

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 06.09.2019 Judgment Pronounced On: 14.11.2019

+ W.P.(CRL.). 2382/2019 & CrI.M.A. 34350/2019 ANANDA D.V. Petitioner

Through: Mr. Pramod Kr.Dubey, Mr. Nishaank Mattoo, Ms. Shivika Singh, Mr. Kaushank Sindhu, Mr. Anurag Andley, Mr, Prince Kumar, Mr,. Bankey Biharijee and Ms. Amrita Vatsa, Advs.

versus

STATE & Anr Respondents

Through: Ms. Shivani Sharma, Ms. Sonalki Jain, Mr. Chaitanya Bansal, Advs. for Ms. Richa Kapoor, ASC for State with W/SI Yaonai from PS S.J.Enclave. Mr. Vivek Kumar Tandon and Mr Siddhant Tyagi Advocates for R-2.

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J

1. This writ petition under Article 226 of the Constitution of India r/w Section 482 Cr.P.C. is filed by the petitioner for quashing of FIR No.455/13 u/s 376/380 IPC dated 17th September, 2013 registered with PS Safdarjung Enclave, Delhi and the consequential proceedings emanating there from.

2. While praying for quashing of FIR and the criminal proceedings emanating there from, the petitioner has pleaded that respondent no. 2 had met the petitioner in January, 2013 on account of a professional assignment and thereafter they kept meeting each other regularly and got romantically involved.

3. Petitioner extended marriage proposal to respondent no. 2. Thereafter, respondent no. 2 entered into a live in relationship with the petitioner and moved in with him in March,2013 at his rented accommodation in Delhi.

4. On 25-26.08.2013, an altercation took place between the petitioner and respondent no. 2 and the petitioner left respondent no.

2. Thereafter respondent no. 2 filed a complaint against the petitioner at PS Safdarjung Enclave which culminated into the aforesaid FIR bearing no. 455/13 dated 17.09.2013 under section

376/380 IPC. A charge-sheet was filed against the petitioner pursuant to which the petitioner has been facing trial.

5. It is further submitted that during the course of the trial, the marriage of the petitioner and the respondent no. 2 was solemnized as per Hindu rituals at Shri Dakshina Ayodhya Kodanda Rama Temple, Bangalore. However, on account of some differences and misunderstandings the trial proceedings continued.

6. It is further submitted that now upon the intervention of friends and well wishers both parties have resolved all the differences and misunderstanding between them by way of a settlement deed dated 16.08.2019. The respondent No. 2 has further given her 'No objection' affidavit for quashing of the aforesaid FIR and all proceedings emanating there from.

7. It is further argued that the petitioner and respondent no. 2 have entered into a matrimonial alliance and their marriage has been duly solemnized and as such no offence under section 376 IPC as alleged has been committed by the petitioner. It is further argued that when the matter has been amicably settled, the continuation of

proceedings arising out of the FIR will render the compromise meaningless and continuation of the proceedings shall be sheer wastage of the precious judicial time and public expenditure.

8. Learned Counsel for the petitioner, in support of its case, has relied upon the following case law:-

i) Parvpal Rajivpal Singh Vs. State of Gujrat and Ors., 2016 Cr.L.J 243 of Hon'ble High Court of Gujrat;

ii) Ashiq N.A. vs. State of Kerala, (2019) 3 KJL 18 of Hon'ble High Court of Kerala;

iii) Akash Gupta vs State of Uttarakhand & Ors., Crl. M.A. No. 502/2018 of Hon'ble High Court of Uttrakhand;

iv) Petchimuthu & Ors. Vs. State & Ors., Crl. O.P.(MD) No. 10213 of 2019 of Hon'ble High Court of Madras;

v) Mohammad Farooq vs. State of HP, Crl. MMO No 451/2019 of Hon'ble High Court of Himachal Pradesh;

vi) Vinoth Kumar & Ors. Vs. State & Ors., of Hon'ble High Court of Madras;

vii) Madan Mohan Abott vs. State of Punjab, 2008(4) SCC 5821, of Hon'ble Supreme Court of India;

viii) Jagdishbhai Shantilal Raval Vs. State of Gujarat, R/C Crl. M.App No. 7001/2019.

9. Ld. ASC for the state has opposed the petition and submitted that the quashing of FIR cannot be allowed in view of the law laid

down by Hon'ble Supreme Court in Parbathhai Aahir @
Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat &
Anr., 2017 SCC Online SC 1189.

10. I have heard the learned counsel for the petitioner and also
gone through the record.

11. The instant FIR bearing No.455/2013 under Sections 376/380
IPC was registered at PS Safdarjung Enclave on 17th September,
2013 on the basis of statement made by complainant/respondent
No.2 'P' (name withheld to conceal her identity) wherein she has
mentioned about her emotional, physical, mental and sexual abuses
at the hands of petitioner herein.

12. In order to understand the nature and gravity of the offence, it
is necessary to refer to the compliant made by the prosecutrix to the
police on the basis of which the present case FIR was registered.

