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

+ CRL.M.C. 4655/2022

SALMAN RAHMAN

..... Petitioner

Through: Mr Shashi Shanker and Mr Saksham  
Yadav, Advs.

versus

STATE, GOVT. OF NCT OF DELHI & ANR. .... Respondents

Through: Mr Aashneet Singh, APP for State  
Inspector Benkatesh Kumar,  
PS-Sarita Vihar  
Mr Kamran Malik, Adv. for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**

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**16.09.2022**

**CRL.M.A. 18841/2022**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**CRL.M.C. 4655/2022 & CRL.M.A. 18842/2022**

1. This is a petition seeking quashing of FIR No. 447/2020 dated 28.11.2020, under Sections 354-D/376/506 IPC, registered at Police Station-Sarita Vihar, Delhi.
2. It is stated that the parties have arrived at a settlement before the Mediation Centre, Saket Courts, New Delhi on 04.07.2022 and the present quashing petition is based on the said mediation settlement. The mediation settlement in fact records "*This turns out to be matrimonial dispute which*

*was preceded by registration of FIR u/s 376 IPC, The offence u/s 376 IPC is not permissible to be settled through mediation but considering the peculiar facts and circumstances of the case that initially parties were in relationship with each other. The FIR was registered u/ s 376 IPC, which as stated was filed due to ill-advise and misunderstanding, thereafter parties married with each other. However, they again drifted apart and decided to part their ways. . Therefore, this settlement is being entertained in mediation centre.”*

3. The petitioner is present in Court and has been identified by his counsel Mr Shashi Shanker.

4. Respondent No. 2 is also present in Court and has been identified by her counsel Mr Kamran Malik as well as by the Investigating Officer Inspector Benkatesh Kumar, PS-Sarita Vihar.

5. Both the parties state that they have entered into the aforesaid settlement of their own will, volition and without any threat, force or coercion. It is stated by respondent No.2 that she has no objection if the FIR is quashed.

6. The allegations in the FIR are under Section 354-D/376/506 IPC and I would be reluctant to quash these charges. My attention has been drawn to a judgment passed in '***Prashant Bharti v. State (NCT of Delhi)***', (2013) 9 SCC 293 in Criminal Appeal No. 175/2013 dated 23.01.2013 wherein the Hon'ble Supreme Court has indicated that once the prosecutrix herself states that the FIR should be quashed under Section 376 IPC, the High Court in 482 Cr.P.C should ask whether proceedings with trial would result in an abuse of process of Court and whether it would serve ends of justice. The relevant part of ***Prashant Bharti (supra)*** are as under:

*22. The proposition of law, pertaining to quashing of criminal*

*proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as “CrPC”) has been dealt with by this Court in Rajiv Thapar v. Madan Lal Kapoor [Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] wherein this Court inter alia held as under: (SCC pp. 347-49, paras 29-30)*

*“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences, inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion*

*that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.*

*30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing raised by an accused by invoking the power vested in the High*

*Court under Section 482 CrPC:*

*30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?*

*30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?*

*30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?*

*30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?*

*30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as*

*proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”*

*24. Most importantly, as against the aforesaid allegations, no pleadings whatsoever have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted. As a matter of fact, the complainant/prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would therefore be legitimate to conclude, in the facts and circumstances of this case, that the material relied upon by the accused has not been refuted by the complainant/prosecutrix. Even in the charge-sheet dated 28-6-2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 CrPC.”*

7. My attention has also been drawn to a judgment dated 04.12.2020 passed by a Coordinate Bench of this Court in '**Lalit Kumar Vats v. State of NCT of Delhi & Anr.**' passed in CRL.M.C 2384/2020 and more particularly to paragraph 10 which reads as under:

*“10. As per the directions of the Hon'ble Supreme Court in **Parbat Bhai Aahir and Ors. vs. State of Gujrat & Ors. (AIR 2017 SC 4843)**, the FIR should not be quashed in case of rape as it is an 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 misunderstanding and now wants to give quietus to the misunderstanding 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.”*

8. I am of the view that in the present case, respondent No.2 was married to the petitioner and, thereafter, had temperamental differences due to which they decided to part ways. Moreover, the respondent No.2 has herself made the statement that she wants to put quietus to the matter without any pressure, coercion and out of her own free will. In view of this, the allegations under Section 376 IPC can be quashed.

9. At this stage, it is submitted by learned counsel for the petitioner that as per the terms of settlement, the petitioner has to pay a sum of Rs. 4,50,000/- to respondent No.2 which shall be transferred to her during the course of the day.

10. However, I am of the view that the FIR in the present case is of the year 2020 and considerable time of the police has been wasted in investigation, which could have been utilised for important matters. Similarly, judicial time has also been wasted. Therefore, the petitioner must do some social good for the society. It is submitted by the petitioner that he is running restaurants under the name and style of *Burger Singh* and *Wat-a-Burger* in Noida and Mayur Vihar. The petitioner undertakes that he shall provide hygienic and good quality burgers to two orphanages having at least

100 children each.

11. In this view of the matter and for the reasons stated above, FIR No. 447/2020 dated 28.11.2020, under Sections 354-D/376/506 IPC, registered at Police Station-Sarita Vihar, Delhi is hereby quashed, subject to the following conditions:

a) The petitioner shall serve hygienic and good quality burgers to the children in two orphanages at Noida and Mayur Vihar, identified by the learned APP, on or around Dussehra following all Covid protocols.

b) The I.O. concerned shall ensure that the meal is well-made and has been cooked in a safe and clean environment, following Covid protocols.

c) The petitioner shall file compliance affidavit.

d) The I.O. shall also file the compliance report in the matter.

12. List on 21.11.2022 for compliance.

13. Later, the learned counsel for the petitioner states that the payment has been made.

14. The petition is disposed of accordingly.

**JASMEET SINGH, J**

**SEPTEMBER 16, 2022/sr**

*[Click here to check corrigendum, if any](#)*