

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 59/2021 & CRL.M.A. 278/2021 (Stay)

Date of decision: 1st February, 2021

IN THE MATTER OF:

AKHTAR

..... Petitioner

Through Mr. Haraprasad Sahu, Advocate

versus

GOVERNMENT OF NCT, DELHI AND ANOTHER ...Respondents

Through Ms. Kusum Dhalla, APP for State

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. By way of this petition under Section 482 CrPC, the petitioner seeks quashing of FIR No.539/2020 dated 10.12.2020 registered at Police Station Prem Nagar for offences under Sections 419, 467, 471, 474, 376 354,506 read with Section 34 IPC.
2. The respondent No.2/complainant filed a complaint at Police Station Prem Nagar on 10.12.2020 stating that the petitioner/accused met her and revealed that his name is *Shiva*. It is stated that the petitioner promised that he would marry her. It is stated that the complainant and the petitioner became intimate and had physical relationship she had been promised marriage by the petitioner. It is stated that later the respondent

No.2/complainant came to know that the petitioner had concealed his identity and his real name is *Akhtar*.

3. She states in the FIR that the petitioner took her to Arya Samaj Mandir and they both got married there and in the marriage certificate he has given his name as *Akhtar*. It is stated that after the marriage, the petitioner started demanding money and when the respondent No.2 visited his parents, she was driven away by them.

4. The present petition under Section 482 CrPC has been filed stating that the parties have amicably settled their dispute.

5. A compromise deed dated 15.01.2021 has been filed. Para 2 of the compromise deed states that the respondent No.2/complainant has pardoned the petitioner/accused and they are willing to lead their peaceful marital life.

6. A Status Report has been filed stating that during the course of the investigation complainant's statement was recorded under Section 164 CrPC wherein she supported her complaint. The Status Report states that *Akhtar/Shiva* hid his identity and was sexually exploiting the respondent No.2 for five years. It is stated in the Status Report that the petitioner has even forged Aadhaar Cards and he has got two Aadhaar Cards, one in the name of *Akhtar* and the second in the name of *Shiva*. The Status Report also states that the marriage certificate of the petitioner and the respondent No.2, was verified from the concerned Trust and the same was found to be a fake one.

7. Heard Mr. Haraprashad Sahu, learned counsel for the petitioner and Ms. Kusum Dhalla, learned APP for the State.

8. Mr. Haraprasad Sahu, learned counsel for the petitioner states that the petitioner and the respondent No.2 have decided to live as husband and

wife. He relies on the a compromise deed dated 15.01.2021 entered into between the parties. He further states that he wants to file an affidavit of the respondent No.2/complainant that she does not want to pursue the complaint. He states that in view of the fact that both the parties have decided to live as husband and wife, no useful purpose will be served in continuing with the complaint and the FIR be quashed.

9. The power of the High Court under Section 482 Cr.P.C. to quash proceedings in those offences which are non-compoundable is recognised. The Supreme Court has time and again held that High Court has to keep in mind the subtle distinction between the power of compounding offences given to the Court under Section 320 CrPC and the quashing of criminal proceedings and the jurisdiction conferred upon it under Section 482 CrPC.

10. The Supreme Court in Shiji & Ors v. Radhika & Anr reported as (2011) 10 SCC 705 has observed as under:

“18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have

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to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.” (emphasis supplied)

11. While exercising its power under Section 482 CrPC, High Court is guided by the material on record as to whether the ends of justice would justify such exercise of power. The Supreme Court in Gian Singh v. State of Punjab reported as (2012) 10 SCC 303 observed as under:

“57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.” (emphasis supplied)

The Supreme Court in the same judgment has also elaborated under what circumstances, criminal proceedings in a non-compoundable case can be quashed when there is settlement between the parties.

“58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled

*although the 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. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation**, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the 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.

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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 supplied)

12. In the case of Narinder Singh & Ors v. State of Punjab & Anr reported as (2014) 6 SCC 466, the Supreme Court laid down principles by which the High Courts should be guided in giving adequate treatment to the settlement between the parties. The relevant portion which sums up law reads 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 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."

13. The same principle has been reiterated by the Supreme Court in Parbatbhai Aahir & Ors v. State of Gujarat & Anr reported as **(2017) 9 SCC 641**.

14. While considering the issue of compounding, the Supreme Court in State of Madhya Pradesh v. Laxmi Narayan & Ors reported as **(2019) 5 SCC 688** observed as under:

“11.1.From the impugned judgment and order passed by the High Court, it appears that the High Court has mechanically quashed the FIR, in exercise of its powers under Section 482 CrPC. The High Court has not at all considered the distinction between a personal or private wrong and a social wrong and the social impact. As observed by this Court in State of Maharashtra v. Vikram Anantrai Doshi [State of Maharashtra v. Vikram Anantrai Doshi, (2014) 15 SCC 29 : (2015) 4 SCC (Cri) 563] , the Court's principal duty, while exercising the powers under Section 482 CrPC to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement.....”

15. Coming to the facts of this case, the petitioner/accused has represented himself as *Shiva* and on that pretext he entered into physical relationship with the respondent No.2/complaint. The Status Report also indicates that the petitioner has prepared a forged marriage certificate.

16. An offence of rape is an offence against the society at large and apart

from offence under Section 376, the petitioner is also accused of committing offences under Sections 419,467,468,471,474,506 and 34 IPC.

17. This Court is not in a position to quash the FIR on the basis of compromise entered into between the parties and wherein it is stated that the petitioner/accused and the respondent No.2/complainant have decided to stay as husband and wife and lead their peaceful marital life. It has been repeatedly stated by the Supreme Court that when parties reach settlement and on that basis a petition is filed for quashing criminal proceedings, the guiding factor for the High Court before quashing the complaint in such cases would be to secure; a) ends of justice, b) to prevent abuse of process of any court. The High Court has to form an opinion on either of the aforesaid two objectives. This is not a matrimonial dispute between the husband and wife for the reason that the petitioner has not married the respondent No.2.

18. It is the allegation of the complainant that the petitioner *Akhtar* falsely represented himself as *Shiva* and promised marriage to the respondent No.2/complainant and had physical relationship with her. The marriage certificate is found to be fake one and in any event, the petitioner could not have married the respondent No.2/complainant in Arya Samaj Mandir according to the Hindu Vedic Rites and Customs. A reading of the allegations in the FIR and the Status Report, it is evident that the petitioner has been accused of serious offences like rape and forgery having a bearing on vital societal interest and these offences cannot be construed to be merely private or civil disputes but rather will have an effect on the society at large. In crimes which seriously endangers the well being of the society, it is not safe to leave the crime doer only because he and the victim have settled the dispute amicably.

19. Accordingly, the present petition is dismissed along with the pending application.

SUBRAMONIUM PRASAD, J.

FEBRUARY 01, 2021

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