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2024:DHC:398

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

% ***Reserved on: 12.01.2024***
Pronounced on: 19.01.2024

\+ **W.P. (CRL) 336/2023**

MAKSOOD AHMAD ..... Petitioner

Through: Mr. Shyam Kumar, Advocate alongwith Petitioner

versus

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

Through: Mr. Sanjeev Bhandari, ASC for the State along with Mr. Kunal Mittal, Mr. Arjit Sharma and Ms. Rishika, Advocates and with SI Manju and SI Neelam, P.S. GTB Enclave alongwith prosecutrix / Respondent no. 2

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

SWARANA KANTA SHARMA, J.

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Indian Penal Code, 1860 (*'IPC'*) for the purpose of quashing the FIR without a trial.

3. **This case also presents a situation which points out that there may be some cases involving facts and situations that even the Legislature didn't plan for, which will raise questions and issues in a petition that may not have come up or dealt with previously by a Court of law**.

FACTUAL HISTORY OF THE CASE

4. Facts of the case, what actually transpired and the controversy in issue as well as the procedural history of this case, which should ideally be kept minimal in a judgment by a appellate or writ court, in this case, as a matter of necessity, needs to be described at a reasonable length as they are of ultimate importance to decide this case.

5. The present writ petition, filed under Article 226 and 227 of Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*'Cr.P.C.'*) for quashing of FIR No. 439/2022, registered at Police Station G.T.B. Enclave, Delhi, for offence under Sections 376/506 of IPC, **centers on the conflicting stories** presented by the accused/petitioner Mr. Maksood Ahmad, and prosecutrix/ respondent no. 2 Ms. 'M'. The story of the respondent no. 2 being of forced sexual assault and the conflicting stand of the petitioner that it was a consensual live-in sexual relationship.

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History of Past Police and Judicial Proceedings

6. At the time of filing complaint before the police, the story given by the prosecutrix Ms. 'M' was that she was a divorcee and a handicapped person, who knew Mr. Maksood Ahmad for several years as he had been a friend of her ex-husband, and he used to visit her house. As per the version of Ms. 'M', at about 6 PM on 24.09.2022, Mr. Maksood had come to her house and had asked her to prepare food for him. At his request, Ms. 'M' had cooked food for him and in the meanwhile, Mr. Maksood had brought cold drinks for both of them. Ms. 'M' alleges that Mr. Maksood had made her drink some cold drink and thereafter, she had started feeling dizzy as Mr. Maksood had laced the drink with some sedatives. Taking advantage of such situation, he had then raped Ms. 'M' and when she had regained consciousness at about 9:30 PM, she had found that Mr. Maksood was lying naked above her and was still establishing physical relations with her. The incident as further disclosed by Ms. 'M' is that when she had confronted and scolded Mr. Maksood, he had initially apologized for his acts, but later he had threatened Ms. 'M' to not inform about the incident to the police, else she would face dire consequences. After committing rape upon her and extending threats to her, Mr. Maksood had run away. Though this incident is alleged to have happened on 24.09.2022, Ms. 'M' says that she was not in a position to inform anyone about the incident, till 27.09.2022, when she had finally called on women's helpline number and after getting courage from the counsellor, she had informed the

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police about the incident, which led to registration of the present FIR on 18.10.2022.

7. The petitioner Mr. Maksood Ahmad told a different story when he appeared at the time of consideration of his bail applications before the learned Sessions Court. His side of story was that he had been in a live-in-relationship with Ms. 'M' since the year 2007, and on 18.04.2012, a compromise deed had been executed between them. However, as per the version of Mr. Maksood, he and Ms. 'M' had again started living together after six months, as husband and wife, and since some differences had arisen between the two of them, the prosecutrix Ms. 'M' had got the present FIR registered against him. However, he informed the Court that on 28.10.2022, he had solemnized marriage with the prosecutrix according to Muslim customs and rights.

8. To encapsulate, the history of proceedings before the courts of law, in this case, is as under:

i. The alleged incident in question took place on 24.09.2022.

ii. The FIR was registered on 18.10.2022.

iii. The prosecutrix Ms. 'M' converted to Islam on 28.10.2022 for the purpose of marriage with Mr. Maksood, and the parties were married *vide Nikahnama* of even date.

iv. The accused was arrested on 18.11.2022.

v. The parties appeared before the learned Sessions Court, and the accused was granted interim bail on the ground of compromise and marriage between the parties, *vide* order dated 23.11.2022. The interim bail was initially granted by

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the learned Sessions Court in its wisdom for the purpose of filing petition for quashing of FIR.

vi. The present petition was filed on 19.12.2022, seeking quashing of the present FIR on the basis of marriage solemnized between the accused and the prosecutrix after conversion of the prosecutrix to Islam.

vii. *Vide* order dated 13.12.2022, the interim bail of the accused was extended till 20.12.2022.

viii. On 20.12.2022, the interim bail of the accused was again extended by a period of one month, after considering the submissions of prosecutrix that she had got the present FIR registered due to some misunderstanding.

ix. The interim bail was further extended on 21.01.2023 by the Sessions Court, till 28.01.2023 and then till 07.02.2023 and further till 25.02.2023.

x. On 25.02.2033, the accused was enlarged on regular bail by the learned Sessions Court, after taking note of the fact that prosecutrix had admitted that she had got married to the accused after the registration of present FIR and the parties had already preferred a quashing petition before this Court.

xi. Charge-sheet was filed after completion of investigation for offence under Sections 376/328/506 of IPC.

xii. The learned Sessions Court framed charge against Mr. Maksood on 10.08.2023, for commission of offences under Sections 376/328/506 of IPC.

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THE RIVAL CONTENTIONS

9. Learned counsel for the accused/petitioner Mr. Maksood argues that the petitioner and respondent no. 2 Ms. 'M' have already settled their disputes, and they are now legally married. It is argued that the marriage/*Nikah* ceremony was performed between the parties on 28.10.2022 after the conversion of respondent no. 2 to the religion of the petitioner. It is argued that on 18.11.2022, the petitioner was arrested in the present FIR, however, on 23.11.2022, he was granted interim bail by the learned Session Court also on the ground of compromise and marriage between the parties which was extended from time to time. It is further argued that the petitioner and respondent no. 2 are residing together as husband and wife along with the children of the respondent no. 2 from her first husband happily from the day of their marriage. Thus, it is prayed that the present FIR registered against the petitioner be quashed, alongwith all consequential proceedings since respondent no. 2 has no objection to the same.

10. Learned ASC for the State has vehemently opposed the present petition, and has argued that the present petition is gross abuse of process of law and that the FIR reveals serious allegations against the complainant who alleges that she is a divorcee and handicapped who has been sexually assaulted by the accused by taking advantage of the fact that he was friend of her ex-husband.

11. This Court has heard arguments advanced by the learned counsels on behalf of petitioner and respondent no. 2, and by learned

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ASC on behalf of the State. The material on record has also been perused and considered by this Court.

