

# Rifakat Ali & Ors vs State (Govt. Of Nct Of Delhi) & Anr on 26 February, 2021

**Author: Subramonium Prasad**

**Bench: Subramonium Prasad**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 599/2021

RIFAKAT ALI & ORS

..... Petitioners

Through

Ms. Maheravish Rein, Advocate with  
Mr.Aldanish Rein, Advocate

versus

STATE (GOVT. OF NCT OF DELHI) & ANR

..... Respondents

Through

Ms. Meenakshi Chauhan, APP for  
State with S.I. B D Sharma, P.S.  
Khajuri Khas  
Mr. Arif Liyaquat, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% 26.02.2021 CRL.M.A. 2983/2021 (Exemption) Allowed, subject to all just exceptions.

1. This petition under Section 482 CrPC has been filed for quashing of FIR No.61/2018 dated 08.02.2018 registered at Police Station Khajuri Khas for offences under Sections 406,498A,377 and 34 IPC.

2. The principal ground on which the petition has been filed is that the respondent No.2/complainant has settled all her disputes amicably with the petitioners. The settlement was arrived at between the parties before the Delhi Mediation Centre, Karkardooma Courts on 29.01.2020. Copy of the mediation settlement dated 29.01.2020 is annexed with the petition (Annexure P-2, page 42 of the paperback).

3. It is stated in the mediation settlement dated 29.01.2020, arrived at before the Delhi Mediation Centre, Karkardooma Courts, the parties seek divorce as per Shariat Law in the presence of the witnesses on the date of quashing of the FIR.

4. It is stated that payment of Rs.3,10,000/- pertains to the quashing of the FIR No.61/2018 which is inclusive of Section 377 IPC against the husband. It was agreed between the parties that the husband shall pay a total sum of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand Only) to the wife towards maintenance i.e. (past, present and future), mehar, iddat, permanent alimony, jewellery, dowry articles(including motorcycle) etc. Out of the said sum of Rs.3,50,000/- (Rupees

Three Lakh Fifty Thousand Only), the petitioner has paid Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) and has returned the motorcycle on 29.01.2020 and Rs.2,00,000/- (Rupees Two Lakh Only) by way of cash/demand draft. It is also stated that the wife shall withdraw the petition under Section 125 CrPC and the two execution petitions bearing No.36/2019 and 145/2019 and a case under Section 12 of the DV Act after the receipt of the said amounts.

5. It is stated in the petition that out of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand Only) has already been paid to the respondent No.2/complainant and Rs.3,10,000/- (Rupees Three Lakh Ten Thousand Only) has been paid to the respondent No.2/complainant in the Court today.

6. The respondent No.2/complainant has also filed affidavit (page No.23 of the paper book) affirming the fact that her claims and grievances against the petitioners in the abovementioned FIR stands settled. It is also stated that the complainant does not have any objection if the FIR against the petitioners is quashed as she has already settled her claims due to her.

7. The power of the High Courts to quash FIRs while exercising its powers under Section 482 CrPC even for offences which are not compoundable under CrPC has been settled in a number of judgments. In *Gian Singh v. State of Punjab & Anr.* reported as (2012) 10 SCC 303, the Supreme Court has observed as under:

"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 predominately 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."

8. After relying on Gian Singh (supra), this position has been laid down in Narinder Singh & Ors. v. State of Punjab & Anr. reported as (2014) 6 SCC 466, wherein the Supreme Court has observed as under:

"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 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."

9. In State of M.P. v. Laxmi Narayan & Ors. reported as (2019) 5 SCC 688, the Supreme Court has observed as under :

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved 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;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes 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;"

10. A perusal of the three judgments which shows that the Supreme Court has consistently held that the power under Section 482 CrPC should not be used for quashing heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. since these offences are not private in nature and have a serious impact in society. An offence under Section 377 IPC is a heinous offence and points to the mental depravity of the accused and hence ought not to be quashed by the High Court on the basis of compromise by exercising its jurisdiction under Section 482 CrPC.

11. The present case arises out of matrimonial dispute and the allegation has been made by the wife against the husband. The parties have decided to part ways and get ahead in their lives without having any acrimony against each other. In the facts and circumstances of the case, this Court is inclined to exercise its powers under Section 482 CrPC even for an offence under Section 377 IPC on the ground that the dispute is private in nature.

12. The learned counsel for the petitioners has placed reliance on orders of this Court in 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. In all these cases wife has levelled allegation of the husband committing an offence under Section 377 IPC. This Court has exercised its jurisdiction under Section 482 CrPC and has quashed the FIRs on the basis of the compromise entered into between the husband and wife.

13. It is made clear that this Court is exercising its powers under Section 482 CrPC to quash an offence of Section 377 IPC on the ground that the parties have compromised the matter with each other only because it arises out of a matrimonial dispute, the allegation has been levelled by wife against her husband of committing an offence under Section 377 IPC and the parties have decided to move ahead in life.

14. Today, parties are present in the Court and have been identified by the Investigating Officer and their respective counsel. The respondent No.2/complainant states that she has settled all her matrimonial disputes with the petitioner No.1 out of her own free will, without pressure, coercion or undue influence and states that she does not want to pursue with the present case any further and request that the present FIR and the proceeding emanating therefrom may be quashed. The parties undertake that they will remain bound by the terms of the settlement arrived at between them before the Delhi Mediation Centre, Karkardooma Courts and the proceedings recorded before this Court.

15. The parties understand the implication of the present proceedings. In view of the settlement arrived at between the parties, this Court is of the opinion that no useful purpose will be served in continuing with the present proceedings. Resultantly, FIR No. FIR No.61/2018 dated 08.02.2018 registered at Police Station Khajuri Khas for offences under Sections 406,498A,377 and 34 IPC and the proceedings emanating therefrom are hereby quashed. The parties shall remain bound by the terms of the settlement and the undertakings given to the Court.

16. The petition stands disposed of in above terms.

SUBRAMONIUM PRASAD, J FEBRUARY 26, 2021 hsk