



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 9687/2022

Saurabh

----Petitioner

Versus

1. State Of Rajasthan, Through P.P.
2. Victim, R/o

----Respondents

For Petitioner(s) : Mr. Vinod Kumar Vaishanaw, Adv.
For Respondent(s) : Mr. Yeshwant Kankhadia, PP
Mr. Amitabh Jatav, Adv.
Mr. Jitesh Kumawat

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Reserved on : **02/01/2023**
Pronounced on : **06/01/2023**

Reportable

ORDER

(1) Marriage is considered as sacred union between two individuals – transcending beyond physical, emotional and spiritual bonds. According to the ancient Hindu laws, marriage and its rituals are performed to pursue Dharma (duty), Artha (possessions), and Kama (physical desire). With such sanctity, marriage is more than a ritual and accordingly the present criminal jurisprudence invoke Section 90 of the Indian Penal Code (for short "IPC") when the consent of sexual intercourse was sought by the petitioner from the respondent no.2 on the promise of marriage.

(2) The respondent no.2, who shall be referred as 'A' lodged a FIR no. 88/2022 against the petitioner with Mahila Police Thana at Sawai Madhopur for the offence under Section 376 IPC



alleging therein that she is 29 years of age and working in News Channel job Bharat 24 and she came in acquaintance with the petitioner in 2020 at Noida and they exchanged their mobile numbers and became friends. On 21.03.2021, the petitioner made a proposal to marry her and developed sexual relations with her and she became pregnant and he gave pills to her to abort the pregnancy. Thereafter they visited Leh Ladhak, Vrindavan, Dehradun, Mussoorie. Thereafter the petitioner refused to marry her.

(3) However, the petitioner and the Respondent 'A' have got married on 17/10/2022 and get their marriage registered before Marriage Registration Officer-V at Ghaziabad (UP).

(4) The petitioner has filed instant petition for quashing of FIR on the ground that after registration of FIR, the parties were able to resolve their differences and eventually got married on 17/10/2022 and that they are living happy married life and both of them have submitted a copy of compromise executed between them on 14/11/2022 indicating therein that due to misunderstanding this FIR has been registered and now they have solemnized marriage and living a happy married life and the respondent 'A' does not want to proceed against the petitioner.

(5) Vide order dated 14.11.2022 the petitioner and the respondent 'A' were directed to appear before the investigating officer for verification of facts mentioned in the compromise. In pursuance of the said directions the prosecutrix 'A' appeared before the investing officer along with her husband (the petitioner) where her statements were recorded u/s 161 of Code of Criminal Procedure and videography of her statements was also done in a



C.D. and she has stated that sexual relation between them were established with her consent and thereafter she has performed marriage with the petitioner but due to some misunderstanding, this FIR was lodged by her against the petitioner and now she does not want any action or proceedings against him. On the basis of such statements of the prosecutrix, the police proposed final report negative and submitted factual report dated 26.11.2022 before the record of this case.

(6) The petitioner and the prosecutrix 'A' appeared in person before this court on 02/01/2023 and they were duly identified by their respective counsels. The prosecutrix 'A' stated before this court that due to misunderstanding the FIR has been lodged against the petitioner but now they have settled there disputes and they are living happy married life and she has no objection in any manner whatsoever, if the present petition is allowed and the FIR no. 88/2022 registered with Mahila Police Station, Sawai Madhopur is quashed.

(7) The Public Prosecutor opposed the prayer made by the petitioner, while the counsel for the respondent no. 2 accepts the factum of compromise and marriage between the parties and he has no objection if the proceedings arising out of impugned FIR are quashed.

(8) Heard and considered the submissions.

(9) It is well settled that the power under Section 482 Cr.PC is to be distinguished from the powers which lies with the Court to compound the offences compoundable under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has the power to quash the proceedings even in those



offences which are not compoundable, where the parties have settled the matter between themselves, but the power has to be exercised fairly and with caution. Offence of rape is a heinous crime punishable under Section 376 IPC.

(10) The Supreme Court in Gian Singh v. State of Punjab reported as (2012) 10 SCC 303 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." (emphasis added)



(11) After relying on Gian Singh (supra), the Supreme Court in Narinder Singh & Ors. v. State of Punjab & Anr. reported as (2014) 6 SCC 466, 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." (emphasis added)

(12) 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;" (emphasis added)

(13) A perusal of the above mentioned judgments show that where the allegation of rape has been made, the proceedings arising out of FIR cannot be quashed only because the prosecutrix and the accused have entered into a compromise and the victim's family and the offender have settled the dispute because these offences are not private in nature and has a serious impact on the society.

