

## Sh. Yatin Gaba vs The State & Ors on 4 January, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 2/2023 & CRL. M.A. 19/2023 (for stay),  
20/2023 (Ex.), 21/2023 (for directions)

SH. YATIN GABA

..... Petitione

Through:

Mr. Gurmit Singh Hans  
Advocate with petitio  
in person.

versus

THE STATE & ORS.

..... Respon

Through:

Ms. Richa Dhawan, APP  
for the State alongwi  
Chandrika, PS Kirti N  
Respondent No. 2, 3 &  
in person.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN  
ORDER

% 04.01.2023 CRL. M.A.20/2023 (exemption from filing certified copies of the annexures)

1. Exemption allowed, subject to all just exceptions.

2. The application is disposed of.

3. The present petition is filed for quashing of FIR 345/2020, dated 22.07.2020 filed under Sections 328/376(2)(n)/506 of Indian Penal Code, 1860 (IPC), registered at Police Station Kirti Nagar, Delhi. The FIR was registered on a complaint filed by complainant, who is arrayed as Respondent No. 2 in the present petition.

4. That on 22.07.2020, the FIR was registered against the petitioner alleging that the complainant / respondent no. 2 met the petitioner in the year 2015 and thereafter in the year 2017

5. That on 24.11.2018, the petitioner asked respondent no. 2 to pick him up and drop him at his friend's hotel, namely, Jagbir Palace, Mayapuri where he made physical relations with respondent no. 2 on the pretext of marriage.

6. The petitioner and respondent no.2 got married on 29.11.2022 as per Hindu Rites and Customs.

7. Learned counsel for the parties submit that the FIR was registered under misunderstanding which is apparent from the statement given by the complainant and recorded under Section 164 Cr.P.C. They further submit that the learned Trial Court on appreciating the said fact had granted bail to the petitioner on 28.07.2020 itself. The parties are now happily married and the entire

dispute arose due to misunderstanding between the family of the petitioner and the complainant.

8. All the parties are present in court and have been duly identified by the IO. The charge-sheet has already been filed.

9. I have also interacted with the respondent no. 2 and she states that she wishes to live with her husband (petitioner herein) and the present FIR was lodged on a misunderstanding and she has no objection to the quashing of the present FIR.

10. Sections 328 and 376(2)(n) of the IPC are non- compoundable, whereas Section 506 of IPC is compoundable in nature.

11. 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 Apex Court has laid down parameters and guidelines for High Courts exercising jurisdiction under Section 482 for Narinder Singh & Ors. V. State of Punjab & Anr. reported as (2014) 6 SCC 466, the 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 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 Signing Date:10.01.2023 16:53:17 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."

12. Similarly, in *Parbatbhai Aahir & Ors v. State of Gujarat & Anr.* reported as (2017) 9 SCC 641, the 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.

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 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 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."

13. It is not in doubt that the offences under Section 376(2)(n) and 328 of the IPC are heinous offences involving mental depravity and cannot be quashed merely because the victim has settled the dispute. Such offences, in true sense, are not private in nature.

14. The present case, however, as stated by the parties, was registered due to the misunderstanding. The parties have categorically stated that they had known each other for a very long time and were in consensual sexual relationship. They also, subsequently, got married on 29.11.2022 and are happily staying together. When the parties are admittedly in a relationship for a long period of time and the FIR was registered even as per the complainant, due to misunderstanding that the petitioner had sexual intercourse on false promise of marriage, the same cannot fall within the

definition of rape in terms of Section 376 of IPC. Therefore, even though the offences under Section 376(2)(n) and 328 of the IPC in general cannot be termed as a private dispute but keeping in view the fact that the allegations are made by a woman, against a person with whom she admittedly, was having a consensual physical relationship, the same, can be called as the Signing Date:10.01.2023 16:53:17 personal / private dispute.

15. This Court, in cases CRL. M.C.1015/2021 titled as Vikash Kumar v. State & Anr., and CRL. M.C. 1761/2020 titled as Bitu Yadav @ Vikas Yadav v. State (NCT of Delhi & Anr.) while exercising power under Section 482 of CrPC had quashed the FIRs registered for offence under Section 376 of the IPC on the basis of compromise entered into between the husband and the wife.

16. FIR was registered in the year 2020 and the chargesheet has already been filed, the offence under Section 376(2)(n) IPC cannot be termed as an offence in personam and is a crime against the society. Considering the peculiar facts that the complainant admits to have been in consensual physical relationship with the accused prior to the registration of the FIR and the fact that they have been married since 29.11.2022 and are happily leading their matrimonial life, this court considers that no purpose would be served by keeping the dispute alive.

17. However, keeping in mind the fact that chargesheet has already been filed in FIR No. FIR 345/2020 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.

18. In view of the above, FIR No. FIR 345/2020 and all consequential proceedings arising therefrom are quashed, subject to payment of cost of Rs.10,000/- (Rupees Ten Thousand Only) to be deposited with the Delhi High Court Bar Association Library Fund within a period of four weeks.

AMIT MAHAJAN, J JANUARY 4, 2023