

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MAY, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.4172 OF 2022

BETWEEN:

1. SRI SATHISH K.,

2. SRINIVASU

3. KOKILA

4. MAMATHA

... PETITIONERS

(BY SRI MOHAN KUMAR D., ADVOCATE (PHYSICAL HEARING))

AND:

1. STATE OF KARNATAKA
BY BYADARAHALLI POLICE STATION
REP. BY ITS STATE PUBLIC PROSECUTOR
HIGH COURT COMPLEX,
BENGALURU – 560 001.
2. SMT. SHIVAGAMI V.,

... RESPONDENTS

(BY SRI K.S.ABHILASH, HCGP FOR R1;
SRI RAGHAVENDRA GOWDA K., ADVOCATE FOR R2;
(PHYSICAL HEARING))

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS INITIATED AGAINST THE PETITIONERS HEREIN BY THE LEARNED CHIEF JUDICIAL MAGISTRATE, BENGALURU RURAL DISTRICT, BENGALURU IN CR.NO.87/2022 FOR THE OFFENCE P/U/S 384, 376, 504, 506 R/W 34 OF IPC AGAINST THE RESPONDENT BYADARAHALLI P.S., BENGALURU.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners are before this Court calling in question proceedings in Crime No.87 of 2022 registered for offences

punishable under Sections 376, 384, 504, 506 read with Section 34 of the IPC.

2. Heard Sri D. Mohan Kumar, learned counsel appearing for the petitioner, Sri K.S.Abhijith, learned High Court Government Pleader for respondent No.1 and Sri K.Raghavendra Gowda, learned counsel appearing for the respondent No.2.

3. The facts are that the 2nd respondent is the complainant. On a complaint dated 16-02-2022 made by her FIR came to be registered 17-02-2022 for the offence punishable under Section 376 of the IPC against the petitioner No.1/accused No.1 and other offences against other accused. The issue is not with regard to the merit of the matter. During the pendency of these proceedings, the parties to the *lis* – petitioner No.1, the complainant and all other accused have entered into a settlement and have produced such settlement by way of an affidavit before this Court. A joint memo and an application under Section 483 read with Section 320 of the Cr.P.C. are also filed before the Court seeking to compound the offences alleged.

4. Since the offence punishable is one under Section 376 of the IPC, the learned High Court Government Pleader objects to quashing of proceedings against the petitioners on the ground of settlement arrived at between the parties.

5. The learned counsel for the petitioners' places reliance upon several judgments rendered by the Apex Court, this Court as well as other High Court, in order to buttress his submission that a settlement arrived at even in case of offence punishable under Section 376 of the IPC, the proceedings can be terminated.

6. In the light of proceedings, where the allegation falling under Section 376 of the IPC are also made having been quashed on account of settlement, in my considered view, the present case also can be looked at in the same way.

7. The Apex Court in the case of **PRASHANT BHARTIYA v. STATE OF DELHI**¹ has held as follows:

"Leave granted."

¹ **Crl.A.No.708 of 2021 decided on 30-07-2021**

We have heard learned counsel for the parties and considered the material on record.

Respondent No.2 had lodged a complaint alleging, inter alia, that the appellant had committed an offence under Section 376 of the Indian Penal Code. It is undisputed that both the accused (appellant) and respondent No.2 were living together for a considerable while. The complainant's allegation is that the appellant duped her by misrepresenting to her that he is divorced. The complainant, according to the accused, is not unmarried and her marriage subsists.

During pendency of the proceedings, the parties were referred to mediation having regard to the fact that a child was born in the meanwhile (i.e., in the year 2018). As a consequence, a mediated settlement limited to the maintenance and upkeep of the child was arrived at by them.

Having regard to these facts and the submissions made on behalf of the complainant – who does not dispute that this may not be an appropriate case for pursuing the prosecution further, this Court is of the considered view that the criminal proceedings must be quashed.