In her statement to the police, the complainant/prosecutrix alleged, that she had met with Ananda in
January, 2013 during a client's meeting of Maruti Suzuki and Evolvant NIIT Company Private Ltd. After
the said meeting, they met several times and during that period, she shared all her past life events
including the fact of her being widow. Petitioner Ananda took advantage of her vulnerable emotional
stage and made an offer of marriage saying that he has strong liking for

her. The repeated proposals to marry her were made in March, 2013. She was reluctant to accept, however, she believed him when he said that his parents have agreed for the same despite knowing the fact that she is a widow. In course of time, she trusted him and on his false allurements of marriage and after repeated insistence from him, cohabited with him at Gautam Nagar, Green Park, Delhi. At several occasions, she requested him to make her speak with his family, however, he always replied that his family does not understand Hindi or English but later on talked with his parents in his regional language giving her an impression that he has conveyed her regards to them. This deceit of his continued till June when he revealed that he was visiting Bangalore for ten days and after completion of his project, his behaviour towards her started changing and several times he became abusive and violent. He started smoking and excessive drinking and forced to have sex with her against her will and consent. His vulgar and harsh comments hurt her and therefore, she gradually started sinking into depression and stress. She requested many times to marry her but always his proposal was rejected on the ground that due to his age, she should not think of having kids and also does not want to take the responsibilities associated with marriage and family. In July-August, 2013, she became pregnant but forced to abort through medication by petitioner. On 25th August, 2013, on her consistent persistent, petitioner called her sister and told to her that a girl was staying with him since last several months and now insisting to marry him but he is not interested to marry her. On one occasion, due to his consistent harassment and lust, she cut her arm and fainted. One day when she woke up in the evening after her night duty, she tried to contact Anand but his mobile phone

was switched off and later on came to know that Ananda has absconded with all her belongings and her valuable. She further sank into further depression when she came to know that Ananda has fraudulently filed a complaint in PS for extortion of Rs. 3,50,000/-. Even after that she tried her level best to reconcile the matter but of no avail. Hence, the present complaint for her emotional, physical, mental and sexual abuse.

13. The question which now arises for consideration is whether the fact that the parties have got married and have settled the dispute between themselves should be a reason good enough to quash the FIR registered under Sections 376/380 IPC and consequential proceedings emanating there from.

14. In the decision reported as Parbathhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors(Supra), the Hon'ble Supreme Court has discussed the scope and power of the High Court under Section 482 CrPC to quash the criminal proceedings on the basis of settlement in a heinous or serious offence and has laid down the following law:-

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court; (ii) The invocation of the jurisdiction of the High Court to quash a First Information Report

or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable. (iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power; (iv) While the inherent

power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court; (v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated; (vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded

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on the overriding element of public interest in punishing persons for serious offences; (vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned; (viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute; (ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and (x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance. (emphasis supplied)

15. In *Narinder Singh & Ors. Vs. State of Punjab & Anr.*,

Criminal Appeal No.686/2014 arising out of SLP(Criminal)

No.9547/2013, the Hon'ble Supreme Court has held that in respect

of offences against society, it is the duty of the state to punish the offender. In consequence, deterrence provides a rationale for punishing the offender. Hence, even when there is a settlement, the view of the offender and victim will not prevail since it is in the interest of society that the offender should be punished to deter others from committing a similar crime.

16. In Gian Singh vs. State of Punjab (2012) 10 SCC 303, the

Hon'ble Supreme Court has held as under:-

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 victims 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 predominately civil flavour 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. (emphasis supplied)

17. Thus, in view of the decision of the Hon'ble Supreme Court in Gian Singh vs. State of Punjab (Supra), settlement in cases where nature of offence is heinous/serious like murder, rape and dacoity, the criminal proceedings cannot be quashed even if there

are settled by the accused and the victim, by invoking the jurisdiction of High Court under Section 482 CrPC.

18. In the case in hand, it is the case of the respondent no. 2 that she was deceived by petitioner and sexual relations were established on the pretext of false promise of marriage and she was, thus, subjected to emotional, physical, mental and sexual abuse and therefore applying the ratio laid down in Parbathhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat & Anr., and Gian Singh vs. State of Punjab cases, (Supra), it is clear that the offence committed by petitioner clearly falls under the category of heinous and serious one. Rape not only causes serious injury to a woman's body, her honour and dignity and even if such an offence is settled by the offender and victim, this offence being not private in nature but has serious impact on the society and,

therefore, cannot be quashed. Thus, despite the alleged marriage of the petitioner with the complainant/respondent No.2, the offence in question cannot be quashed in exercise of powers vested in this Court under Section 482 Cr.P.C.

19. So far as the cases relied upon by learned counsel for the

petitioner are concerned, the same are distinguishable in view of the law laid down by Hon'ble Supreme court in Parbatbhai Aahir @ Parbatbhai Bhi msinhbhai Karmur & Ors. Vs. State of Gujarat & Anr., and Gian Singh vs. State of Punjab(Supra).

20. In view of the above discussion, the FIR bearing no.455/13 u/s 376/380 IPC dated 17th September, 2013 registered with PS Safdarjung Enclave, Delhi and proceedings emanating there from cannot be quashed. The petition along with pending application is, therefore, dismissed.

BRIJESH SETHI, J

NOVEMBER 14, 2019 AK