ISSUE IN DISPUTE BETWEEN THE PROSECUTION AND THE PETITIONER

12. The issue that arises for consideration in the present case is:

> *Whether in the peculiar facts and circumstances of the case, where the accused and the prosecutrix have compromised the matter and have married each other, the petition for quashing FIR registered under Section 376 of IPC deserves succeeding in light of the conduct of the parties?*

ISSUES MANDATING JUDICIAL NOTICE FOR THE OVERALL WELL-BEING OF THE COMMUNITY

13. The hearing of this petition brought to fore **many questions, related and unrelated to the petition, which affect the larger concern of judicial adjudication, fairness, equity, purity and strength of the judicial system to stand tallest and be able to see from the said tallest pedestal, the manipulation, misguiding and taking for a ride the judicial system,** and the criminal provisions by parties approaching it so that the faith of the community should not shake in the judicial system ever.

14. The following issues have compelled the judicial conscience of this Court to critically examine and lay down directions and

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guidelines which are crucial for just and equitable adjudication of criminal cases and maintaining purity of the criminal justice system:

A. **Importance of Recording Statement under Section 164 of Cr.P.C.**
B. **Importance of Parties Approaching the Judicial System with Clean Hands**
C. **Conversion of Religion of one of the parties solely for the purpose of Inter-faith Marriage**
D. **The Intricate Role of the Concerned Authorities Conducting Conversions solely for the Purpose of Inter-Faith Marriages:**
E. **Need to lay down Guidelines to be followed in case of Religious Conversions taking place solely for the Purpose of Inter-Faith Marriages.**
F. **How to deal with a Litigant or Complainant who Abuses the Process of Law.**

PRINCIPLES GOVERNING QUASHING OF FIRs ON THE BASIS OF SETTLEMENT AND THE ROLE OF COURTS

15. As highlighted in discussion above, Mr. Maksood and Ms. 'M' have approached this Court seeking quashing of FIR registered for offence under Section 376 of IPC. Thus, this Court must remain guided by the principles propounded by the Hon'ble Apex Court, which govern the Constitutional Courts while adjudicating such petitions seeking quashing of FIRs on the basis of settlement/compromise.

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16. In this regard, the Apex Court in case of ***Narinder Singh v. State of Punjab*** *(2014) 6 SCC 466*, after taking note of decision in case of ***Gian Singh v. State of Punjab*** *(2012) 10 SCC 303*, had observed as under:

> "29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:
>
> 29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.
>
> 29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure: (i) ends of justice, or (ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.
>
> 29.3. **Such a power is not to be exercised in those prosecutions which involve 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.** Similarly, for the offences alleged to have been committed under special statute 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.

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> 29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.
>
> 29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases."

17. In ***Parbatbhai Aahir Alias Parbathbhai Bhimsinhbhai Karmur v. State of Gujrat*** *(2017) 9 SCC 641*, three-Judge Bench of the Hon'ble Apex Court, after referring to several judicial precedents, had summarized the following principles *qua* quashing of criminal proceedings on the basis of settlement:

> "16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:
>
> 16.1. 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.
>
> 16.2. 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 Criminal Procedure Code, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

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16.3. 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.

16.4. 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.

16.5. 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.

16.6. 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 on the overriding element of public interest in punishing persons for serious offences.

16.7. 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 insofar as the exercise of the inherent power to quash is concerned.

16.8. 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.

16.9. 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

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> remote and the continuation of a criminal proceeding would cause oppression and prejudice; and
>
> 16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. 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."

18. Therefore, the consistent view expressed by the Hon'ble Apex Court has been that FIRs registered for commission of serious offences, including offence of rape, should not be quashed on the basis of settlement or compromise arrived at between the victim and the accused.

19. However, this Court is also conscious of the fact that it is not an absolute rule that the FIR registered for offence under Section 376 of IPC cannot be quashed on the basis of compromise in any case. The Constitutional Courts, including the Hon'ble Apex Court [*Ref:* ***Ananda D.V. v. State*** *2021 SCC OnLine SC 3423*] as well as High Courts, have taken a view that in cases where the victim and the accused had been in relationship for a long period of time and FIR was registered owing to some misunderstanding, but if they had later got married to each other and had been living happily with each other, such FIRs can be quashed in larger interest and for ensuring justice. However, the Courts while adjudicating quashing petitions in such cases, will have to analyse all the facts and circumstances of the

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case including the facts surrounding the factum of marriage solemnized between the parties, and the parties cannot seek quashing as a matter of right.

20. Besides presenting before this Court the conflicting stories given by the prosecutrix and the accused, this one case highlighted many judicial mistakes too.

FIRST JUDICIAL ERROR: MECHANICALLY RECORDED STATEMENT UNDER SECTION 164 OF CR.P.C.

21. In the journey of the case which travelled after lodging of the FIR, at the relevant point of investigation reached the learned Magistrate for a very important duty of recording statement under Section 164 of Cr.P.C.

22. In the present case unfortunately, two questions were asked by the learned Magistrate to the prosecutrix who was around 40 years of age (as per Aadhaar Card filed before this Court), with two grown up children, who had studied up to 6th Standard as per the statement recorded under Section 164 of Cr.P.C., however, who states before this Court that she is illiterate and can only sign in Hindi.

23. Strangely, while recording the statement of the victim under Section 164 of Cr.P.C. the learned Magistrate writes as under:

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I have asked the following questions from the victim to check her competency to depose in a vernacular language:

Q1. What is your age?

Ans. 36 جمعہ.

02. What is your qualification?

Ans. 6th Standard.

Q3. What is your favourite fruit?

Ans. Guava.

Q4. What is your favourite color?

Ans. Pink

Q5. Are you making this statement voluntarily?

Ans. Yes.

On asking the above said questions I am of the view that the victim is competent to depose, her statement is recorded separately on oath.

24. In the present case, the statement recorded reads as mere formality in a typed initial *performa*. It is strange that though the Magistrate was actually examining a woman who is 40 years of age and having two children, she was asked about her favourite fruit and favourite colour. Strangely though the learned Magistrate writes that these two questions were *"to check her competency to depose in a vernacular language"*, the questions seem to be a typed *performa* in English and the answers have been written in English only. Therefore, it is not clear as to how the learned Magistrate, by asking these two questions in English, was judging and checking the competence of prosecutrix to give a statement and her capacity to speak and understand a vernacular language.

25. Today, when this statement is being questioned that it was given under misunderstanding and pressure and her being under stress and inability to depose before the learned Magistrate, this Court has been constrained to note several such cases which have become a subject matter of challenge and therefore, lays down the

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significance and guidelines *qua* recording of statements of sexual assault victim under Section 164 of Cr.P.C.

SIGNIFICANCE OF RECORDING STATEMENTS OF SEXUAL ASSAULT VICTIMS UNDER SECTION 164 OF CR.P.C.

