

Prasanjeet Sarkar & Ors vs State (Govt. Of Nct Of Delhi) & Anr on 7 August, 2024

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 4892/2024

PRASANJEET SARKAR & ORS.

Through: Mr. Sarthak Toma
All the petition
person.

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STATE (GOVT. OF NCT OF DELHI)
& ANR. ...

Through: Mr. Sunil Kumar
APP for the St
Raghubir
Khyala.
R-2 in person.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN
ORDER

% 07.08.2024

1. The present petition is filed seeking quashing of FIR No. 849/2014 dated 10.11.2014, registered at Police Station Khayala, for offences under Sections 365/376/323/506/34 of the Indian Penal Code, 1860 ('IPC').

2. Charge sheet has been filed in the present case for offences under Sections 365/376/323/506/452/34 of the IPC against the petitioners.

3. The brief facts of the present case are as follows:

3.1 The present FIR was registered on the basis of the written complaint made by Respondent No.2/complainant wherein she alleged that the petitioner - Prasanjeet Sarkar used to visit her house, tease her and made physical 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 06/09/2024 at 20:33:35 relations with her several times. It is alleged that he threatened the complainant of disfiguring her face by throwing acid on her and to kill her family members in case she disclosed about the same to

anyone. 3.2 On 16.01.2013, the petitioner - Prasanjeet Sarkar, allegedly, forcibly took the complainant to Ghaziabad for performing marriage. It is alleged that on 07.03.2013, the complainant got married to someone else and started residing at her matrimonial home.

3.3 It is further alleged that on 27.06.2013, the petitioners went to the house of the complainant and manhandled her and her family members and threatened them with dire consequences.

3.4 During the course of investigation, the marriage certificate issued by Arya Samaj Mandir and the certificate of registration of marriage issued by the Marriage Officer, Ghaziabad were verified and were found to be genuine. It was found that at the time of marriage, the age of the complainant was above 20 years and during the subsistence of her marriage with - Prasanjeet Sarkar, she solemnized second marriage. 3.5 The petitioner - Prasanjeet Sarkar was thereafter arrested and was admitted on pre-arrest bail by order dated 08.04.2015 passed by this Court and the other petitioners were bound down by serving notices under Section 41 of the CrPC.

4. It is stated that the complainant is cousin of Petitioner No. 1.

5. It is stated that after the incident, the complainant and This is a digitally signed order.

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6. The present petition is filed on the ground that the matter has been settled between the parties by way of Memorandum of Settlement dated 05.04.2024.

7. The complainant, on being asked, states that the allegation was made initially that Petitioner No. 1 established forceful sexual relations, however, the relationship between her and Petitioner No. 1 was consensual. She states that the FIR was registered pursuant to acrimony that happened between the parties and the complainant has since married to someone else.

8. She states that she has no objection if the proceedings arising out of the present FIR are quashed.

9. The learned Additional Public Prosecutor for the State opposes the quashing of the present FIR as serious allegations are made. He submits that the offences alleged are heinous in nature and ought not to be quashed on the basis of a compromise between the parties. He submits that no party can be allowed to misuse the criminal justice system in this manner.

10. The offences under Sections 323/506 are compoundable whereas the offences under Sections 365/376/452 are non- compoundable.

11. In *State of Haryana v. Bhajan Lal* : 1992 Supp (1) SCC 335, the Hon'ble Apex Court has laid down the test to discern This is a digitally signed order.

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"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as This is a digitally signed order.

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(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(emphasis supplied)

12. In *Narinder Singh & Ors. V. State of Punjab & Anr.* :

(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 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 06/09/2024 at 20:33:36 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 any court.

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, 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 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 06/09/2024 at 20:33:36 the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play 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 This is a digitally signed order.

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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 and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

(emphasis supplied)

13. The Hon'ble Apex Court, in Kapil Gupta : 2022 SCC Online SC 1030, while quashing an FIR under Section 376 of the IPC, had observed as under:

"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 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 06/09/2024 at 20:33:36 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.

x-x-x

15. In both the cases, though the charge- sheets have been filed, the charges are yet to be framed and as such, the trial has not yet commenced. It is further to be noted that since Respondent 2 herself is not supporting the prosecution case, even if the criminal trial is permitted to go ahead, it will end in nothing else than an acquittal. If the request of the parties is denied, it will be amounting to only adding one more criminal case to the already overburdened criminal courts."

(emphasis supplied)

14. It is not in doubt that the offence under Section 376 of the IPC is heinous in nature and involves mental depravity. The same cannot be quashed merely because the victim has settled the dispute.

Such an offence, in true sense, cannot be said to be an offence in personam as the same is a crime against the society.

15. In the present case, however, the complainant's statement indicated that she was in a consensual relationship with Petitioner No.1. It is undisputed that the parties are related to each other. The FIR was registered pursuant to acrimony that happened between the parties and the complainant has since married to someone else. Under these circumstances, allowing the criminal trial to proceed would cause undue harassment and heartburn to the parties and it is unlikely that the present FIR will result in a conviction when Respondent No.2 is not supporting the case of the prosecution.

16. In view of the fact that the complainant has herself stated This is a digitally signed order.

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17. However, keeping in mind the fact that the chargesheet has already been filed in the case arising out of the present FIR, and the State machinery has been put to motion, ends of justice would be served if the petitioners are put to cost.

18. In view of the above, FIR No. 849/2014 and all consequential proceedings arising therefrom are quashed, subject to the payment of cost of 20,000/- by the petitioners, to be deposited with the Delhi Police Welfare Society.

19. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J AUGUST 7, 2024 'KDK' This is a digitally signed order.

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