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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 30.05.2024
Pronounced on: 01.07.2024+ CRL.M.C. 4677/2024

RAKESH YADAV & ORS.

..... Petitioners

Through: Mr. Shasak Jain, Advocate

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Naresh Kumar Chahar, APP for
the State with Mr. Jasir Aftab & Md.
Hedayatullah, Advocates with W/SI
Archana, P.S. Mehrauli.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioners seeking quashing of the FIR bearing No. 648/2020, registered at Police Station Mehrauli, Delhi for offences punishable under Sections 376/377/323/509/34/380 of the Indian Penal Code, 1860 ('IPC') and all consequential proceedings emanating therefrom.

2. Issue Notice. Mr. Naresh Kumar Chahar, learned APP accepts notice on behalf of State.



3. Learned Counsel appearing on behalf of the petitioner submits that the petitioner no.1 herein has amicably settled the matter *vide* MoU dated 06.04.2024 executed between petitioner no. 1 and respondent no. 2. It is further stated that as per the MoU, the complainant/respondent no. 2 has agreed to settle her claims for Rs. 1.5 lakhs. Although, the total claim was for Rs. 12 lakhs. But considering the financial condition of the petitioner, the complainant is ready to settle for Rs. 1.5 lakhs. It is further submitted that the present FIR had been lodged in this case since the prosecutrix was angry. Thus, the present FIR be quashed.

4. Learned APP for the State, on the other hand argues that this is not a fit case for quashing of the FIR, as the complainant at the time of lodging of the complaint had leveled several serious allegations against the present accused/applicant and the settlement agreement (MoU) in this case clearly reveals that the accused is paying money to the victim to get the FIR quashed if quashing is allowed on the grounds that the prosecutrix had lodged the complaint out of anger towards the accused, it would be a travesty of justice and an abuse of the criminal justice system.

5. This Court has heard arguments advanced on behalf of both the parties and has perused the material available on record.

6. This Court at the very outset notes that this Court was not inclined to quash the FIR in the present case based on the settlement reached between the parties. Consequently, during the course of arguments, the learned counsel for the petitioners had requested that a decision be made on the merits of the case. Considering the same, this Court had provided the learned counsel for the petitioner an opportunity to argue the present case on merits, since he was now seeking quashing on the merits. However, the



learned counsel for the petitioner chose to limit his arguments to the assertion that the FIR in the present case had been lodged by the prosecutrix only because she was angry with the petitioner no. 1, and that they had a consensual relationship. He further contended that the parties have now reached a compromise and the prosecutrix does not wish to pursue the case further. Additionally, he argued that since both parties have no objection to the quashing of the FIR, this Court should proceed to quash the FIR in question.

7. Thus, the issue before this Court is whether the FIR registered for an offense punishable under Section 376 of the IPC can be quashed as a matter of right based on a compromise reached between the parties. This consideration arises even though the statements recorded under Sections 161 and 164 of the Cr.P.C. initially supported the prosecution's case, and the MOU was entered into based on a monetary settlement.

8. The Hon'ble Supreme Court in the case of *State of Haryana v. Bhajan Lal* 1992 SCC (Crl) 426, has laid down principles for quashing of the FIR and the same are extracted herein-under for reference:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in



their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”



9. Recently, the Hon'ble Apex Court in *Neeharika Infrastructure v. State of Maharashtra*, 2021 SCC OnLine 315, culled out the relevant principles that govern the law on quashing of an FIR under Section 482 of the Cr.P.C. It has been held as under:

“...57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of *Khawaja Nazir Ahmad* (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognized to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.



ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR...”

(Emphasis Supplied)

10. Thus, considering the legal precedents laid down by the Hon’ble



Apex Court and after going through the case file of the present case, this Court notes that the prosecutrix in the present case has alleged that the prosecutrix, who is a single mother, had met petitioner no. 1 on a social media website, where he had introduced himself as a divorced man living with his uncle. It is alleged that petitioner no. 1 had begun visiting her frequently and had even attended her son's birthday party. It is further alleged that one day, when prosecutrix's son was not at home, the accused, aware of this fact, had visited her residence under the influence of alcohol and he had brought half a bottle of alcohol and a bottle of breezer, knowing that the prosecutrix preferred breezer due to its lower alcohol content. It is further alleged by the prosecutrix in her complaint that while she was consuming beezer, petitioner no. 1 had begun touching her inappropriately. Although she had asked him to leave and return another day, he had persisted on staying longer. Further, as she continued drinking breezer, the accused had allegedly spiked her drink, causing her to lose consciousness. Despite being semi-conscious, the prosecutrix lacked the strength to resist as petitioner no. 1 had sexually assaulted her four times. It is further alleged that after that petitioner no.1 had professed his love for her, had promised to marry her, and had also apologized for his conduct, assuring her that he would not engage in sexual relations with her again without her consent. It is further alleged by the prosecutrix in her complaint that petitioner no. 1 had also taken some intimate photographs of the prosecutrix and he had further kept on sexually assaulting her on the pretext of marriage. It is also alleged that he had also made her meet his mother on the festival of Karwachauth. However, on the same day, he and his mother had beaten her as the prosecutrix had refused to give money to them. It is further alleged that the



