent No. 2 is present in Court and accepts notice.

10. Petitioners are present and are identified by their counsel as well as the Investigating Officer SI Shallu, PS: Kalyanpuri. Respondent No. 2 is also identified by the IO. Respondent No. 2 acknowledges that a sum of Rs. 1,25,000/- has been paid to her in Court today, by way of Demand Draft bearing No. 277839 dated 02.12.2023, drawn on Kotak Mahindra Bank, Defence Colony Branch, Delhi. Copy of the Demand Draft is annexed with the petition. Respondent No. 2 submits that she has no objection to the FIR being quashed as the marriage between her and Petitioner No. 1 stands dissolved and all other disputes have been amicably settled. Learned Standing Counsel also has no objection to the quashing of the FIR, in view of the settlement between the parties.

11. The Supreme Court in *Gian Singh v. State of Punjab and Another*, (2012) 10 SCC 303, observed that while exercising inherent powers under Section 482 Cr.P.C. in respect of quashing of an FIR where parties have entered into amicable resolution of the disputes, one of the considerations would be whether it would be unfair or contrary to the interest of justice to continue the criminal proceedings despite the compromise and if the answer to the question is in the affirmative, the High Court would be well within its jurisdiction to quash the criminal proceedings, in order to ensure that the disputes are put to an end and peace is restored as securing the ends of justice is the ultimate guiding factor. This was of-course with a caveat that heinous and serious offences of mental

depravity or offences like murder, dacoity etc. cannot be fittingly quashed even though the victim or the victim's family settles the disputes with the offender. Relevant paragraphs of the judgment are as follows:-

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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 19/02/2024 at 23:55:37 "55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

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58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may

within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

The above list is illustrative and not exhaustive. Each case will depend on This is a digitally signed order.

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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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be

well within its jurisdiction to quash the criminal proceeding."

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12. The Supreme Court has consistently reaffirmed this view and in the context of matrimonial disputes, it would be relevant to refer to the observations of the Supreme Court in *Jitendra Raghuvanshi and Others v. Babita Raghuvanshi and Another*, (2013) 4 SCC 58, relevant paragraphs of which are as follows:-

"15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders."

13. Parties have mutually settled all their disputes and differences. In furtherance of the Memorandum of Understanding executed on 15.07.2023, marriage between Petitioner No. 1 and Respondent No. 2 has been dissolved by mutual consent and the entire settlement amount of Rs.4,25,000/- has This is a digitally signed order.

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"9. The only question for consideration before this Court at this stage is that inasmuch as all those offences are not compoundable offences under Section 320 of the Code (except Section 420 IPC that too with the permission of the Court before which any prosecution for such offence is pending), whether it would be possible to quash the FIR by the High Court under Section 482 of the Code or by this Court exercising jurisdiction under Article 136 of the Constitution of India?

10. The above question was recently considered by this Court in Shiji v. Radhika [(2011) 10 SCC 705 : (2012) 1 SCC (Cri) 101] . The question posed in that case was: (SCC p. 707, para 1) "1. ... whether the criminal proceedings in question could be quashed in the facts and circumstances of the case having regard to the settlement that the parties had arrived at."

After advertng to Section 482 of the Code and various decisions, this Court concluded as under: (Shiji case [(2011) 10 SCC 705 : (2012) 1 SCC (Cri) 101] , SCC pp. 712-13, paras 17-18) "17. It is manifest that simply because an offence is not compoundable under Section 320 CrPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 CrPC. That power can in our opinion be exercised in cases where there is no chance of 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 CrPC 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 the 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."

On going through the factual details, earlier decision, various offences under Section 320 of the Code and invocation of Section 482 of the Code, we fully concur with the said conclusion.

11. In the case on hand, irrespective of the earlier dispute between Respondent 2 complainant and the appellant being Accused 3 as well as Accused 1 and 2 subsequently and after getting all the materials, relevant details, etc., the present appellant (Accused 3) sworn an affidavit with bona fide intention securing the right, title and interest in favour of Respondent 2 herein, the complainant. In such bona fide circumstances, the power under Section 482 may be exercised. Further, in view of the settlement arrived at between Respondent 2 complainant and the appellant (Accused 3), there is no chance of recording a conviction insofar as the present appellant is concerned and the entire exercise of trial is destined to be an exercise in This is a digitally signed order.

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12. Inasmuch as the matter has not reached the stage of trial, we are of the view that the High Court, by exercising the inherent power under Section 482 of the Code even in offences which are not compoundable under Section 320, may quash the prosecution. However, as observed in Shiji [(2011) 10 SCC 705 : (2012) 1 SCC (Cri) 101] , the power under Section 482 has to be exercised sparingly 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. In other words: (SCC p. 713, para 18) "18. ... 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 the process of law."

14. Applying the aforesaid judgments to the present case, this Court is also of the view that continuing the proceedings against the Petitioners, after the disputes have been amicably settled and compromised, would be an abuse of process of the Court and would not be in the interest of the parties. This Court is fortified in its view by the judgments of this Court in Vaibhav Upadhyay and Others v. State NCT of Delhi and Another, 2023 SCC OnLine Del 1116 and Nazimuddin and Others

v. State and Another, 2019 SCC OnLine Del 9325, where the Courts have quashed FIRs under similar provisions, predicated on settlements between the parties therein, in the interest of justice. Accordingly, FIR No. 548/2018 dated 30.10.2018 under Sections 498A/406/506/34 IPC registered at PS: Kalyanpuri, Delhi is quashed including proceedings emanating therefrom.

15. Petition stands allowed and disposed of.

JYOTI SINGH, J FEBRUARY 16, 2024/shivam/kks This is a digitally signed order.

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