

(2024) 09 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : CWP No. 7360 Of 2021

Nitasha Kumari

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 27-09-2024

Acts Referred:

Citation : (2024) 09 SHI CK 0002

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Lovneesh Kanwar, Tek Chand, Pranay Pratap Singh, Suchitra Sen, Vikrant Thakur

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

By way of instant petition filed under S.482 CrPC, prayer has been made on behalf of the petitioner for quashing of FIR No. 4, dated 3.2.2023, under Ss. 363, 366 and 376 IPC and S.6 of Protection of Children from Sexual Offences Act, registered at Police Station Baddi, Tehsil Baddi, District Solan, Himachal Pradesh alongwith consequent proceedings i.e. Case No. 2-S/7 of 2023 pending before learned Additional Sessions Judge, Fast Track Court, Solan, Himachal Pradesh, on the basis of compromise (Annexure P-3), arrived inter se parties.

2. Precisely, the facts of the case, as emerge from record are that the FIR sought to be quashed in the instant proceedings, came to be lodged at the behest of respondent No.2/complainant Pradeep Kumar, i.e. father of the respondent No.3/victim-prosecutrix (name withheld to protect her identity) alleging therein that his minor daughter, aged 13 years (respondent No.3), has gone missing and he has apprehension that the petitioner namely Vikas has made her elope with him under the pretext of marriage. On the basis of aforesaid complaint made by respondent No.2, FIR sought to be quashed in the instant proceedings came to be lodged against the petitioner and on 18.2.2023, police arrested the petitioner,

who disclosed to the police that he and respondent No.3, have solemnized marriage. In this regard, petitioner placed on record documentary evidence. Since, complainant, who happens to be father of victim-prosecutrix had disclosed to the police that his minor daughter (respondent No.3) aged 13 years had gone missing, police after completion of investigation, presented Challan in competent court of law but before the same could be taken to its logical end, petitioner has approached this court for quashing of FIR in question as well as consequent proceedings, on the basis of compromise, Annexure P-3, whereby parties have resolved to settle the dispute inter se them amicably. It is averred in the compromise that the victim -prosecutrix is 20 years old and she, of her volition and without there being external pressure, has entered into compromise with the petitioner, whereby they have resolved to settle their dispute and petitioner and respondent No.3 are living happily, as such, complainant does not wish to prosecute the case further.

3. This court with a view to ascertain genuineness and correctness of the compromise arrived inter se parties and factum of marriage of petitioner and respondent No.3, directed parties to come present in the court, especially complainant and the victim-prosecutrix.

4. Today, Respondent No.2 Pradeep Kumar, father of respondent No.3, at whose behest, FIR sought to be quashed in the instant proceeding, came to be registered and who happens to be father of respondent No.3/victim-prosecutrix, stated on oath, that he of his own volition and without any external pressure has entered into compromise with the petitioner, whereby both the parties have resolved to settle the matter inter se them amicably. He stated that the FIR in question is result of misunderstanding and respondent No.3 and petitioner have contracted marriage, where- after, they are living happily, as such, he does not wish to prosecute the criminal proceedings against the petitioner any further. He further stated that at the time of lodging of FIR, date of birth of victim-prosecutrix was more than 18 years and she (respondent No.3), of her own volition has solemnized marriage with the petitioner as such, he shall have no objection in case, FIR in question alongwith consequent proceedings pending in the competent court of law is quashed and set aside and petitioner is acquitted of the charges framed against him. While admitting contents of the compromise to be correct, he also admitted his signatures thereupon. His statement is taken on record.

5. Respondent No.3, Kashish, also stated before this Court that at no point of time, she was kidnapped or abducted by the petitioner, rather she of her own volition and without there being any external pressure joined his company and solemnized marriage on 3.2.2023. She stated that her date of birth is '8.6.2004' and her father, respondent No.2 inadvertently stated her age to be 13 years to the police. To substantiate aforesaid claim, she placed on record copy of Aadhaar Card No. 5916 5928 1588, perusal whereof clearly reveals that the date of birth of the victim-prosecutrix is '8.6.2004'. Respondent No.3 stated that since she has

solemnized marriage with the petitioner and both are living happily, she shall have no objection, in case prayer made on behalf of the petitioner for quashing of FIR in question, alongwith consequential proceedings, is accepted and petitioner is acquitted of the charges framed against him. While admitting contents of the compromise to be correct, she also admits his signatures thereupon. Her statement is taken on record.