In the peculiar circumstances of the present case, the impugned judgment of the High Court is set aside; the FIR (No. 616) and all consequent proceedings be quashed. It is, however, made clear that this order will not come in the way or in any manner prejudice the contentions of the parties in any other pending proceedings, which shall be decided in accordance with law.

The appeal is allowed to the above extent.

Pending application, if any, stands disposed of.”

The Apex Court, again in the case of **K.DHANDAPANI v. THE STATE BY THE INSPECTOR OF POLICE**², has held as follows:

“Leave granted.

The appellant who is the maternal uncle of the prosecutrix belongs to Valayar community, which is a most backward community in the State of Tamilnadu. He works as a woodcutter on daily wages in a private factory. FIR was registered against him for committing rape under Sections 5(j)(ii) read with Section 5, 5(I) read with Section 6 and 5(n) read with Section 6 of Protection of Child from Sexual Offences (POCSO) Act, 2012. He was convicted after trial for committing the said offences and sentenced to undergo rigorous imprisonment for a period of 10 years by the Sessions Judge, Fast Track Mahila Court, Tiruppur on 31.10.2018. The High Court, by an order dated 13.02.2019, upheld the conviction and sentence. Aggrieved thereby, the appellant has filed this appeal.

Mr. M.P.Parthiban, learned counsel appearing for the appellant, submitted that allegation against him was that he had physical relations with the prosecutrix on the promise of marrying her. He stated that, in fact, he married the prosecutrix and they have two children.

The appellant submitted that this Court should exercise its power under Article 142 of the Constitution and ought to do complete justice and it could not be in the interest of justice to disturb the family life of the appellant and the prosecutrix.

After hearing the matter for some time on 08th March, 2022, we directed the District Judge to record the statement of the prosecutrix about her present status. The statement of the prosecutrix has been placed on record in which she has categorically stated that she has two children and they are being taken care of by the appellant and she is leading a happy married life.

² **Crl.A.No.796 of 2022 decided on 9-05-2022**

Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle.”

8. This Court in **V.PRABHU v. STATE OF KARNATAKA**

AND ANOTHER³ has held as follows:

“2. This petition is filed by the petitioner-accused under Section 482 of Cr.P.C., for quashing the criminal proceedings in C.C.No.28042/2021 pending on the file of I Additional Chief Judicial Magistrate, Bengaluru Rural District arising out of Cr.No.121/2021 registered by Kadugodi police station for the offences punishable under Section 417, 376 of Indian Penal Code (for short 'IPC').

3. Heard the arguments of learned counsel for the petitioner and learned High Court Government Pleader for the respondent-State.

4. During the pendency of this petition, both the parties, the petitioner and respondent No.2, have filed joint compromise application under section 320 read with 482 of

³ **Crl.P. No.8754 of 2021 decided on 19-01-2022**

Cr.P.C. Respondent No.2 and the petitioner submitted that they have compounded the offences and respondent No.2 submits no objection for quashing the criminal proceedings against the petitioner. Both petitioner and respondent No.2 along with their counsels have appeared through video conference and the parties were identified by the respective counsel.

5. The allegation against the petitioner is that he had sexual intercourse with the respondent No.2 under the pretext of marrying her, therefore the complaint came to be filed. Subsequently, both decided to resile from each other and compounded the offence, therefore both of them filed joint application for closing the matter. In view of the submission of both the parties having compounded the offence and in view of the judgment of the Hon'ble Supreme Court in the case of **Gian Singh Vs. State of Punjab and Another** wherein it is laid down where the parties have settled the dispute between them and the same is not affected to the public, the Court can quash the proceedings. In view of the same, parties have settled the dispute amicably and therefore I.A.No.4/2022 requires to be allowed.

Accordingly, I.A.No.4/2022 is allowed and subsequently, Criminal proceedings against the petitioner in C in C.C.No.28042/2021 pending on the file of I Additional Chief Judicial Magistrate, Bengaluru Rural District arising out of Cr.No.121/2021 registered by Kadugodi police station for the offences punishable under Section 417, 376 of IPC, is hereby quashed.”