(14) In the present case, the allegation in the FIR is that the prosecutrix and the accused became friends. They fell in love and were living together for two years. The accused made a proposal





to marry her and developed sexual relations with her and later on he refused to marry her, hence the FIR was lodged alleging rape. Now the prosecutrix has married the accused with whom she is living since two months. The prosecutrix in her affidavit has affirmed the statements made in the petition under Section 482 Cr.P.C. that the parties got married on 17.10.2022 according to Hindu Rites and Ceremonies. In the facts of the case, continuation of the proceedings would cause immense harm to the prosecutrix. This Court is aware that offences like rape cannot be quashed by exercising jurisdiction under Section 482 Cr.P.C. if a compromise has been reached, but, at the same time, this Court cannot ignore and overlook the welfare and the future of the prosecutrix.

(15) Similar views have been taken by the High Court of Kerala in Ashiq N.A. v. State of Kerala and Anr., 2019 SCC Online Ker 1731 and Freddy @ Antony Francis & Ors. v. State of Kerala and Ors., [Crl.M.C.No.723/2017] decided on 02.02.2017 and by the High Court of Uttarakhand in Akash Gupta v. State of Uttarakhand and Anr., [Criminal Misc. Application No.502/2018] decided on 27.10.2018.

(16) The counsel appearing for the petitioner has placed reliance on the order passed by Delhi High Court in Bitu Yadav @ Vikas Yadav v. State (NCT of Delhi) & Anr., [CRL.M.C.1761/2020 dated 07.09.2020], wherein the court has quashed the FIR where the prosecutrix and the accused were married. Paras 17, 18 and 19 of the said order, read as under :-

"17. In view of the submissions made by the respondent No.2 before this Court, the respondent



No.2 is liable to be prosecuted. However, keeping in view the fact that the petitioner and respondent No.2 are married and living happy married life, I hereby refrain from taking any legal action against the respondent No.2. A similar view was taken by this court in the case of Danish Ali v. State and Anr. in CrI.M.C.1727/2019.

18. Taking into account the aforesaid facts and the fact that the petitioner and respondent No.2 are in love affair since 2013 and they are married, this Court is inclined to quash FIR as no useful purpose would be served in prosecuting petitioner any further.

19. For the reasons afore-recorded, FIR No.384/2020 dated 31.07.2020, for the offence punishable under Sections 376/506 IPC, registered at PS-Dwarka North, Delhi and consequent proceedings emanating therefrom are quashed." (emphasis added)"

(17) Learned counsel has also placed reliance on the judgment of Bombay High Court in the case of Swapnil Digambar Patil v. The State of Maharashtra & Anr. [Criminal Application no. 52/2021 decided on 03/01/2022] wherein in paras 9 and 10 it has been held that :-

"9. In the instant case, the FIR reveals that the Complainant – Respondent No. 2 herein is a 25 year old lady. She was friendly with the Applicant. She had physical relationship with the applicant for the first time in the month of June 2019. Though she had stated that the applicant had compelled her to enter into such a relationship under the pretext of marriage, she had not lodged any complaint but had accompanied the petitioner at several places during the period June 2019 to January 2020 and had continued to have physical relationship with the applicant without there being any misconception of fact, force, pressure of coercion. The FIR therefore reveals that the relationship between the applicant and respondent no. 2 was consensual. Hence, the offence under Section 376 is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution. Apart from this, now the Respondent No. 2 and Applicant have got married and residing together as husband and wife.

10. Considering all these facts, we are of the opinion, that learned counsel for Applicant has made out a case for allowing the Application. Accordingly, Criminal Application is allowed in terms of prayer clause 'B' and the first information report bearing C.R. No. 34 of 2020 registered at Wadala T.T. Police Station for commission of offence punishable under Section 376, 354 of IPC and consequent proceedings arising out of said first information report are quashed and set aside."





(18) Dealing with the similar issue the Hon'ble Apex Court has held in the case of Appellants v. State & Anr. [Criminal Appeal Nos. 394-395 of 2021 (Arrising out of SLP (Crl.) Nos. 3175-76 of 2021) (Diary No. 11723 of 2020) decided on 12.04.2021] as under :-

"The gravamen of the allegations in the FIR filed by the private respondent was that the appellant had promised her that he will marry her, which promise was not kept by the appellant. The FIR was registered on 17.09.2013.