26. The importance of recording statement of a victim of sexual assault under Section 164 of Cr.P.C., can be understood, firstly through a bare reading of the relevant portion of provision:

> "(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.
>
> (5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:
>
> Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:
>
> Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the

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> assistance of an interpreter or a special educator, shall be video graphed.
>
> (b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 (1 of 1872) such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial."

27. The Hon'ble Apex Court in case of ***State of Karnataka v. Shivanna*** *(2014) 8 SCC 913* had issued certain directions to be followed in cases involving recording of statement of a victim of sexual assault under Section 164 of Cr.P.C., which are as under:

> "10. On considering the same, we have accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, we are pleased to issue interim directions in the form of mandamus to all the police station in charge in the entire country to follow the direction of this Court which are as follows:
>
> 10.1. Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/ preferably Judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C. A copy of the statement under Section 164 Cr.P.C. should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C. should not be disclosed to any person till charge sheet/report under Section 173 Cr.P.C. is filed.
>
> 10.2. The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/ preferably Lady Judicial Magistrate.

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> 10.3. The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/ preferably Lady Judicial Magistrate as aforesaid.
>
> 10.4. If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.
>
> 10.5. Medical Examination of the victim: Section 164 A Cr.P.C. inserted by Act 25 of 2005 in Cr.P.C. imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C."

28. This Court notes that the recording of the statement of the rape victim under Section 164(5A) is an essential part of the investigation, as it serves several critical purposes in ensuring a fair and effective adjudication process.

29. It is trite law that statements recorded under Section 164 of Cr.P.C. before the learned Magistrate, of a victim of sexual offence, has to be made voluntarily by the person giving such statement. Further, it is crucial that the concerned Magistrate must record his satisfaction that the person making such a statement is not temporarily or permanently disabled, either physically or mentally. In case the Magistrate forms an opinion that the victim of sexual assault who is making such statement is either temporarily or permanently disabled, physically or mentally, the Magistrate shall take the

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assistance of an interpreter or a special educator in recording the statement and such proceedings will be video-graphed.

30. Thus, the learned Magistrate recording statement under Section 164 of Cr.P.C. is entrusted with a very crucial duty of writing the incident of sexual assault of victim within the four walls of chamber of the Magistrate, to ensure that the security so felt to disclose without fear or pressure the real facts, incident or happening will give right direction to a case under Section 376 of IPC. In this regard, there is a practice to ask preliminary questions which is in the form of interaction between the witness and the Magistrate to ascertain the competence of the witness to understand as to where she/he is, he understands why he is before the judge, and an assurance to the judge that the victim is not under any pressure, coercion or threat to give a statement. In case of child victims, more caution is required as the administration of oath may need to be dispensed with and the capacity to make the statement may be judged and is reflected in the statement. It is also to ensure that at the time of trial when the statement is put to the witness and at times to the Magistrate himself, the defence counsel and the concerned Trial Court Judge, in case of need for proving or confrontation are able to appreciate its evidentiary value and the defence taken by the accused effectively. The questions are asked for the above purposes.

31. The statement made by a victim under section 164(5A) of Cr.P.C. transcends its role as mere evidence; it stands as a testament to the profound agony the victim suffers from due to the wrongful actions of accused. It is also an emotional release, laying bare the

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deep pain and suffering inflicted upon her — a harrowing experience akin to witnessing the shattering of her hopes and dreams and in the hope of getting justice. The words recorded in the statement under section 164 of Cr.P.C., the victim not only communicates the immediate physical harm but also the enduring impact on her dignity and self worth.

32. The role of Courts thus while recording such statements becomes paramount, and the same must be done with a deep sense of sensitivity towards the victim and professionalism towards the criminal adjudicatory process.

33. Recording of statement under Section 164 Cr.P.C. in a case of sexual assault is a critical responsibility of a magistrate as the statements so recorded also becomes part of edifice of building of a case. The preliminary examination of the victim is to ascertain her competence, intelligence and being under no pressure as well as her capacity to understand a vernacular language.

Guidelines Apropos Recording of Statement under Section 164 of Cr.P.C. of sexual assault victims

34. Thus, in these circumstances, this Court deems it crucial to lay down the following set of guidelines, to be followed by the learned Magistrates, while recording statements of a victim of sexual assault under Section 164 of Cr.P.C.:

1. Statements under Section 164 of Cr.P.C. of victims of sexual assault should not be recorded mechanically or in a typed *performa*.

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2. **The victim has to be produced by the investigating officer** before the learned Magistrate, at the earliest. Before recording the statement in **the chamber or room so designated for the said purpose**, the investigating officer **will identify** the victim and will sign the same on the record so made by the Magistrate, that the IO Ms. 'M' has produced the witness who has been identified by her and was asked to leave the chamber/room where the statement was to be recorded. **The Magistrate must record that the IO had left the chamber/room after identification**.
3. The Magistrate **must interact** with the victim to make preliminary inquiries by putting **age appropriate and educational background appropriate questions to adjudge the competence of the victim to depose and give rational answers**.
4. The questions so put **must reflect the state of mind of the victim** by inquiries as to whether he/she is aware about his/her surroundings, the purpose of making the statement and before whom and why he/she is making the statement.
5. The questions so put must also reflect, as far as possible, that the statement is **being made voluntarily** without any threat, pressure, fear, influence, coercion, or tutoring.

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6. In case of **child victims**, the Magistrate must satisfy that he or she understands the **sanctity of oath**, and in case of tender age, may dispense with administering oath.
7. The **preliminary inquires as well as the statements must be in vernacular and should not typed stereotyped *performas,*** as all cases are not the same, and all victims may not have same level of intelligence, competence to understand, or social and educational background.
8. The **words and language used by the victim must be written in the statement in verbatim**, and the act of sexual assault explained and described by the victim must be written as it is, instead of writing 'wrong act' which becomes a bone of contention at the time of trial.
9. **The questions to be put have to be framed according to each case and the victim.** The learned magistrate may record after putting the questions and preliminary inquiry that *"the victim is comfortable, well-oriented and is capable of giving rational answers to questions. He/she is aged about __ years at present and after some preliminary conversations with him/her, the victim appears to be vocal. The victim appears to be giving his/her statement voluntarily and without any threat, pressure, fear, influence, coercion or tutoring."*
10. The Magistrate must append **a certificate at the end of the statement recorded under Section 164 of Cr.P.C.**

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regarding the statement being made voluntarily and the same being the true and exact statement made by the victim and that **nothing has been added or subtracted therefrom**.

11. The certificate at the end of the statement must also mention that the **statement was read over and explained to the victim** and the victim has put his/her signatures in token of its correctness.
12. The **signatures or thumb impression**, as the case may be, must be taken inside the chamber/room and in presence of the Magistrate.
13. In case, the statement has been typed by a stenographer or an interpreter, which should not be the norm but an exception for reasons to be mentioned in the statement, it will be added that the statement was typed at the dictation of the learned Magistrate and is the true content of the statement made by the victim.
14. The statement **must be recorded in the language understood by the victim** and it should be so reflected in the statement.

