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

% *Date of decision: 02nd August, 2023*

+ **CRL.M.C. 5323/2023 & CRL.M.A. 20227/2023**

ARJUN KAMTI

..... Petitioner

**Through: Mr. Nikhil Arora and
Ms. Isha Khanna,
Advocates with the
petitioner in person**

versus

**THE STATE OF GNCT OF DELHI
THROUGH SHO & ORS.**

..... Respondents

**Through: Ms. Manjeet Arya, APP
for State/R-1 with SI
Arpana, PS Punjabi
Bagh.**

**Respondents no. 2 & 3
in person.**

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present petition is filed under section 482 Cr.P.C for quashing of FIR bearing no.0563/2018 dated 08.10.2018 registered under section 363 IPC at PS Punjabi Bagh at the instance of the respondent no. 2.

2. Issue notice.

3. Ms. Manjeet Arya, Additional Public Prosecutor accepts notice on behalf of the respondent no.1/State and the respondents no.2& 3 are present in the court along with counsel and accepts notice.

4. The FIR was got registered on the basis of complaint made by the respondent no. 2 wherein he suspected that some unknown person



has kidnapped his daughter i.e. respondent no. 3 after taking out from his Guardianship. During the investigation the petitioner was arrested and Final Report as per section 173 Cr.P.C/charge sheet was filed for the offence under sections 363/376 IPC and under section 6 of the Protection of Children from Sexual Offences, Act 2012(POCSO) wherein the petitioner was implicated. After conclusion of investigation, the chargesheet has already been filed and the trial is stated to be pending in the Court of Ms. Harleen Singh, ASJ, Tis Hazari Courts, West, Special Court (POCSO).

5. The statement of the respondent no. 3 was recorded under section 164 Cr.P.C during the investigation by Ms. Sonam Gupta, Duty Magistrate, Mahila Courts-02, West vide proceedings dated 23.09.2022 wherein the respondent no. 2 has mentioned her age as 22 years and stated that she had gone to Gujarat in the year 2018 along with the petitioner and expressed her desire to live with the petitioner. As per the charge sheet the ossification test to determine the the age of the respondent no. 3 was conducted at Sanjay Gandhi Memorial Hospital in the year 2020 and the members of the medical board opined the age of the prosecutrix between 16 to 18 years in the year 2020. The supplementary statement of the respondent no. 2 who is the complainant and the father of the respondent no. 3 was also recorded under section 161 Cr.P.C. during investigation, wherein he expressed his desire not to proceed with the complaint.

6. The counsel for the petitioner stated that the petitioner and the respondent no. 3 got married and have become parents of two children. The petitioner is employed as a driver and is taking care of



the respondent no. 3 and their children. The respondent no. 3 also stated that she is leading a happy married life with the petitioner who is taking her care as well as of both the children. The complainant also stated that he is not interested in the continuance of consequential judicial proceedings arising out of FIR bearing no. 0563/2018 and he got registered the present FIR out of his anger and misunderstanding.

7. The Additional Public Prosecutor appearing on behalf of the respondent no. 1/State stated that although the petitioner and the respondent no. 3 got married with each other but future financial safety of the respondent no. 3 and her children be ensured. She further stated that the offences as complained are non-compoundable offences.

8. The extraordinary power Under Section 482 Code of Criminal Procedure 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.

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 of the Code does not limit or affect the powers under section 482 of the Code. The power of compounding and quashing of criminal proceedings in exercise of inherent powers are not equal or interchangeable in law. The Supreme Court in **Shiji alias Pappu and others V Radhika and Anr**, (2011) 10 SCC 705 observed that simply because an offence is not compoundable under section 320 Code of



Criminal Procedure is by itself no reason for the High Court to refuse exercise of its power under section 482 Code of Criminal Procedure.

10. The Supreme Court in **Gian Singh V State of Punjab and Others**, (2012)10SC C 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-dominatingly 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. The Supreme Court in **State of Madhya Pradesh V Laxmi Narayan & Ors.**, 2 (2019) 5 SCC 688 recapitulated principles laid down in **Gian Singh** case 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.

12. The Supreme Court in **Ramgopal & another V State of Madhya Pradesh**, Criminal Appeal No. 1489 of 2012 decided 29th September, 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."



13. The Supreme Court in **Daxaben V. The State of Gujrat & Ors.**, 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.

