

Suraj vs State (Gnct Of Delhi) And Anr on 24 November, 2022

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 6194/2022

SURAJ

Through: Mr. Karan Bansal, Adv.
petitioner in person.

versus

STATE (GNCT OF DELHI) AND ANR.

Through: Ms. Priyanka Dalal, APP
with SI Sonia, PS Fateh
Mr Vishal Verma, Mr. Ut
and Mr. Vibhu Kumar Sin
for R-2 and R-3 with R-
person.

CORAM:

HON'BLE MS. JUSTICE POONAM A. BAMBA
ORDER

% 24.11.2022 CRL. M.A. 24342/2022 (Application for exemption from filing certified copies of the Annexures) 1.0 Allowed subject to just exceptions. Application is disposed of accordingly.

2.0. Vide this petition under Section 482 Cr.P.C, the petitioner has sought quashing of the FIR no. 0362/2018 dated 28.08.2018, under Sections 363/376 IPC, Section 6 of POCSO Act and Section 9 of Prohibition of Child Marriage Act, PS Fatehpur Beri and all consequential proceedings arising therefrom.

3.0. It is submitted that the petitioner and the respondent no. 3 were friendly with each other and the respondent no. 3/prosecutrix had voluntarily accompanied the petitioner on 27.08.2018 ; she got married to him on 12.10.2018 out of her own volition. Though, subsequently, she was alleged to be minor at that time.

3.1. It is further submitted by the Ld. counsel for the petitioner that since their marriage in October 2018, the parties are living together peacefully.

3.2. Ld. counsel for the petitioner submits that they have arrived at settlement vide settlement/MOU dated 06.04.2022, whereby the respondent no. 3 has stated that she does not wish to pursue the matter as both of them have been living as a couple.

4.0. Respondent no. 3 is present in person and is accompanied by her father. She is also represented by an advocate. She is identified by the IO.

5.0. Respondent no. 3 submits that she had left with the petitioner out of her own volition. She is already married to the petitioner for the last 4 years and is happily living with him as his wife. She further submits that she is in family way.

5.1. Respondent no. 2 further submits that she has voluntarily arrived at a settlement with the petitioner vide MOU/settlement dated 06.04.2022 and she does not wish to prosecute the matter. The respondent no. 3 has also filed her affidavit dated 06.04.2022 to this effect, which is filed along with the petition 6.0. Ld. counsels for the petitioner and the respondent no. 3 submit that this settlement/MOU was entered into on 06.04.2022, however, inadvertently due to cut-paste, in the beginning, month of settlement is mentioned as September.

7.0. Ld. Prosecutor, on instructions from the Investigation Officer, confirms the factum of marriage between the petitioner and the respondent no. 3. She further submits that charge sheet in the matter has already been filed and the matter is now fixed for arguments on charge on 23.12.2022. She further submits that as the respondent no. 3/prosecutrix is now married and respondent no. 3 and petitioner are living as husband and wife, the State has no objection to quashing of the FIR.

8.0. Section 482 Cr.PC confers inherent powers on the High Court to quash any proceedings in order to secure ends of justice. Scope of inherent powers of the High Court under Section 482 Cr.P.C particularly, with respect to the non compoundable offences, came for examination before three Judges Bench of the Hon ble Supreme Court in Gian Singh v. State of Punjab, (2012) 10 SCC 303. The Supreme Court in paras 48, 49, 50, 51, 52 & 54 observed as under -

48. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code

49. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, „nothing in this Code' which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice.

50. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or

(ii) to secure the ends of justice, is a sine qua non

51. 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..... 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

52. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

53.

54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although 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..... the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of 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 its own facts and no hard and fast category can be prescribed."

9.0. Thus, this court has ample power under Section 482 Cr.P.C to quash the FIR even in respect of offences which are not compoundable, to secure the ends of justice and to do complete and substantial justice. No doubt, the inherent powers have to be exercised with caution and care.

10.0. In view of the facts and circumstances of the case, and particularly that the respondent no. 3, who got married with the petitioner in October 2018 and has been living with the petitioner as his wife since then i.e. last four years ; and that the respondent no. 2 does not wish to prosecute the matter, I am of the considered opinion that no purpose would be served in continuing the proceedings arising out of this FIR. Rather, quashing of the FIR would only further the ends of justice.

11.0 Thus, the present FIR No. 0362/2018 dated 28.08.2018, under Sections 363/376 IPC, Section 6 of POCSO Act and Section 9 of Prohibition of Child Marriage Act, PS Fatehpur Beri and all consequential proceedings arising therefrom, are hereby quashed.

12.0 The present petition is disposed of accordingly.

13.0 Pending applications, if any, stand closed.

POONAM A. BAMBA, J NOVEMBER 24, 2022/csc Click here to check corrigendum, if any