35. The **judiciary, being a crucial pillar of democratic Bharat, is always striving to deliver the best and the need for continuous judicial education is a step forward in this direction for a more dynamic and professional judiciary**.

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36. **The Director (Academics), Delhi Judicial Academy, is requested to conduct a workshop for the learned Magistrates regarding the importance and procedure to be followed while recording statements under Section 164 of Cr.P.C. of sexual assault victims**.

SECOND JUDICIAL ERROR

37. Another judicial error committed in this case was by the learned Sessions Court. While adjudicating the interim bail application of accused Mr. Maksood, certain facts of the case were mentioned incorrectly, and absolutely contrary and imaginary to the contents of FIR. In this regard, the relevant portion of order dated 23.11.2022 passed by learned Sessions Court is extracted hereunder:

> "...Briefly, as per the contents of the FIR, the case of prosecution is that **the complainant, who is a widow** and handicapped lady, lives along with her children and she knows the applicant/accused for the long time being the **friend of her deceased husband.** On 24.09.2022 at about 6 pm, the applicant/accused came to her house and at his request, she cooked the food…"

38. This Court is constrained to point out the same since the contention raised before this Court is that the learned judge granted bail on wrong facts which were totally imaginary and incase the judge would have recorded the correct facts bail would have been rejected and the accused could not have agitated before this Court that even the sessions court granted him bail on the basis of a compromise. This Court notes that contrary to the version given by

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the prosecutrix in FIR, that she was a divorcee, the learned Sessions Judge had recorded in the above-mentioned order that prosecutrix was a widow and the accused was a long time friend of her deceased husband.

39. Further, the learned Sessions Court also fails to take note of the fact that the first husband of the prosecutrix was alive, and rather an agreement dated 18.04.2012 had been filed on record by the accused alongwith his interim bail application which mentions that previously also, the accused and prosecutrix had lived together for a long period of time after getting married to each other, and the husband of the prosecutrix was alive and was working in Delhi and that the prosecutrix did not want to live with him though he was ready to take care of her and the children. Had the learned Sessions Judge noted the correct facts, the genuineness of marriage on the basis of which interim bail was granted to the accused, would have been revealed. The learned Sessions Judge would have noted that the parties could not have been validly married and that there was no document of divorce of the prosecutrix on record. The detailed observations in this regard have been recorded in succeeding paragraphs.

LOVE, LAW, LIES & LITIGATION

40. The story of this case allegedly began with **love** of Ms. M and Mr. Maksood which landed Mr. Maksood in a police station where he had encountered the hands of **law**, and it then progressed on mutual **lies** of Ms. M and Mr. Maksood before police authorities and courts and ended up in the present **litigation**.

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41. These lies have been highlighted in the succeeding paragraphs.

Alleged Compromise Deed Executed in 2012

42. An interesting aspect in this case emerges from the submissions made on behalf of Mr. Maksood, at the time of hearing of interim bail application before the learned Sessions Court, that he and prosecutrix Ms. 'M' had been in a live-in-relationship between the period 2007 to 2012, after which they had executed a compromise deed and separated from each other, for a few months.

43. To fortify his submission, Mr. Maksood had also placed on record before the learned Sessions Court, a copy of the alleged compromise deed executed between Mr. Maksood and Ms. 'M' on 18.04.2012. This Court has gone through the contents of the said deed, and interestingly as well as shockingly at the same time, the compromise deed reveals that Mr. Maksood had got married to Ms. 'M' earlier also, and that Ms. 'M' had not obtained divorce from her husband. The deed records that Ms. 'M' was married to one Mr. 'P' for fourteen years and out of their wedlock, one boy and one girl were born. It was further recorded that Mr. P had gone to Madras in 2007, after which Ms. 'M' had established physical relations with Mr. Maksood. Thereafter, marriage had been solemnized between Ms. 'M' had Mr. Maksood, whereas Ms. 'M' had not disclosed the factum of her first marriage to Mr. Maksood as well as the fact that she had not obtained any divorce from her husband Mr. P. It is further mentioned in the compromise deed that both the parties i.e. Ms. 'M' and Mr. Maksood had decided to finally settle the matter

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and Mr. Maksood had paid Rupees Fifty Thousand in cash to Ms. 'M'.

Mala Fide on Part of Prosecutrix

44. This Court notes that in the present case, the prosecutrix Ms. 'M' had got the present FIR registered on 18.10.2022 against the accused Mr. Maksood. Though it was later disclosed before the Courts that Mr. Maksood and Ms. M had solemnized marriage on 28.10.2022 as per Muslim rites and customs, the prosecutrix Ms. 'M' had not informed either the police or the Court about the same.

45. The records reveal that Ms. M was present before the learned Sessions Court on 05.11.2022, at the time of hearing of anticipatory bail application of Mr. Maksood, but she had not informed the Court that they had already got married to each other a week prior i.e. on 28.10.2022. The learned Sessions Court vide order dated 05.11.2022 had thus dismissed the anticipatory bail application filed by Mr. Maksood.

46. This Court has also perused the supplementary statements of Ms. M recorded under Section 161 of Cr.P.C on 06.11.2022 and 17.11.2022, whereby she had reiterated the allegations made by her in the FIR. However, even on the said dates, Ms. 'M' had not informed the Police that she had already got married to the accused on 28.10.2022.

47. It is the order dated 23.11.2022, passed by learned Sessions Court, which discloses that Ms. M had then, for the first time, informed the Court about the factum of her conversion and getting

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married to Maksod on 28.10.2022, as well as the fact that she had not disclosed the same at the time of adjudication of his anticipatory bail application on 05.11.2022 when she was already married to him.

48. Thus, this Court is of the opinion that even though Ms. M had got married to Mr. Maksood after converting her religion, as claimed before this Court, ten days after the FIR was registered in this case, Ms. 'M', however, had misguided the police as well as the Courts by not informing them about the factum of their marriage.

49. The story further took a different turn altogether on 20.12.2022, when during the course of hearing of extension of interim bail application of accused, Ms. 'M' admitted before the learned Sessions Court that she had got a false FIR registered against Mr. Maksood, and that she had misled the Court earlier at the time of adjudication of anticipatory bail of Mr. Maksood by not informing the Court that she had already got married to him.

50. In this regard, this Court deems it important to refer to the following observations in order dated 20.12.2022 passed by learned Sessions Court:

> "…However, complainant, who is present in the court, has submitted that she had filed the present case FIR against the applicant/accused due to some misunderstanding and upon being misled by some people. She has further stated that applicant/accused has solemnized marriage with her on 28.10.2022 after her conversion, however, the said fact was not disclosed by her at the time of adjudication of application for anticipatory bail on behalf of applicant/ accused. She has further stated that she along with the applicant/accused have already filed a quashing petition before the Hon'ble High Court of Delhi vide diary number 2076373/22 on 19.12.2022. Further, she has no

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> objection in case the applicant / accused is granted extension of interim bail in the present case…"

51. Again on 25.02.2023, i.e. at the time of adjudication of regular bail application of Mr. Maksood, the prosecutrix Ms. 'M' stated before the learned Sessions Court that she had falsely implicated Mr. Maksood in the present FIR and he may be enlarged on bail. For the same, order dated 25.02.2023 may be referred to:

> "On being asked, the victim/prosecutorix submits that on the ill advice, she had registered a false case against the accused and now she does not want any further proceedings against accused in the present case."