Again, this Court in **H.S.CHANDAN v. STATE OF KARNATAKA AND ANOTHER**⁴ has held as follows:

“7. Respondent No.2 in CrI.P.No.1111/2022 has filed a complaint against the petitioner-Chandan H.S for the offences punishable under Sections 376 and 417 of IPC as the petitioner is said to be committed rape on her on the promise of marriage and the mother of the petitioner and accused have

⁴ **Criminal Petition No.1111 of 2022 c/w Criminal Petition 1116 of 2022 decided on 15-02-2022**

filed complaint against the victim for the offences punishable under Sections 468, 506 and 201 of IPC which is nothing but case and counter case filed between the parties.

8. The counsel for respondent No.2 and respondent No.2 Crl.P.No.1116/2022 also appeared before the Court. Victim also present before the Court submits that the matter has been amicably settled between them. In view of the judgment of Hon'ble Supreme Court in the case of **Gian Singh vs. State of Punjab and Another** reported in **2012 CRI.L.J.4934** wherein, it has been held that in cases where the parties have settled the dispute between them, the Court can quash the proceedings and this Court in various cases has also granted permission to quash the criminal proceedings even the offences under Sections 417 and 376 of IPC is involved. Even in view of amicable settlement between the parties and in view of judgment of Hon'ble Supreme Court in the case of **Gian Singh** stated supra, when the parties have settled their dispute amicably, the Court can quash the criminal proceedings. This Court in the case of **Ismail vs. The State of Karnataka and another** in **Crl.P.No.2031/2020, dated 11.02.2022** and in the case of **V. Prabhu vs. State of Karnataka and another** in **Crl.P.No.8754/2021, dated 19.01.2022** has quashed the criminal proceedings in similar circumstances.

9. Therefore, in view of the settlement between the parties, the compromise filed by both the parties in both the case are accepted and permitted to compound their offences. Accordingly both the cases are **allowed**.

10. The criminal proceedings against the parties in Crl.P.No.1111/2021 in respect of S.C.No.838/2021 (Crime No.28/2021) pending on the file of LIII Additional City Civil and Sessions Judge, Bengaluru (CCH-54) for the offence punishable under Sections 376, 417 and 313 of IPC and in Crl.P.No.1116/2022 in respect of C.C.No.25328/2021 (Crime No.28/2021) registered by Sanjay Nagar Police Station, Bengaluru for the offences punishable under Sections 468, 506, 201 of IPC are hereby quashed.”

9. It is also germane to notice the judgment of the High Court of Delhi in **LALIT KUMAR VATS v. STATE OF NCT OF DELHI AND ANOTHER**⁵ whereby the Delhi High Court quashed the proceedings in an allegation pertaining to Section 376 of the IPC. The judgment rendered by the Delhi High Court reads as follows:

“3. Vide the present petition, petitioner seeks direction thereby for quashing of FIR No.381 of 2020 dated 10-08-2020, for the offence punishable under Sections 376 IPC registered at Police Station – Kapashera, New Delhi and all other proceedings arising therefrom.

4. Notice issued.

5. Notice is accepted by learned APP for State and by the respondent No.2 and with the consent of counsel for parties, the present petition is taken up for final disposal.

6. The present petition is filed on the ground that matter has been compromised between petitioner and the prosecutrix.

7. The Prosecutrix is personally present in Court and has been identified by W/SI Chandra Kanta/IO of the case. She states that FIR was lodged out of anger reason being she and petitioner had an altercation on 9-08-2020. To this effect, she has not only filed affidavit but she also sought apology from this Court.

8. Since prosecutrix has made wrong statement which culminated into the present FIR, therefore, she is liable to be prosecuted under the law, however, she seeks unconditional apology and submits that she is a married woman having two children and her matrimonial life will be destroyed if the present case is sent for trial.

