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

\+ **CRL.M.C. 1002/2021**

Date of decision: 24th March, 2021

IN THE MATTER OF:

DINESH SHARMA AND ORS ..... Petitioners

Through Mr. Deepak Kumar Gupta, Advocate

versus

STATE AND ANR ..... Respondents

Through Ms. Kusum Dhalla, APP for the State along with SI Anand Pratap Singh, P.S. Laxmi Nagar.
Complainant/respondent No.2 in person.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

Crl.M.A.5088/2021(exemption)

Allowed, subject to all just exceptions.

CRL.M.C.1002/2021 & Crl.M.A.5089/2021(stay)

1. This petition filed under Section 482 Cr.P.C. is for quashing FIR No.193/2018 dated 07.05.2018 registered in Police Station Shakarpur for offences punishable under Sections 354, 354D, 506, 509, 34 IPC and Section 10 POCSO Act on the ground that the prosecutrix and the petitioners have compromised the matter.

2. The facts as stated in the charge sheet are that the prosecutrix in her complaint stated that she lives with her family and study in Class X. The allegation of the complaint reads as under:

"...Dinesh Sharma, a distant relative of ours who lives in Jalandhar Punjab came to our house in search of a job. He did not get a job for a few days, then he stayed at our house and started doing small work with my father for a few days. Everything was fine until a few days later he started looking at me with strange eyes when my mother and father were not at home. So he also started mocking me in a jiffy. One day I was alone at home. My mother and father had gone out, then Dinesh came and picked me up from behind and took me to another room with wrong intentions. I made a noise, then he left me and said that I made a mistake, it will not happen in future, when my mother and father came to the house, I told them everything, then my mother & father expelled him from the house at the same time, he apologized and said that it will not happen again. But do not tell this to the housemates, in February, 2017, the marriage of the Dinesh's sister Shobha was held. We went to Jalandhar Punjab to attend her marriage with the family. In that marriage, we also met Dinesh and his two nephews Deepak and Vishal who live in Bangalore. They asked me to be a friend, I refused him. One day I was sitting alone, Vishal and Deepak came, they said that if you will not accept our friendship, we will defame you because Dinesh has told us all about you & your family, he also has having your nude picture. Both of them tried to drag me into the room by holding my hand, so I released my hand and ran away and told all these things to my mother, my mother rebuked them and said that I had gathered the people of your house and call the police. Then Dinesh also came there and they all apologized and said that there will be no such mistake from our side. In March 2018, I got a call from mobile number 8873540617 on my phone number 7932283344 and the called said that I am Dinesh speaking and I want to be friend you. If you refuse, then I have your pictures while taking bath and toilet. I will kill your mother & father, I am afraid of this after talking to him, Dinesh started talking vulgarly to me, then on 24-4-18 I got a call from a number and he said that I am speaking of the nephew of Dinesh, you will have to be friend me too. Dinesh has given me all your photos, I will upload the same on Facebook, then on 24-4-18 I got a call from phone

number 07019834248, he said that I am speaking Vishal's brother Deepak. Dinesh has given me all your photos too. You will have to be friend me as well, otherwise I will upload all your photos on Facebook, when I told him that I will complain to my family and police, he threatened to kill me and my family, then I got afraid, those people send me dirty messages, I told my family members these things in distress, then my mother has brought me to the police station. I request you that take a legal action against Dinesh, Deepak and vishal and protect the life & honour of me & my family..."

3. It is stated in the petition that the compromise has been entered into between the prosecutrix, who has now turned major, the mother of the prosecutrix and the petitioners. Her mother and the petitioners/accused herein have compromised the matter.

4. It is well settled that the power under Section 482 Cr.PC is to be distinguished from the powers which lies with the Court to compound the offences compoundable under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has the power to quash even in those offences which are not compoundable, where the parties have settled the matter between themselves, but the power has to be exercised fairly and with caution. Offence of rape is a heinous crime punishable under Section 376 IPC.

5. The Supreme Court in Gian Singh v. State of Punjab reported as **(2012) 10 SCC 303,** observed as under:

"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a

criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.:
(i) to secure the ends of justice, or

(ii) to prevent abuse of the process of any court.

In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. **Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute.** Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement

and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

(emphasis added)

6. After relying on Gian Singh (supra), the Supreme Court in Narinder Singh & Ors. v. State of Punjab & Anr., **(2014) 6 SCC 466**, has observed as under:

"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.

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."

(emphasis added)

7. In State of M.P. v. Laxmi Narayan & Ors. reported as **(2019) 5 SCC 688,** the Supreme Court has observed as under :

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;"

(emphasis added)

8. A perusal of the above mentioned cases shows that the Supreme Court has categorically stated that heinous crime like rape cannot be quashed by the High Court by exercising power under Section 482 Cr.P.C. even if the prosecutrix and the accused have entered into a compromise. The said judgments are binding on this Court under Article 141 of the Constitution of India. The petitioner is accused of an offence under POCSO Act. The Statement of Objects and Reasons as to why the Protection of Children from Sexual Offences (POCSO) Act, 2012 was legislated reads as under:

*"**STATEMENT OF OBJECTS AND REASONS***

1. Article 15 of the Constitution, inter alia, confers upon the State powers to make special provision for children. Further, Article 39, inter alia, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires that State Parties to undertake all appropriate national bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials..

3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on child Abuse: India 2007' conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalised. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that the offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is therefore, proposed to enact a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.

5. ***The Bill would contribute to enforcement of the right of all children to safety, security and protection***

from sexual abuse and exploitation.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives."

9. Exercising jurisdiction under Section 482 Cr.P.C to quash an offence under POCSO Act would go against the intention of the legislature which has brought out the special enactment to protect the interests of children.

10. The FIR cannot be quashed on the ground that the victim after attaining majority has decided to compromise the matter with the accused.

11. In view of the above, this Court is not inclined to exercise its jurisdiction under Section 482 Cr.P.C. for quashing the FIR No.193/2018 dated 07.05.2018 registered in Police Station Shakarpur, wherein the petitioners have been accused of the offence under Section 10 of POCSO Act.

12. The petition is accordingly dismissed along with pending application.

SUBRAMONIUM PRASAD, J.

MARCH 24, 2021
pst