52. Thus at every stage of police investigation and judicial proceedings, the prosecutrix/respondent no.2 misguided the authorities and Courts and did not come to the court with clean hands.

Conduct of Non-Disclosure of True Facts To The Authorities By The Accused

53. Similarly, the conduct of the accused is also noteworthy.

54. As revealed from the records, though the FIR in this case was registered on 18.10.2022 and the parties herein had got married on 28.10.2022, the accused while preferring an anticipatory bail application before the learned Sessions Court had neither informed the Court about the factum of marriage solemnized between him and the prosecutrix, after the prosecutrix had converted her religion for the purpose of said marriage, nor he had informed the Court about execution of any compromise deed in the year 2012.

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55. It was only at the time of hearing of interim bail application on 23.11.2022, that the accused had informed the learned Sessions Court about the aforesaid facts.

IMPORTANCE OF PARTIES APPROACHING THE JUDICIAL SYSTEM WITH CLEAN HANDS

56. An individual is required to approach the Court with honesty and disclosure of true facts, emphasizing the fundamental principle that those seeking justice must present themselves before the Court with clean hands.

57. This recurring trend of parties failing to adhere to the foundational principle of approaching the Courts with clean hands raises significant concerns about effort to manipulate the legal process. Courts rely on the information presented before it for the purpose of making informed legal decisions by application of law, and the deliberate suppression or misrepresentation of material facts definitely comes in the way of dispensation of fair and just decisions.

58. The doctrine that those seeking equity must do equity and must come with clean hands highlights the importance of transparency in legal proceedings. It is not merely a procedural formality but a vital ethical obligation that litigants must fulfill. The duty to approach the Court with clean hands extends beyond the legal realm; it is a moral obligation that ensures the sanctity of the justice-seeking process.

59. In response to such practices, the Courts have consistently and unequivocally asserted that the suppression of material facts and a lack of candor in presenting one's case can lead to a denial of relief. It

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acts as a check on any party attempting to gain an unfair advantage by withholding crucial information. The principle of clean hands ensures that the Court's time and resources are dedicated to resolving disputes based on a complete and accurate understanding of the facts.

NO DOCUMENT TO SHOW THAT MS. M HAD OBTAINED DIVORCE FROM MR. P AND WAS THUS COMPETENT TO SOLEMNIZE MARRIAGE WITH ACCUSED EVEN AFTER CONVERSION TO ISLAM

60. In the present case, the prosecutrix Ms. ‘M’ had stated in her initial complaint that she was a divorcee, and the accused herein was a friend of her ex-husband. Ten days post the registration of present FIR, Ms. M and Mr. Maksood were married to each other, as per Muslim customs and rights, and for the solemnization of marriage, Ms. ‘M’ had converted her religion to Islam on the same day prior to solemnization of marriage.

61. However, this Court notes that the Investigating Officer in this case had issued a notice on 01.11.2022 to the prosecutrix to produce documents in respect of divorce obtained by her from her first husband Mr. P. However, Ms. M had failed to provide any documents to prove that she was divorced as per law from her previous husband, so as to be capable of entering into another marriage, as per law, and to ensure that this second marriage was not bigamous. It was more crucial since she appears before this Court supporting the petitioner’s plea for quashing the FIR on the basis of marriage solemnized between them.

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62. Therefore, no documents have been either handed over to the Investigating officer by Ms. 'M' or placed before this Court, to show that she had obtained divorce from her previous husband and that she was competent to enter into a legally valid marriage with the accused Mr. Maksood or any other person.

63. This aspect gains even more importance in this case since the contents of the compromise deed dated 18.04.2012 also revealed that Ms. M and Mr. Maksood had got married to each other in the past as well even though Ms. M was still the legally wedded wife of her husband Mr. P and was a Hindu and Mr. Maksood followed Islam.

THE CONCERNS OF COURT REGARDING THE PROCESS FOLLOWED FOR RELIGIOUS CONVERSIONS SOLELY FOR THE PURPOSE OF MARRIAGE

The Courts in India have Religiously Guided the Religious Sanctity of a Person's Choice to Practice Any Religion

64. **While legal limits on religious conversions in India have been apparent through certain State legislations, the core sentiment of freedom of practicing any religion is enshrined in the Constitution of our country itself.**

65. **At the cost of repetition, it is to be reiterated and impressed that the Courts have never come in the way of a person practicing any religion or not practicing any religion according to his choice, as the same is respected and guaranteed in the form**

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of right of freedom of choice to practice any religion under Article 25 of the Indian Constitution.

66. **The need to deal with issue of conversion was necessitated in this case, since it was vehemently and repeatedly argued by the learned counsel for the petitioner as well as the complainant that the conversion and consequent marriage of the prosecutrix with the petitioner makes out a strong case in their favour for quashing. Since this Court has to deal with this argument in detail to decide the present case, the need to deal with this issue arose**.

67. In this regard, this Court notes with strong sense of dissatisfaction and regret that the prosecutrix/respondent no. 2, who had lodged an FIR under Section 376 of IPC against the petitioner for having sexually assaulted her, married him after registration of FIR. **The facts and investigation revealed the story of love, lies, law, and litigation** as it transpired that in the year 2012 itself, the petitioner herein and the prosecutrix, who were already married to different partners, had married each other. The petitioner as per his personal law could marry for a second time but he could not have married the prosecutrix/respondent no. 2, who was a Hindu, as her husband was alive and she was not divorced. Interestingly, the said compromise deed filed by the petitioner, and not disputed by the respondent no. 2, mentions the name of petitioner as Mr. Maksood *alias* Manoj and the factum of both having married after being in a live-in relationship, a compromise between them which was never

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brought to the knowledge of police or the Sessions Court at any stage of proceedings prior to arrest of the petitioner.

68. The proceedings and investigations further reveal that both the parties herein did not approach the police, religious or judicial authorities with clean hands. The respondent no. 2, in the agreement of the year 2012, mentions that she is married to the petitioner, though her husband Mr. P was alive and willing to take care of her and children born out of her wedlock with her husband Mr. P. Till date, she has not been able to produce before this Court or any other Court or the investigating agency, despite being asked to produce, the documents regarding her divorce with her first husband.

69. **The timing of the marriage is crucial too** which is being made basis of plea for quashing. The same took place on the same date of her conversion in the year 2022, ten days after registration of FIR.