6. After having heard statements of respondent No.2-complainant and respondent No.3, Mr. Rajan Kahol, learned Additional Advocate General vehemently argued that though at this stage, it is being claimed by respondent No.3, that at the time of alleged incident, her age was more than 18 years, but material available on record clearly reveals that age of the victim-prosecutrix at the time of alleged incident was 13-15 years. If it is so, consent, if any, of respondent No.3 is immaterial. Mr. Rajan Kahol, learned Additional Advocate General further submitted that the Aadhaar Card placed on record is also not genuine, because, as per status report, date of birth of respondent No.3 in Aadhaar Card No. 5196 5298 1588 is "8.6.2011", however, Mr. Kahol was unable to dispute correctness of the copy of Aadhaar card placed on record by victim-prosecutrix because same has been taken out of the Challan presented by Investigating Agency in the competent court of law. Copy of Challan made available to this court clearly reveals that a copy of Aadhaar Card No. 5196 5298 1588 was made available at the time of investigation to the police by victim-prosecutrix as well as complainant and perusal, thereof clearly reveals that date of birth of victim-prosecutrix is '8.6.2004'. Moreover, copy of Aadhaar card made available to this court bears stamp of Police Station concerned.

7. The question which now needs consideration is whether FIR in question can be ordered to be quashed when Hon'ble Apex Court in *Narinder Singh and others versus State of Punjab and another* (2014)6 SCC 466 has specifically held that power under S. 482 CrPC is not to be exercised in the cases 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.

8. At this stage, it would be relevant to take note of the judgment passed by Hon'ble Apex Court in *Narinder Singh* (supra), whereby the Hon'ble Apex Court has formulated guidelines for accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings. Perusal of judgment referred to above clearly depicts that in para 29.1, Hon'ble Apex Court has returned the findings that 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 criminal proceedings even in those cases which are not compoundable and where the parties have settled the matter between themselves, however, this power is to be exercised sparingly and with great caution. In para Nos. 29 to

29.7 of the judgment Hon'ble Apex Court has laid down certain parameters to be followed, while compounding offences.

9. Careful perusal of para 29.3 of the judgment suggests that such a power is not to be exercised in the cases 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. Apart from this, offences 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. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly arising out of commercial transactions or arising out of matrimonial relationship or family disputes may be quashed when the parties have resolved their entire disputes among themselves. Aforesaid view taken by Hon'ble Apex Court has been further reiterated in *Gian Singh v. State of Punjab* and anr. (2012) 10 SCC 303.

10. The Hon'ble Apex Court in case *Gian Singh supra* has held that power of the High Court in quashing of the criminal proceedings or FIR or complaint in exercise of its inherent power is distinct and different from the power of a Criminal Court for compounding offences under Section 320 Cr.PC. Even in the judgment passed in *Narinder Singh's* case, the Hon'ble Apex Court has held that while exercising inherent power of quashment under Section 482 Cr.PC the Court must have due regard to the nature and gravity of the crime and its social impact and it cautioned the Courts not to exercise the power for quashing proceedings in heinous and serious offences of mental depravity, murder, rape, dacoity etc. However subsequently, the Hon'ble Apex Court in *Dimpey Gujral and Ors. vs. Union Territory through Administrator, UT, Chandigarh and Ors.* (2013) 11 SCC 497 has further reiterated that continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. Hon'ble Apex Court further observed that when offences of a personal nature, burying them would bring about peace and amity between the two sides.

11. Hon'ble Apex Court in its judgment dated 4th October, 2017, titled as *Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others versus State of Gujarat and Another*, passed in Criminal Appeal No.1723 of 2017 arising out of SLP(Crl) No.9549 of 2016, reiterated the principles/ parameters laid down in *Narinder Singh's* case *supra* for accepting the settlement and quashing the proceedings.