14. The Co-ordinate Bench of this court in **Mohd. Sufiyan & Ors. V. State of NCT of Delhi & Anr.**, W.P. (CRL.)2568/2021 decided on 11.05.2021 as cited by the Additional Public Prosecutor declined to quash offence punishable under section 376 IPC despite statement given by the wife to the effect that she lodged FIR in anger and out of vengeance without paying due attention as to the consequences of FIR and settlement between the concerned parties. In **Pawan Gaur V State (NCT of Delhi)**, CrI. M.C. 981/2021 decided on 26.03.2021, the Coordinate Bench of this court declined to quash FIR pertaining to offence punishable under section 376 IPC despite compromise between the parties.



15. In **Kundan & Anr. V. State & Ors., CRL.M.C. 27/2022** dated **21.02.2022**. The Coordinate Bench of this Court has quashed FIR pertaining to offences punishable under section 363/366/376 IPC and section 6 of the Prevention of Children from Sexual Offences Act, 2012 on the ground that the victim/prosecutrix and the accused got married and the victim/prosecutrix delivered a baby boy. The victim/prosecutrix in statement under 164 of the Code also stated that she was in love with the accused and due to opposition of marriage by her parents, she decided to go with the accused. This Court in **Jaimeet Singh Kalra & Ors. V. State & Anr., CRL.M.C. 1474/2019** decided on 02.06.2022 also quashed FIR under sections 328/498A/406/376/377/506/34 as registration of FIR originated from matrimonial dispute. This Court in **Sunny Kumar @ Mukesh & Ors. V the State & another, CRL.M.C 3561/2022** vide order dated 02.08.2022 has quashed the judicial proceedings under section 363/366/376 IPC and section 4 of POCSO under the facts & circumstances similar to facts and circumstances of present case.

16. The High Court may also quash criminal proceedings where possibility of conviction is remote and bleak and continuation of criminal case is causing great oppression and prejudice to the accused and extreme injustice would be caused to him and to put an end to criminal case would be appropriate. The Supreme Court in **State of Madhya Pradesh V Laxmi Narayan & Others** besides reiterating principles laid down in **Gian Singh** case observed that while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, 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. The Supreme Court in **Ramgopal & another V State of Madhya Pradesh** observed that the High Court after considering peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 of the Code in aid to prevent abuse of the process of any Court and/or to secure the ends of justice. It was further observed that the High Court can quash non compoundable offences after considering nature of the offence and amicable settlement between the concerned parties. The High Court can evaluate the consequential effects of the offence and need to adopt a pragmatic approach to ensure that quashing is not paralyze the very object of the administration of criminal justice system. It was further observed that a restrictive construction of inherent powers under Section 482 of the Code may lead to rigid or specious justice which may lead to grave injustice.

17. The **Gian Singh** in broad perspective prohibits quashing of FIR pertaining to rape. The petitioner and the respondent no.3 were known to each other and were having liking for each other. The petitioner and the respondent no.3 married with each other and with the passage of time, they have been blessed with two children who are of tender age. The petitioner and the respondent no.3 belong to lower strata of the society. The petitioner and the respondent no.3 are leading happy married life without any discord and trouble between them. The petitioner and the respondent no.3 have become the part of the main



stream of the society. The petitioner and respondent no.3 have undertaken to build the future life of their children by mutual love, affection and understanding. Under given facts and circumstances of case, there is remote and bleak possibility of conviction and continuance of legal proceedings arising out of FIR bearing no. 0563/2018 shall cause great oppression and prejudice to the petitioner and the respondent no. 3 as they shall be subjected to extreme injustice and as such to put an end to legal proceedings arising out of FIR bearing no. 0563/2018 would be appropriate and be in the interest of society. The petitioner is also taking care of the respondent no.3 and children.

18. As observed in **Ramgopal & another V State of Madhya Pradesh** the High Court need to adopt a pragmatic approach to ensure that quashing is not paralyze the very object of the administration of criminal justice system and a restrictive construction of inherent powers under Section 482 of the Code may lead to rigid or specious justice which may lead to grave injustice. The antecedents of the petitioner are clear and never been indulged in criminal activities.

19. After considering all facts and totality of the circumstances, the present petition is allowed and FIR bearing no. 0563/2018 registered under section 363 IPC at P.S. Punjabi Bagh is quashed along with all consequential judicial proceedings under sections 363/376 IPC and under section 6 of Protection of Children from Sexual Offences Act, 2012.



20. The petition along with pending applications, if any, stands disposed of.

(DR.SUDHIR KUMAR JAIN)
JUDGE

AUGUST 02, 2023

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HIGH COURT OF DELHI



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