70. The need for conversion arose after registration of FIR as the accused could not have married the prosecutrix under Special Marriage Act, 1954 without his divorce from his first wife and divorce of the prosecutrix from her husband. The prosecutrix, in any case being governed by the law of monogamy, whether as a Hindu or after conversion to Islam, could not have married the accused without being divorced from her first husband, for which she has no document and rather there is a document to the contrary.

71. **The concern of the Court was critical as case after case, one is confronted with cases where conversion to one religion or the other only for the purpose of marriage and evading law has**

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deeply troubled the judicial conscience of this Court. More so, since in many cases, quashing of FIR lodged under Section 376 of IPC is sought on the ground of conversions and marriage between the accused and the victim which is followed by divorce or desertion of the victim after quashing of the FIR.

72. The marriage between petitioner and the respondent no. 2 is *prima facie* not valid, however, she has been assured by the accused of its validity by virtue of a *Nikahnama*. She and probably the accused presumed that they are legally married due to the conversion of the prosecutrix, however, they are not. Therefore, the very basis of their contention that FIR be quashed since they are married now, is meritless.

73. Thus, in this situation, there arises deep concern regarding such conversions and marriages. The conversions, many a times, are only for the purpose of facilitating inter-faith marriages, the religion may be any and this order is not referring to any one or specific religion or conversion of one gender.

74. The respondent no. 2 is unfortunately illiterate and can only sign in Hindi. She does not know Urdu and there is nothing in the certificate of marriage i.e. *Nikahnama* which shows that the contents of *Nikahnama* or the conversion certificate which also is in Urdu was explained to her. As per investigating officer, no documents were available in the office record where the conversation and Nikah had taken place between the parties. The IO has submitted that during investigation that only ID card of the prosecutrix and the accused

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were available in one office, situated behind Tis Hazari Court, where conversion and *Nikah* took place.

75. When respondent no. 2 appeared before this Court, during interaction with the Court, she disclosed her name as 'X' which is not her name after her conversion. The respondent no. 2, when asked about her name could not disclose her name to be one which as per conversion certificate placed on record was given to her after her conversion to Islam. She was using her original name, however, she was prompted by the petitioner in the Court to tell her name as 'B'. The petitioner was continuously prompting her about the questions being asked to her. He was asked not to do so.

76. In the interaction with the Court during in-camera proceedings, in the presence of learned counsel for the accused and learned ASC for the State and investigating officer, the prosecutrix stated that at the time of conversion, she was only told that for the purpose of getting married to the petitioner, she will have to convert to Islam and for that purpose only, she had converted. She was only told that she will have to offer *Namaz* five times a day, and except that, she was not informed about what she should expect and as to how her rights which she had enjoyed, till date in a matrimonial union as a Hindu, will not be available to her after conversion to Islam. She was not aware about anything including the law regarding maintenance or *Mehr*. She did not know Urdu, but the conversion certificate as well as the marriage certificate and *Nikahnama* were in Urdu. The investigating officer was unable to locate the Qazi, who had got the parties married in a place which is an office and not a religious place.

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The said office did not have any document furnished by the parties except the Identity cards, though the parties stated that they had tendered certain documents to the person who had solemnized their marriage. **It was admitted that the factum of the first marriage of the accused was known to the prosecutrix herein and the factum of first marriage of prosecutrix was known to the accused, however, both of them had misguided the *Qazi***. In a nutshell, for the prosecutrix to get married to Mr. Maksood, she had to cross the barrier of conversion to Islam which was one of the conditions put by the accused. She states that she had converted only for the purpose of marrying him.

77. **Conversion to another religion which is uninformed may not prepare a convert with the consequences that they will now not be able to follow their form of religion in case the religion they are converting to, does not permit so. This becomes more critical in case their reverting back to their religion may ensue legal, matrimonial, succession and custody related consequences. This Court is only concerned with such situations. These situations may arise by conversion to any religion whatsoever**.

78. In the present case, the conversion is with the consent of the prosecutrix herself and this Court has no occasion to either raise any objection to it, nor the Court is authorized to do so but the cause of such conversion being solely for the purpose of getting married to the petitioner and not out of following the faith and without understanding the consequences thereof may complicate their life further in future which is not the intent of any religion or conversion.

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79. It is not clear whether the person concerned i.e. Qazi was authorized or not for the purpose of conversion as he could not be located or found by the IO concerned at the place where conversion and Nikah had taken place. The Qazi was misguided by both the parties by suppression of facts and even he could not have known that the marriage could not have been solemnized, neither he may have known that the prosecutrix was converting not out of her faith towards the religion but love for the accused who was already married.

80. In these circumstances, since this Court cannot make any law neither intends to do so but only being concerned with the restrictions and outcome of such cases, deems it apposite to lay down certain guidelines to be followed for conversion of religion, be it any religion, solely for the purpose of conducting marriages except under Special Marriage Act, 1954.

RELIGIOUS CONVERSIONS SOLELY FOR THE PURPOSE OF SOLEMNIZATION OF INTER-FAITH MARRIAGES: CRUCIAL ASPECTS TO BE FOLLOWED

1. Informed Consent and Understanding:

81. The foremost requirement in the process of religious conversion for the purpose of marriage revolves around ensuring informed consent and comprehensive understanding on the part of the individual undergoing conversion. It is crucial that the person

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willingly embraces the decision to convert, fully cognizant of the multifaceted implications embedded in such a significant life choice.

82. To achieve this, it becomes paramount to furnish and inform the individual with exhaustive information concerning the religious doctrines, customs, and practices associated with the chosen faith, which includes an explanation of the tenets, rituals, and societal expectations inherent in religious conversion, to ensure that consent to such conversion is an informed consent, given after fully understanding the consequences of such action.

2. Communication in Native Language:

83. When an individual contemplates a decision to undergo conversion for the purpose of marriage, it is essential for him or her to grasp the intricacies of this process fully, for the same, effective communication assumes paramount importance.

84. Essentially, the communication process must align with the linguistic preferences and understanding of the person involved, ensuring that the information is presented in a language they are familiar with and proficient in. The choice of language holds immense significance, as it facilitates not only comprehension but also a meaningful exchange of ideas.

85. Recognizing the gravity of the decision to convert for marriage, it is incumbent upon the parties involved, whether they be religious or legal authorities, to convey this information in a manner that is accessible and culturally sensitive. It is further noted that the language used should be simple and clear which directly

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communicates the religious and legal implications of the conversion. It enables the individuals to comprehend the implications, responsibilities, and consequences associated with such a conversion.

86. This Court emphasizes that the communication should not only be linguistically understood. By prioritizing clear understanding by the prospective convert, this guideline ensures that the individual is equipped with a comprehensive understanding of the transformative journey they are embarking upon and the conversion is **completely voluntary**.

3. Legal Implications of Conversion Be Explained: Succession & Inheritance, Maintenance, Custody of Children, Rights of the Spouse to Personal Law After Conversion

87. The individual undergoing religious conversion for the purpose of marriage must be fully informed of the legal consequences associated with such a conversion. This involves providing a comprehensive explanation of how the conversion may affect the individual's personal status, outlining any alterations in inheritance rights, and shedding light on modifications in succession, maintenance, custody, divorce laws that may come into play.

