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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: October 30, 2023*

+ **CRL.M.C. 7825/2023 & CRL.M.A. 29177/2023**

SAKH ALAM @ SHEKH ALAM **Petitioner**

**Through: Mr. Amjad Khan, Advocate.
Petitioner through VC.**

versus

**THE STATE (GOVT. OF NCT,
DELHI) & ANR.**

..... **Respondents**

**Through: Mr. Utkarsh, APP for State/R-1
with SI Sarita (Main IO) and SI
Rashmi (Deputed IO), P.S. BHD
Nagar.**

**Mr. Sumit Kumar, Advocate for
R-2 with R-2 in person.**

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (oral)

1. The present petition is filed under section 482 Cr.P.C. for quashing of FIR bearing no. 0360/2020 dated 20.04.2020 registered under section 376 IPC and section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) at P.S. Baba Haridas Nagar along with consequential proceedings including judicial proceedings stated to be pending in the court of Sh. Manu Goel Kharb, ASJ (FTSC)(POCSO)-02, Dwarka Courts, New Delhi/Successor Court.



2. Issue notice.
3. Mr. Utkarsh, Additional Public Prosecutor assisted by the Investigating Officer SI Rashmi, P.S. Baba Haridas Nagar, accepts notice on behalf of the State/respondent no. 1. The respondent no. 2 is present in person alongwith counsel and accepts notice.
4. The perusal of FIR bearing no. 0360/2020 reflects that it was got registered on the basis of complaint made by the respondent no. 2 pertaining to the allegations as mentioned in the FIR wherein the petitioner was implicated. The petitioner and the respondent no. 2 are identified by their respective counsel as well as by the Investigating Officer SI Rashmi, P.S. Baba Haridas Nagar. After completion of investigation, the charge-sheet was filed under section 376 IPC and section 6 POCSO Act and the trial is stated to be pending in the court of Sh. Manu Goel Kharb, ASJ (FTSC)(POCSO)-02, Dwarka Courts, New Delhi/Successor Court.
5. The respective counsel appearing on behalf of the petitioner and the respondent no. 2 stated that the petitioner and the respondent no. 2 have settled their pending disputes and got married on 28.03.2023 at the office of the Marriage Registrar, Motihari, Bihar vide Registration Certificate bearing no. 04/2023 and thereafter they are leading a happy married life with mutual



love, affection and understanding and have become the parents of one male child namely Taymur. The respective counsel appearing on behalf of the petitioner and the respondent no. 2 prayed that under the given facts and circumstances of the case and after considering the future prospects of the petitioner and the respondent no. 2, the present petition be allowed and FIR bearing no. 0360/2020 registered under section 376 IPC and section 6 POCSO Act at P.S. Baba Haridas Nagar be quashed alongwith consequential proceedings including judicial proceedings stated to be pending in the court of Sh. Manu Goel Kharb, ASJ (FTSC) (POCSO)-02, Dwarka Courts, New Delhi/ Successor Court.

6. The respondent no. 2 stated that she has settled the pending disputes with the petitioner and got married to him out of her own free will and without any fear, force and coercion. She further stated that she does not have any objection if the present petition is allowed and FIR bearing no. 0360/2020 registered under section 376 IPC and section 6 POCSO Act at P.S. Baba Haridas Nagar is quashed alongwith consequential proceedings including judicial proceedings stated to be pending in the court of Sh. Manu Goel Kharb, ASJ (FTSC) (POCSO)-02, Dwarka Courts, New Delhi/ Successor Court.



7. The Additional Public Prosecutor appearing on behalf of the respondent no. 1/State raised objections regarding the present petition and stated that the present FIR pertains to the offences punishable under section 376 IPC and section 6 of POCSO Act which are non-compoundable offences and the allegations as mentioned in the FIR are serious in nature, as such the present FIR cannot be quashed.

8. The extraordinary power under section 482 Cr.P.C. should be exercised sparingly and with great care and caution and can be used to prevent abuse of the process of the court or to secure ends of justice and the exercise of inherent powers entirely depends on facts and circumstances of each case. The Supreme Court in **Sushil Suri v. Central Bureau of Investigation and Another**, (2011) 5 SCC 708, considered the scope and ambit of the inherent jurisdiction of the High Court and observed as under:-

16. Section 482 Code of Criminal Procedure itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under Code of Criminal Procedure; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists.