prosecutrix had given petitioner no. 1 Rs. 12 lakhs. Further, the prosecutrix had been informed by one of the friends of petitioner no.1 that he is already married and immediately thereafter, the prosecutrix had confronted petitioner no. 1 about the same. However, the prosecutrix had also found out that the petitioner no. 1 was not divorced and his wife was living with him. On 16.02.2020, she had lodged a complaint with the police against petitioner no.1. After that as per the allegations, the prosecutrix had been informed that petitioner no.1 had left his house, to check the same the prosecutrix had visited the house of petitioner no. 1 and upon arrival she has alleged that his family members had beaten and abused her. Thereafter, the family of petitioner no. 1 had lodged complaint against her on 17.02.2020 alleging kidnapping of petitioner no. 1 and for blackmailing him. Thereafter, they had told her that when she will take back the complaint filed by her on 16.02.2020 then only, the complaint filed by them will be withdrawn. Thus, a compromise was affected between them and petitioner no. 1 had undertaken that he will give back the money due towards the prosecutrix and will live properly with his wife. Furthermore, the prosecutrix in her complaint alleges that she had married petitioner no. 1 on 07.07.2019 and she had disclosed this fact to his brother who had also not told her that petitioner no. 1 was already married. When she had taken back her complaint after he had threatened her, both of them had again started talking to each other and exchanging messages on WhatsApp. On 06.03.2020, petitioner no. 1 had again visited her house and had told her that he will be divorced soon and on the said pretext he had again established physical relations with her. Further as per allegations, he had again visited her on 20.03.2020 to attend her son's birthday and had allegedly told her that from



25.03.2020 he will permanently stay with her. In the meantime, he was indulging in phone sex with her. Thereafter, he had also come to stay with her and used to commit sexual violence with her and used to threaten her that he will kill her son. He had also committed theft of Rs. 2,20,000/- from her almirah. Thereafter, the prosecutrix had lodged the present FIR.

11. This Court observes that the present case reveals continuous incidents of extreme sexual violence and the fact that the accused had misrepresented himself as divorced and had engaged in sexual violence and a sexual relationship with her under the false pretext of marriage. The FIR specifically alleges not only sexual violence but also the creation of inappropriate videos and photos of their relationship and threats to kill her and her son, and repeated misrepresentation by the accused.

12. Despite these serious allegations of extreme sexual violence and threats, the prosecutrix who was present before the Court on the date of hearing, had stated that the present FIR was lodged out of anger. She further explained that, following intervention by their families, she wishes to have the FIR quashed.

13. This Court has considered the fact that the FIR itself reveals serious allegations against petitioner no.1 and his family members, including consistent threats to the prosecutrix to prevent her from lodging a complaint. The Court also notes that the MOU entered into by the parties is not the result of a resolution of misunderstandings through family intervention but rather an exchange of money amounting to Rs. 12 lakhs, intended to secure the quashing of the FIR. However, this Court is of the opinion that **criminal cases involving allegations of sexual violence cannot be quashed on the basis of monetary payments, as doing so would imply that justice is for**



sale.

14. This Court in CRL.M.C. bearing No. 753/2024 titled as ‘*Virender Chahal @ Virender*’ has expressed its opinion on settlements based on monetary payments in cases relates to offences punishable under Section 376 of the IPC and the relevant observations are as under:

“23. Money, it seems, is to be exchanged for getting a quietus to the present criminal proceedings for offence of rape—a proposition that is not only immoral but also strikes at the very core of our criminal justice system.

24. In this Court’s opinion, the offence of rape is a heinous violation of a woman’s bodily autonomy and it stands as an offence against the society. While the Courts are often tasked with the responsibility of ensuring fairness and at times, reconciliation between the parties, there are certain areas where compromise is not only inappropriate but also fundamentally unjust.

25. To allow a settlement, such as the present one, to crystallize would amount to trivializing the sufferings of a rape victim, and reducing her anguish to a mere transaction. It would amount to giving a message to perpetrators of such offence that heinous act of rape can be absolved by paying money to the victim, a notion that is as repugnant as it is repulsive”...

15. In the present case, the FIR highlights issues of self-respect, life and death for the prosecutrix and her child, and contains her assertions that she possesses evidence of the threats and other allegations. On the other hand, the parties are seeking to settle the matter through a payment of Rs. 12 lakhs. Furthermore, there is no evidence produced before this Court that Rs. 12 lakhs were actually paid to the prosecutrix, nor was such a payment contended before this Court beyond a reference to some monetary transactions in the FIR.

16. This Court faces a situation where the accused seeks to pay Rs. 12 lakhs, and the prosecutrix seeks to accept it to quash an FIR filled with grave allegations of sexual violence and threats. In these circumstances, this Court



concludes that the present case does not fall within the principles laid down by the Hon'ble Supreme Court for quashing an FIR. The offence under Section 376 is a serious crime against society at large.

17. Further, if the prosecutrix has made false allegations and lodged a false FIR, she must face the consequences if proven. Therefore, this case does not merit the quashing of the FIR but necessitates a trial to determine whether the accused committed the offences or whether the complainant lodged a false complaint and now seeks to settle by accepting Rs. 1.5 lakhs. This Court is of the opinion that true justice and the ends of justice will be served not by quashing the FIR without a trial, but by conducting a trial to fairly ascertain the real culprit, whether it be the accused or the complainant.

18. This Court is of the opinion that justice in a criminal trial, particularly in a case such as the present one, serves not only as a serious example and deterrent to the accused but also as a lesson to the community as a whole. Neither the accused nor the complainant can be allowed to manipulate the criminal justice system or misuse State and judicial resources to serve their own ends. Therefore, even if the parties have reached a compromise, they cannot demand the quashing of an FIR as a matter of right. The learned Trial Court must decide the case on its merits, examining the facts in light of natural justice for both the complainant and the accused, as well as considering the broader implications for the community and the criminal justice system. Every judgment carries its own message, and this one emphasizes that the integrity of the judicial process must be upheld.

19. Therefore, in view of foregoing discussion, the present petition stands dismissed.

20. It is, however, clarified that nothing expressed herein above shall



tantamount to an expression of opinion on merits of the case.

21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 1, 2024/zp