88. Thus, the legal ramifications of the conversion necessitate thorough explanation, which involves clarifying its impact on matters of inheritance and successions, ensuring that the individual is cognizant of the legal consequences that may ensue. A transparent discussion about the intricacies of the religious framework ensures that the person making this crucial choice is well-informed about the

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religious framework they are entering in. Thus, by providing a detailed understanding of the religious and its associated ramifications, the individual must be made aware of the potential shifts in his or her legal standing post-conversion.

89. This aims to prevent any legal complications that may arise due to oversight or lack of information during the process of conversion. Ensuring that the individual is well-versed in the religious and its associated aspects of the conversion process contributes to informed decision-making.

4. Religious Repercussions of Conversion for the Purpose of Inter-faith Marriage:

90. Equally important is the exploration of religious repercussions. The individual must be apprised of the religious norms, obligations, and restrictions that come with the conversion. This encompasses explaining whether certain practices, such as idol worship in case of Hindus, will be allowed or prohibited within the new found religious framework. Providing insights into the broader religious context aids the person in understanding the cultural and spiritual dimensions of their decision.

91. Furthermore, this Court emphasizes through this guideline the importance of discussing any restrictions or allowances related to religious practices post-conversion. Addressing potential restrictions ensures that the individual is well aware of any limitations or modifications in their religious practices that may arise as a consequence of the conversion. Simultaneously, highlighting

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allowances enables the person to appreciate the freedoms and privileges they may enjoy within the framework of their newly adopted religious identity.

5. Marital Consequences in Marriages after Conversion:

92. Moreover, the communication should extend to the marital domain, covering aspects such as the mode of marriage and potential modes of dissolution of the same. It is important to clarify and explain the rites, rituals, and obligations associated with the marital union following the conversion. Addressing these marital repercussions ensures that the person is fully aware of the commitments and dynamics involved in their marital journey.

93. It must also be explained as to what are the specific personal law rights available to one of the partners and whether the same will be available to the prospective convert or not. For example, in case of conversion of a female to another religion, she must know the non-prohibition for husband to follow polygamy and the restriction of monogamy being still applicable to her despite her conversion. It will be applicable in a vis-a-versa situation. Needless to say, this is an example and will be applicable to any religious conversion for the purpose of marriage.

94. This will entail elucidating the specific procedures and practices involved in getting married within the chosen religious framework. Whether it involves a religious ceremony, legal formalities, or a combination of both, the individual must have a clear understanding of how their marriage will be solemnized.

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Additionally, this guideline highlights the importance of addressing potential dissolution scenarios, ensuring that the person is well-informed about the processes and legalities involved in ending a marriage within the adopted faith.

95. It will ensure a sense of understanding and preparedness, enabling the prospective convert to make informed decisions about their commitment to marriage within the context of their newly adopted religious beliefs.

6. Identity Verification of the Prospective Spouses:

96. Furthermore, this Court observes that the individual who is facilitating the conversion has the utmost responsibility to meticulously verify the identity of the prospective spouse. This verification process is important to ensure transparency and authenticity throughout the conversion and subsequent marriage proceedings.

7. Affidavit for Marital History:

97. Additionally, during the performance of marriage ceremonies following the conversion, the individual who is facilitating the conversion must take an affidavit from the parties detailing the past marital history of the individuals entering into the marital bond. The purpose of this affidavit is to promote transparency creating an environment of trust between the parties involved.

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8. Scope for Reverting Back to Original Religion:

98. The prospective convert must also be informed about his/her right to reconvert to his/her own original religion and the consequences of the same.

GUIDELINES

99. **The law books may not have answers to every situation lurking in pages of the petitions before the adjudicating courts. It is when a Court is confronted with the real life situations that the justice system has to deal with, that the guidelines or application of law with the understanding of specific cases are born.**

100. Thus, to give effect to aforesaid aspects and observations, the **following guidelines are laid down by this Court**:

1. The **following affidavits** must be obtained at the time of inter-faith marriage after conversion by the concerned persons/authorities, except in cases of marriages performed under Special Marriage Act, 1954:
    (a) Affidavit regarding the **Age, marital history and marital status and evidence thereof of both the parties**.
    (b) **Affidavit that the conversion is being undergone voluntarily after understanding the implications and consequences related to marital divorce, succession, custody and religious rights, etc**.

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2. A **certificate** must be appended to the conversion certificate that the **convert has been explained** the tenets, rituals and expectations inherent in religious conversion as well as implications and consequences related to marital divorce, succession, custody and religious rights etc.
3. The certificate of conversion and marriage should also be in **additional vernacular language** understood by the prospective convert in proof of the fact that he or she has understood the same. **The same be in Hindi also where the language spoken and understood by the prospective convert is Hindi, in addition to any other language preferred to be used by such authority. Where the language spoken and understood by the prospective convert is other than Hindi, the said language can be used**.

101. **These guidelines will not be applicable to the person converting back to his/her original religion, since the convert is already well-versed with his/her original religion.**

Note of Caution

102. **This Court should not be taken to be laying down any law or prescribing any mode of conversion or putting restrictions on conversion, but the Courts, being the implementing institutions of the country and one of the pillars of democracy to ensure rule of law by application of law is that pillar of democracy which will come across situations through unfolding of facts in various**

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cases, as to whether the laws which have been enacted by the Parliament suffer from any lacunae, grey area or gap in law including any lacunae or unconstitutionality in the law which has the potential of being manipulated by those who do not have care or respect for the law.

103. **These guidelines are for ensuring well-informed decision on the part of the naive, uneducated, susceptible, adolescent couples who may enter into such unions after conversions, without fully comprehending the profound implications of such a conversion, impact of which extends far beyond the immediate union, encompassing a myriad of consequences on their personal laws and various facets of life, as have been highlighted in the preceding paragraphs**.

CONCLUSION

104. **Each page of this case file revealed one after another layer and level of lies and manipulation by both the parties, as if it was not a petition but an object with thousand layers revealing one colour after another.**

105. The present case brings to light a convoluted scenario marked by a **web of deceit that extends beyond the immediate parties to encompass religious authorities, even deceiving the Qazi involved**. At the heart of this complexity is the deliberate concealment of crucial information related to the prosecutrix's marital status. As noticed hereinabove, it came to this Court's attention that the prosecutrix was not legally divorced from her first husband, a fact

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that renders her ineligible for remarriage without proper legal dissolution of her prior union. This deliberate withholding of pertinent details by both the parties not only violates legal requirements but also raises questions about the candor and forthrightness of the involved parties. This intricacy adds a **layer** of complexity to the case, where the parties have lied to the religious authorities too.

106. **A Court should not be trapped** in the legal intricacies which will amount to straying from the principle of protecting not only the complainant but also the offender, in case he has been falsely implicated, and at the same time protect the purity of the judicial system from being encroached upon and manipulated by a manipulative and an abusive complainant or accused.