9. The Supreme Court in **B.S. Joshi V State of Haryana** (2003) 4 SCC 675 held that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and section 320 Cr.P.C. does not limit or affect the powers under section 482 Cr.P.C. The Supreme Court in **Shiji alias Pappu and Others V Radhika and Another**, (2011) 10 SCC 705 considered the exercise of inherent powers by the High Court under section 482 Cr.P.C in a matter where the offence was not compoundable and observed that simply because an offence is not compoundable under section 320 Cr.P.C is by itself no reason for the High Court to refuse exercise of its power under section 482 Cr.P.C. It was further observed that there is a subtle distinction between compounding of offences by the parties before the trial court or in appeal and the exercise of power by the High Court to quash the prosecution under section 482 Cr.P.C. The argument advanced by the Additional Public Prosecutor that the offences as complained of are non-compoundable in nature, hence the present petition is liable to be dismissed has no legal force.

10. The Supreme Court in various decisions has discussed the issue pertaining to quashing of FIR registered for the offence punishable under



section 376 IPC. The Supreme Court in **Gian Singh V State of Punjab and Others**, (2012) 10 SCC 303 laid down following principles:-

57. 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 F.I.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominantly civil favour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and



continuation of criminal case would put 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

11.1 The Supreme Court in **State of Madhya Pradesh V Laxmi Narayan and Others**, (2019) 5 SCC 688 recapitulated the principles laid down in **Gian Singh** (*supra*) and observed as under:-

- (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;
- (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;
- (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;
- (4) xxx xxx xxx



(5) While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc.

11. The Supreme Court in **Ramgopal & Another V State of Madhya Pradesh**, Criminal Appeal No. 1489 of 2012 decided on 29.09.2021 observed as under:-

11. True it is that offences which are ‘non-compoundable’ cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would amount to alteration, addition and modification of Section 320 Cr.P.C, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of ‘compoundable’ offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are non- compoundable. The High Court can indubitably evaluate



the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post- conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extra-ordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in *Narinder Singh & Ors. vs. State of Punjab & Ors.* 3 (2014) 6 SCC 466 and *Laxmi Narayan (Supra)*.

14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through



duress, threats, social boycotts, bribes or other dubious means. It is well said that “let no guilty man escape, if it can be avoided.”

12. The Supreme Court in **Daxaben V. The State of Gujrat and Others**, SLP Criminal No.1132-1155 of 2022 decided on 29.07.2022 also observed as under:-

38. However, before exercising its power under Section 482 of the Cr.P.C. to quash an FIR, criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the offence. Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim. Crimes like murder, rape, burglary, dacoity even abetment to commit suicide are neither private nor civil in nature. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.

13. A Coordinate Bench of this Court in **Mohd. Sufiyan & Others V State of NCT of Delhi & Another**, W.P. (CRL.) 2568/2021 decided on 11.05.2021 declined to quash the FIR pertaining to the offence punishable under section 376 IPC despite settlement between the concerned parties and the statement given by the wife to the effect that she lodged the FIR in anger and out of vengeance without paying due attention as to the consequences of the FIR. In **Pawan Gaur V State (NCT of Delhi)**, Crl. M.C. 981/2021 decided on 26.03.2021, a Coordinate Bench of this Court declined to quash



an FIR pertaining to the offence punishable under section 376 IPC despite compromise between the parties.

14. The respondent no.2 in the FIR has alleged that the petitioner had sexual intercourse with her multiple times when she was just 16 years old. The respondent no. 2 also got pregnant due to this reason. The respondent no.2 has repeated the allegations as mentioned in the FIR in her statement under section 164 Cr.P.C. and in her testimony before the trial court. The allegations as levelled by the respondent no. 2 are serious in nature. The mere fact that the respondent no. 2 got married with the petition subsequently does not entail quashing of FIR. The present FIR pertains to offences punishable under section 376 IPC and section 6 of the POCSO Act which are serious in nature. It has been constantly observed by the Supreme Court in various judgments as detailed hereinabove that the offence punishable under section 376 IPC cannot be compounded and FIR pertaining to the offence punishable under section 376 IPC cannot be quashed on the basis of settlement between the parties.

15. After considering all facts and gravity of allegations, the present petition cannot be allowed and FIR bearing no.0360/2020 registered under section 376 IPC and section 6 POCSO Act at P.S. Baba Haridas Nagar along



with consequential proceedings including judicial proceedings stated to be pending in the court of Sh. Manu Goel Kharb, ASJ (FTSC)(POCSO)-02, Dwarka Courts, New Delhi/Successor Court cannot be quashed.

16. The present petition alongwith pending application, stands dismissed.

DR. SUDHIR KUMAR JAIN
(JUDGE)

OCTOBER 30, 2023
N/AM