

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 19th OF JULY, 2024

MISC. CRIMINAL CASE No. 9683 of 2024

FARUKH

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Vikas Yadav - Advocate

Ms. Aditi Mehta - Complainant

Shri Sagar Mule - Panel lawyer
.....

ORDER

This petition u/S 482 of Code Of Criminal Procedure, 1973 filed by the applicant/accused for quashing FIR, bearing crime No.48/2023, offence u/S 452, 376, and 307 of IPC registered at P/S Harangaon, Distt. Dewas.

2. As per prosecution case, the applicant is already married and has 03 children. Apart from that, he wanted to marry the prosecutrix and used to tell her that he loves her, but the prosecutrix had denied. On 27.03.2023, at around 02:30 PM, when the prosecutrix was alone at her house, the applicant entered in her house and at the point of knife, committed rape upon her. The prosecutrix raised alarm, then the applicant had given a blow to her by means of knife with intent to kill her. She rescued herself and sustained knife cut injury on the wrist of right hand. The applicant fled away from the place of incident. The neighbours around the house of prosecutrix gathered hearing the shout of prosecutrix. After some time, her parents also returned to the

house as well. Thereafter, she told about the incident to her parents and got the FIR lodged against the applicant.

3. Learned counsel for the applicant and learned counsel for the respondent No.2/complainant submitted that after filing of the petition, the parties filed applications for compromise I.A. No.4018/2024 and I.A. No.3917/2024. The said applications were sent for verification before the Principal Registrar of this Court. A verification report has been received, where matter has been amicably settled between the applicant and the respondent No.2/complainant without any fear or coercion. Learned counsel for the applicant has placed reliance on the case of *Mohd. Julfukar V State Of Uttarakhand And Anr.* [AIR 2024 SC 781] and *Sunil V State Of M.P. And Anr.* [Order dated 06.03.2024 passed in MCRC No.8158/2024].

4. On the other hand, learned counsel for the State submits that offence u/S 452, 376 and 307 of IPC are not compoundable u/S 320 of the Cr.P.C.

5. I have heard learned counsels for the parties and perused the record.

6. On perusal of this case, it appears that the prosecutrix is around 20 years of age and she has lodged the FIR within 1.5 hours against the applicant. It also appears from verification report of the compromise that both the parties have amicably compromised in the matter without any fear or coercion. However, offences u/S 452, 376 and 307 of IPC are non-compoundable u/S 320 of Cr.P.C.

7. In the case of *Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur And Ors V State Of Gujarat And Anr.* [Cr.A. No.1723/2017, Judgment Dated 04.10.2017], the Apex Court has observed as under:-

“15 The broad principles which emerge from the precedents on the

subject, may be summarised in the following propositions:

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

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

8. It is apparent from the aforementioned judgment that the ultimate objective of inherent power vested with the High Court is to prevent the abuse of process of Court and miscarriage of justice. This power shall be exercised sparingly in the case involving heinous offences especially whereby the society is being affected like murder, rape, dacoity etc., even if the parties have settled the matter amicably.

9. In the case of *Mohd. Julfukar (Supra)*, the accused and complainant were in relationship, however, the relationship of the accused and complainant was against the wishes of the parents but they decided to reside together and both the parties had amicably settled their matter. In these situations, the Apex Court found that the continuation of the criminal proceeding would not be in the interest of justice and the proceedings were quashed and set aside.

10. In the case of *Sunil (Supra)* the Coordinate Bench of this Court has held as *under:-*

“7. In the case of Yogendra Yadav & Ors. vs. The State of Jharkhand & Anr. [AIR 2015 SC (Criminal) 166], the Apex Court held as under :-

"Needless to say that offences which are non- compoundable cannot

be compound by the Court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh V. State of Punjab). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may sent wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.”

11. In the case of *Virender Chahal V State And Anr.* [2024 SCC Online Del 1630], the Delhi High Court has opined as under:-

“37. Time and again, the Hon'ble Apex Court as well as this Court has held that criminal proceedings arising out of heinous offence such as rape cannot be quashed, merely on the basis of some settlement agreement executed between the accused and the victim, except in cases where there may be extraordinary circumstances to show that continuation of criminal proceedings in a case of serious nature would in fact result in abuse of process of law or miscarriage of justice. As expresses in case of State of M.P. v. Madanlal (Supra), under no circumstance can one even think of compromise in a case of rape.”

12. In view of aforesaid position of law, the concept of compromise with regard to the offence of rape cannot be accepted in a routine manner but the nature of offence is considerable. No doubt, in the instant case compromise application has been filed by the parties, which shows that the prosecutrix does not want to prosecute the FIR against the applicant, but the offence is related to rape which is serious and heinous in nature and affects the society. Accordingly, in absence of any extraordinary circumstance, it is not appropriate to quash such kind of offences despite of settlement between the

parties.

13. Accordingly, this petition filed u/S 482 of Cr.P.C., is hereby dismissed.

(PRAKASH CHANDRA GUPTA)
JUDGE

Shruti