It is not in dispute that after the registration of FIR, the parties were able to resolve their differences and eventually got married on 11.10.2014. The appellant as well as private respondent represented by Ms. Meenakshi Arora, learned senior counsel jointly state that they are enjoying happy married life.

A joint request is, therefore, made on behalf of the appellant and the private respondent that the FIR registered on 17.09.2013 be quashed as it was the outcome of some misunderstanding between the parties.

Considering the nature of allegations in the FIR and the realization of the fact that due to miscommunication FIR came to be registered at the relevant point of time which issues/misunderstanding have now been fully resolved and the parties are happily married since 11.10.2014, the basis of FIR does not survive. Rather registering such FIR was an ill-advised move on the part of the private respondent, is the stand now taken before us. It is seen that the appellant and private respondent are literate and well-informed persons and have jointly opted for quashing of the stated FIR.

Taking overall view of the matter, therefore, in the interest of justice, we accede to the joint request of quashing of FIR in the peculiar facts of the present case.

Hence, these appeals must succeed. The impugned judgment and order is set aside. Instead, the Writ Petition filed by the appellant for quashing is allowed, as a result of which, all steps taken on the basis of impugned FIR be treated as effaced from the record in law.."

(19) Similarly, in the case of Jatin Agarwal v. State of Telangana & Anr. [Criminal Appeal No. 456/2022, decided on 21.03.2022], the Supreme Court has held as under :-

"An FIR was lodged against the appellant by the respondent no.2 for offences under Sections 417, 420 and 376 IPC alleging that the respondent no.2 was introduced to the petitioner through Bharat Matrimony



and thereafter they remained in touch with each other. It was alleged that on the promise to marry, the appellant made physical relationship with respondent no.2. Thereafter, since the appellant refused to marry, the FIR was lodged by the respondent no.2. However, it is not disputed that on 23.09.2020, the appellant and the respondent no.2 have got married, for which marriage certificate has also been issued on the same date.

The appellant then filed an application for quashing of the FIR. The High Court dismissed the petition filed under Section 482 Cr.P.C. Aggrieved by the said order, this appeal by way of special leave petition has been filed.

On earlier occasion, this Court directed the respondent no.2 to be present through video-conferencing. Today, respondent no.2, namely, Ms. T. Harshini appeared through video-conferencing, who has been duly identified by Mr. Saivamshi V., learned counsel. Respondent no.2 has made a statement that it is correct that she is now married to the appellant and leading a happy married life and has also made a statement that she does not wish to press the FIR lodged against the appellant.

Considering the aforesaid facts and keeping in view that the respondent no.2/complainant has herself made a statement before us that she has married the appellant and now living happily, we exercise our powers under Article 142 of the Constitution of India and to do complete justice in the matter, we quash the FIR dated 16.08.2020 lodged by the respondent no.2 against the appellant under Sections 417, 420 and 376 IPC."

(20) In view of the aforesaid factual situation and looking the recent laws laid down by the Hon'ble Supreme Court in the case of Jatin Agarwal (supra) and Appellants v. State & Anr. [Criminal Appeal Nos. 394-395 of 2021 decided on 12.04.2021] and perusal of material available on the record, it is clear that result of the trial is obvious and would indicate about acquittal of the petitioner, therefore, this court has no hesitation to hold that the criminal proceedings initiated against the petitioner vide FIR No. 88/2022 is nothing but an abuse of the process of law, and for the ends of justice this court can exercise the powers provided under Section 482 Cr.P.C. by setting aside the criminal proceedings initiated against the petitioner.



(21) **The instant FIR is being quashed only keeping in view the peculiar facts and circumstances of this case and this order cannot be taken as a precedent on the power of High Court to exercise its jurisdiction under Section 482 Cr.P.C. to quash an offence of rape as the ground that the victim and the accused have entered into compromise.**

(22) For the reasons stated hereinabove, the FIR No. 88/2022 registered with Mahila Police Station, Sawai Madhopur for the offence under Section 376 IPC and the proceedings arising therefrom are hereby quashed.

(23) The petition is disposed of in the above terms.

(24) Stay application and all pending applications (if any) also stand disposed of.

(25) The original compromise deed is ordered to be taken on the record.

(Anoop Kumar Dhand) J.

db/