⁵ **Crl. M.C.No.2384 of 2020 decided on 4.12.2020**

9. Her unconditional apology is accepted.

10. AS per the directions of the Hon'ble Supreme Court in **Parbat Bhai Aahir and others v. State of Gujarat and other** (AIR 2017 SC 4843), the FIR should not be quashed in case of rape as it is a heinous offence, but when the respondent No.2/complainant/prosecutrix herself takes the initiative and file affidavits before this Court, stating that she made the complaint due to some mis-understanding and now wants to give quietus to the mis-understanding which arose between the petitioner and respondent No.2, in my considered opinion, in such cases, there will be no purpose in continuing with the trial. Ultimately, if such direction is issued, the result will be of acquittal in favour of the accused, but substantial public time shall be wasted.

11. This Court is conscious about the dictum of the Supreme Court in terms of seriousness of the case, however, keeping in view the settlement arrived between the parties, this Court is inclined to quash the present FIR as no useful purpose would be served in prosecuting the petitioner any further. Moreover, petitioner is a well educated person. He holds various educational degrees including MBA and CS-Executive, as evidenced by the documents annexed hereto as Annexure-P6. The petitioner is currently preparing for CS-Professional and UPSC examinations. Continuation of the proceedings will affect his prospects in clearing examinations.

12. For the reasons afore-recorded, quashing of FIR No.381/2020 dated 10-08-2020, registered at Police Station – Kapashera, New Delhi and all other proceedings arising therefrom are quashed.

13. The petition is, accordingly, allowed and disposed of.”

10. In the light of the judgments rendered by the Apex Court, this Court and that of Delhi High Court what requires to be noticed is, the closure of proceedings on account of

settlement arrived at between the parties even for offence punishable under Section 376 of the IPC, being permissible. Therefore, the affidavit of the complainant filed along with application invoking Section 320 of the Cr.P.C. reads as follows:

“VERIFYING AFFIDAVIT

... ..

2. I submit that the petitioners herein had filed the above petition seeking to quash the entire proceedings initiated by the learned Metropolitan Magistrate, Bangalore Rural, Bangalore in C.R.No.87/2022. The grounds urged in the main petition may kindly be read as part and parcel of this affidavit so as to avoid repetition.

3. I submit that I and petitioner No.1 to 4 herein are relatives and family members due to some financial dispute and misunderstanding in both the family for a sum of Rs. 1,00,000/-. In the above background I lodged the complaint. Now at the intervention of the elders, family members, well-wishers and friends we have settled the dispute between ourself. I myself and petitioner No.1 to 4 have agreed for mutual settlement and compromise.

4. I submit that, I and petitioner No.1 to 4 have been mutually compromised. Thus, I herein is ready to withdrawn all cases filed by me against petitioners without any pressure or undue influence or coercion.

5. I submit that now I am willfully not interested in prosecuting the case against the petitioners as we are the only family members and relatives. Now by settling this there will be no hardship will cause to any either party or others. By virtue of the continuation of the proceedings, the learned trial Court is proceeding further with the case and if that is allowed to be done, myself and my other family members will be put to irreparable loss and hardship which cannot be compensated

in terms of money. By allowing this petition no hardship and injustice will be caused to either parties.

6. I submit that, I have no objection to quash the entire proceedings pending on the file of the learned Magistrate, Bangalore Rural, Bangalore in C.R.No.87 of 2022.

WHEREFORE, it is prayed that this Hon'ble Court be pleased to permit the petitioner to compound the offences, in the interest of justice and equity."

11. In view of the judgments rendered by the Apex Court and that of this court and the peculiar facts of this case, the complainant is said to have married and is leading her life with another man within the family itself and the accused being members of the same family, I deem it appropriate to accept the application seeking compounding of offences aforesaid and terminate the proceedings against the petitioners.

12. For the aforesaid reasons, I pass the following:

ORDER

- (i) Criminal Petition is disposed of.
- (ii) The proceedings against the petitioners in Crime No.87 of 2022 of Byadarahalli Police Station pending before the learned Chief Judicial Magistrate, Bangalore Rural District, Bangalore

stand quashed. Consequently all further proceedings taken pursuant to registration of impugned crime also stand quashed.

I.A.No.1/2022 stands disposed, as a consequence.

**Sd/-
JUDGE**

bkp
CT:MJ