12. No doubt, in the case at hand, petitioner is accused of a heinous offence punishable under Ss. 363, 366 and 376 IPC and S. 6 of Protection of Children from Sexual Offences Act.. but once, respondent No.2/complainant and respondent No.3/victim-prosecutrix have categorically stated before this Court on oath, that the FIR sought to be quashed in the instant proceeding, is result of misunderstanding and, at no point of time petitioner made respondent No.3

elope with him, under the pretext of marriage, rather, victim-prosecutrix of her own volition, not only joined company of the petitioner but also solemnized marriage with him, prayer having been made by petitioner for quashing of FIR alongwith consequent proceedings, deserves to be considered.

13. Since the respondent No.2 is no more interested in pursuing the criminal proceedings against the petitioner, there are bleak and remote chances of conviction of accused and no fruitful purpose shall be achieved by continuing with criminal prosecution of the petitioner as such, this court sees no impediment in accepting the prayer made by petitioners for quashing of FIR.

14. No doubt, material collected on record by prosecution suggests that date of birth of the victim-prosecutrix at the time of alleged incident was 8.6.2011, but such plea stands falsified with the placing of a copy of Aadhaar Card No. 5196 5298 1588, perusal whereof clearly reveals that date of birth of the victim-prosecutrix is '8.6.2004'. If it is so, she was major at the time of her having solemnized marriage with the petitioner.

15. This Court, in *Satish Kumar v. State of Himachal Pradesh and another*, CrMMO No. 1014 of 2022, decided on 3.11.2022, while taking note of judgments passed in *State of Haryana and others v. Bhajan Lal and others*, 1992 Supp (1) SCC 335, *Vineet Kumar and others v. State of U.P. and another*, *Prashant Bharti v. State (NCT of Delhi)* (2013) 9 SCC 293, *Asmathunnisa v. State of A.P.*, (2011) 11 SCC 259 and *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others*, (1976) 3 SCC 736, after delving upon the power of High Court to quash criminal proceedings in exercise of power under S.482 CrPC, observed in the peculiar facts of the said case, as under:

"14. Since in the present case, respondent No.2 has solemnised marriage after attaining majority and is living happy married life with the petitioner, there appears to be no reason for this court to refuse the relief as prayed for in the instant petition, rather, refusal to grant relief prayed for in the petition would cause undue hardship to the petitioner as well as respondent No.2, who otherwise would be unnecessarily compelled to face ordeal of protracted trial, which is otherwise bound to fail on account of statement made on oath by respondent No.2 coupled with the fact that the petitioner and respondent No.2 have solemnized marriage."

16. No doubt, Hon'ble Apex Court in *Narinder Singh supra* and various other judgments has held that High court, while exercising power under S.482 CrPC, should be cautious that such power is used sparingly. However, in the instant case, though serious allegations under S. 363, 366A and 376 IPC and S.6 of the Protection of Children from Sexual Offences Act have been leveled against the petitioner but since respondent No.3 has solemnized marriage with the petitioner coupled with the fact that she has resiled from her statement given to the Police, while making deposition before learned trial Court, no fruitful purpose would be served in continuing with the criminal prosecution of the petitioner, as it would

only lead to wastage of time of the court.

17. No doubt in such like cases, interest of society at large is to be kept in mind vis-à-vis interest of individual but in the facts and circumstances of the instant case, interest of respondent No.3 appears to be more important than that of the society because, in the event of trial being continued and thereafter conviction if any is recorded against the petitioner, it is respondent No.3, who would be the ultimate sufferer, as now petitioner is her husband and in the event of petitioner being sent behind the bars, it definitely will pose a greater threat to respondent No.3, and child, if any, born, out of their wedlock, which would definitely serve no larger interest

18. Consequently, in view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court (supra), FIR No. 4, dated 3.2.2023, under Ss. 363, 366 and 376 IPC and S.6 of Protection of Children from Sexual Offences Act, registered at Police Station Baddi, Tehsil Baddi, District Solan, Himachal Pradesh alongwith consequent proceedings i.e. Case No. 2-S/7 of 2023 pending before learned Additional Sessions Judge, Fast Track Court, Solan, Himachal Pradesh, are quashed and set aside and petitioner is acquitted of the charges framed against him.

19. The petition stands disposed of in the aforesaid terms, alongwith all pending applications.