107. Any manipulation to take the criminal justice system for a ride needs to be corrected, and such cases are not only a **strain** on the heavily burdened courts, but also a **stain** on the character of the man if in a case registered under Section 376 of IPC, he has been falsely implicated.

108. In the present case, it is not about pure love culminating into marriage between the parties which could have become a basis for quashing the FIR.

109. Notably, the relations between the parties had taken place much prior to the marriage. The FIR was registered prior to the marriage. A person embracing another religion not only gives up his or her faith, but also the personal law he/she is governed by, and thus, he or she needs to make an informed decision, without being

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influenced by any external factors. It is not clear as to whether the conversion in this case was *bonafide* with intent to only marry the petitioner. The prosecutrix who appeared before this Court had converted to Islam, which was one of the conditions precedent set before her by the petitioner herein for getting married to him.

110. **Had this FIR not been registered, probably the marriage would not have taken place**. There is no argument or justification as to why the marriage was earlier solemnized and was not brought to the notice of the authorities.

The Decision

111. **There should not be an expectation that as a matter of right, subsequent marriage between the prosecutrix and the accused is sufficient ground for quashing the FIR of every case registered under Section 376 of IPC**. Needless to say, every case has to be adjudged strictly on the basis of evidence, conduct of the parties, their age, etc., and other material available on record.

112. Having carefully examined the entire records of the case, as well as the contents of this petition, and having considered the discussion made in preceding paragraphs and examined the facts and circumstances of the present case on the anvil of the principles laid down by the Hon'ble Apex Court in several judicial precedents governing quashing of FIRs based on settlement/compromise, this Court reaches the following conclusions:

1. *Allegations against the accused:* The allegations leveled by the prosecutrix/respondent no. 2 against the petitioner/

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accused in the FIR were serious in nature, alleging therein that accused, after intoxicating the prosecutrix, had established sexual relations with her without her consent, and had also extended threats to her to not disclose about the incident to anyone. The same allegations were reiterated by her in the statement recorded under Section 164 of Cr.P.C before the learned Magistrate, as well as in two supplementary statements recorded under Section 161 of Cr.P.C.

2. *Misconduct on the part of prosecutrix:* The misconduct of the prosecutrix is writ large, as she had lied at every stage and misguided the police as well as the Courts. The Court acknowledges the present case as one marked by mala fide intentions on the part of the prosecutrix, Ms. 'M', who failed to disclose before the Courts and the investigating authorities, the factum of her marriage to the accused Mr. Maksood, for almost a month after the registration of FIR. Despite attending court proceedings and recording statements, she consistently omitted the crucial information about her conversion and marriage. The turning point came during the hearing on 20.12.2022 when Ms. 'M' admitted to filing a false FIR against the accused and for misleading the courts. Subsequently, during the adjudication of the regular bail application on 25.02.2023, she expressed a desire to drop further proceedings against the accused, further emphasizing her

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inconsistent and misleading conduct throughout the investigation and court proceedings.

3. *Simultaneously, the conduct of the accused* also raises questions, given the delay in revealing the marriage and compromise deed executed in the year 2012, before the learned Sessions Court. The accused's failure to disclose these vital facts during the anticipatory bail application reflects lack of transparency on his part. This Court, thus, notes that both parties have not approached the courts with clean hands, with each contributing to the confusion and complicating the legal proceedings.
4. *Previous Marriage, Compromise, and the Quashing:* The parties herein base their plea for quashing solely on the ground of compromise that they have entered into a marital union. Before averting to this ground, it is crucial to emphasize that quashing, especially in cases falling under Section 376 of the IPC, cannot be considered a standard practice. Even if this Court entertains the possibility of a settlement, it must scrutinize whether the compromise is such and pertains to the marital aspect between the parties, that it warrants quashing of FIR. Herein lies a critical concern– the prosecutrix was already married to her first husband. The investigation of the case reveals that the prosecutrix has not taken divorce from her previous husband and neither has she filed any document which establishes that she is divorced from her

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first husband, even though she mentions in her complaint that she was a divorcee, thus casting doubt on the legality of the marriage solemnized between the accused and the prosecutrix itself. One document i.e. compromise deed 18.04.2022 filed by the accused before the learned Sessions Court, and not disputed by the prosecutrix as such, reflects that several years ago, the accused and the prosecutrix had lived together for a considerable period of time after getting to married to each other, even though the marriage between the prosecutrix and her husband was subsisting and she had not obtained any divorce. This raises suspicion about the validity of the marriage between the prosecutrix and the accused, as it appears from the record that the prosecutrix is still married to her previous husband, and therefore she cannot enter into a second marriage without divorcing her previous husband. Thus, this Court is of the opinion that whether the marriage solemnized between the prosecutrix and the accused *vide Nikahnama* dated 28.10.2022, as per Muslim rites and customs, is a valid marriage or not, is a question in itself that still remains unanswered at this stage which is being sought to be made a ground for quashing.

5. *Suspicious circumstances surrounding the marriage of prosecutrix and accused:* This Court also looks such marriage with suspicion, and the bona fides of accused

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are also unclear, since the marriage in this case was immediately solemnized i.e. within a period of ten days of registration of FIR, after getting the religion of prosecutrix converted to Islam, and it cannot be ascertained at this stage as to whether the religious conversion in this case was with a bona fide intent to only marry the prosecutrix or to clandestinely project to the prosecutrix that now she was married to the accused and that both of them could now approach the Courts for seeking bail and for quashing of the FIR.

113. Without a doubt sexual violence against a woman should invite no tolerance. At the same time, manipulating the system by the parties to a case under Section 376 of IPC would equally need to be dealt with a stern hand and serious efforts should be made to address and remedy failings within the criminal justice system and through our society.

114. The learned Trial Courts below have already taken cognizance of the statement of the prosecutrix. This Court has taken cognizance of conduct of the accused as well. No material could be brought forth before this Court in support of the contention which is the very basis on which the quashing has been sought by both the parties. The argument addressed before this Court could not prima facie prove that the contention of compromise on the basis of marriage is genuine or not or whether it is only for the purpose of quashing of the FIR. The same will be clear only during trial and passage of time. The Courts below will be at liberty to take appropriate action under law

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against both the parties in case it is proved that they had misguided the Court or committed perjury.

115. Without doubt, it is not the continuity of the proceedings which will be abuse of process of law in this case, but bringing to halt or quashing of the proceedings which will be equivalent to permitting abuse of process of law by both the parties herein. Thus, in view of the above facts and circumstances, this Court does not find it a fit case to quash the FIR.

116. A copy of this judgment be forwarded to **the Director (Academics), Delhi Judicial Academy for information and necessary action and also to Commissioner of Police, Delhi for bringing it to the notice of all concerned and training**.

117. In view thereof, the present petition stands dismissed.

118. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 19, 2023/ns