

(2020) 09 DEL CK 0029

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1761 Of 2020

Bitu Yadav @ Vikas Yadav

APPELLANT

Vs

State (NCT Of Delhi) & Anr

RESPONDENT

Date of Decision : 07-09-2020

Acts Referred:

Indian Penal Code, 1860 — Section 376, 506
Code Of Criminal Procedure, 1973 — Section 320

Citation : (2020) 09 DEL CK 0029

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Anand Neetu, Anupam Seth, Izhar Ahmed

Final Decision : Allowed

Judgement

Suresh Kumar Kait, J

The hearing has been conducted through video conferencing.

Crl. M.A. 12314/2020 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

CRL.M.C.1761/2020 & CRL.M.A.12313/2020 (stay)

3. Vide the present petition, petitioner seeks direction thereby for quashing of FIR No. 384/2020 dated 31.07.2020, for the offence punishable under Sections 376/506 IPC registered at PS - Dwarka North, Delhi and all other proceedings arising therefrom.

4. Notice issued.

5. Notice is accepted by learned APP for State and by the respondent No.2 and with the consent of counsel for parties, the present petition is taken up for final

disposal.

6. The present petition is filed on the ground that parties have settled their disputes and they are living happy married life and respondent No.2 has given an undertaking which is annexed with the petition and the relevant paras of the affidavit are reproduced as under:

"3. I say that the present FIR under consideration was lodged by me due to misunderstanding and at the instance of a police constable, the contents of the FIR in question are not true and correct.

4. I say that the Petitioner is my husband and we have been in relationship since 2013.

5. That I am happily married with the petitioner and also residing with him with the knowledge and consent of our family members.

6. That I have no objection in any manner whatsoever if the present petition is allowed and consequently, the said FIR No.384/2020 is quashed."

7. Respondent No.2 has been identified by W/SI Sangeeta/IO and submits that matter has been settled and she does not wish to prosecute the matter any further.

8. Petitioner and respondent No.2 have amicably settled all their disputes inter se themselves.

9. Case of the petitioner is that petitioner and the respondent No.2 have been in a relationship since 2013 to the knowledge of their family members. They had been in regular touch with each other over the phone and also used to meet regularly as and when they got time from their respective jobs.

10. The petitioner is in a government job and working as a Constable in the U.P. Police whereas the respondent No.2 is working as ground staff at I.G.I. Airport, New Delhi. They have always been in a happy and loving relationship as evident from the fact that no complaint has been filed by them against each other except the present one from 2013 till date.

11. Learned counsel for the petitioner submits that the petitioner and the respondent No.2 married on 02.08.2020 and the same was registered before Marriage Registration Office on 04.08.2020.

12. Learned counsel for the petitioner has relied upon the judgment passed by the Bombay High Court in Avinash Haribhau Shinde vs. The State of Maharashtra & Anr. in Criminal Writ Petition No.5848/2018.

13. Learned APP has opposed the present petition by stating that as per the judgment passed by the Supreme Court in Gian Singh vs. State of Punjab (2012) 10 SCC 303, the present petition deserves to be dismissed. The relevant portion of the same is as under:

"61 ...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.

Thus, the present FIR is under Section 376 IPC. Therefore, the present petition deserves to be dismissed.

14. Petitioner and respondent No.2 are personally present in Court through video conferencing and they state that before March, 2020 everything was going on well between them, however, misunderstandings started between them during March, 2020 when the petitioner was posted at Etawah, Uttar Pradesh during the nationwide lockdown and was extremely occupied due to his long and rigorous duty hours. The petitioner was also during those days suffering from pyrexia with jaundice and he was advised to take rest for 62 days. In spite of suffering from jaundice, the petitioner was left with no other option but to continue his duty because of shortage of staff in the U.P. Police Department. It is further submitted that due to the above-said reasons the petitioner remained almost disconnected with his entire family and also with her. The petitioner tried to explain the said situation to her at one point of time over the phone, however, she under wrong impression thought that the petitioner was ignoring her. Due to this, it resulted into misunderstanding between them and the respondent No.2 started believing that the petitioner was cheating her. She further states that if the present FIR is not quashed, she will no longer get the petitioner's love and affection and it will spoil their matrimonial life.

15. Although, as per the directions of the Hon'ble Supreme Court in *Parbat Bhai Aahir and Ors. vs. State of Gujrat & Ors.*: (AIR 2017 SC 4843), the FIR should not be quashed in case of rape as it is an heinous offence, but when the respondent No.2/complainant/prosecutrix herself takes the initiative and makes affidavits before this Court, stating that she made the complaint due to some misunderstanding and now wants to give quietus to the misunderstanding which arose between the petitioner and respondent no.2, in my considered opinion, in such cases, there will be no purpose in continuing with the trial. Ultimately, if such direction is issued, the result will be of acquittal in favour of the accused,

but substantial public time shall be wasted.

16. This Court is conscious about the dictum of the Supreme Court in terms of seriousness of the case, however, keeping in view the relationship between the petitioner and the respondent No.2 since 2013, it seems that no rape was committed by the petitioner upon respondent no. 2 in the present case and the FIR was registered on the basis of false allegations arising out of misunderstandings.

17. In view of the submissions made by the respondent No.2 before this Court, the respondent No.2 is liable to be prosecuted. However, keeping in view the fact that the petitioner and respondent No.2 are married and living happy married life, I hereby refrain from taking any legal action against the respondent No.2. A similar view was taken by this court in the case of Danish Ali v. State and Anr. in Crl. M.C. 1727/2019.

18. Taking into account the aforesaid facts and the fact that the petitioner and respondent No.2 are in love affair since 2013 and they are married, this Court is inclined to quash FIR as no useful purpose would be served in prosecuting petitioner any further.

19. For the reasons afore-recorded, FIR No. 384/2020 dated 31.07.2020, for the offence punishable under Sections 376/506 IPC, registered at PS - Dwarka North, Delhi and consequent proceedings emanating therefrom are quashed.

20. The petition is, accordingly, allowed and disposed of.

21. Pending application is also disposed of.

22. The order be uploaded on the website forthwith.