

**(2015) 06 GUJ CK 0037**

**In the Gujarat High Court**

**Case No :** Criminal Misc. Application (For Quashing & Set Aside FIR/Order)  
No. 9576 of 2015

Parvpal Rajivpal Singh

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

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**Date of Decision :** 24-06-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482  
Hindu Marriage Act, 1955 — Section 13B  
Penal Code, 1860 (IPC) — Section 307, 323, 376, 377, 509

**Citation :** (2016) CriLJ 243

**Hon'ble Judges :** Abhilasha Kumari, J

**Bench :** Single Bench

**Advocate :** J.M. Panchal for Maunish T. Pathak, for the Appellant; L.B. Dabhi, Learned APP, Advocates for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Abhilasha Kumari, J.—Rule. Mr. L.B. Dabhi, learned Additional Public Prosecutor, waives service of notice of Rule for respondent No. 1- State of Gujarat and Mr. Ankit Shah, learned advocate, waives service of notice of Rule for respondent No. 2 (complainant). On the facts and in the circumstances of the case and with the consent of the learned counsel for the respective parties, the application is being heard and decided finally.

2. By preferring this application under Section 482 of the Code of Criminal Procedure, 1973 ("the Code" for short), the applicant has prayed that the FIR being C.R. No.I-87 of 2013, registered with Bopal Police Station, Ahmedabad, against the applicant on 31.10.2013, for offences punishable under Sections 376, 377, 323 and 509 of the Indian Penal Code, as well as the charge-sheet dated 01.01.2014, and subsequent proceedings pending before the learned 8th Additional District Judge, Ahmedabad (Rural), be quashed and set aside.

3. The sum and substance of the allegations made in the FIR are as under:

"3.1 The complainant and the applicant were known to each other since the year 2000, from their college days. After her marriage, the complainant shifted to Delhi. In the year 2008, when the complainant was residing separately from her husband, the applicant contacted her and they again came into contact with each other and started meeting. In the year 2010, the complainant shifted to her husband's flat at Sector-7, C/501, Bopal Sun City, Bopal, Ahmedabad, from Delhi, with her son aged ten years. At that point of time, she came to know that the applicant was suffering from depression. Hence, the complainant visited the applicant at Bangalore, Mantri Ellygunj, Benargatti. Further, in August, 2011, the complainant shifted to a rented house at the address mentioned in the Memorandum of the application, from her husband's flat, along with her son. It is alleged that in August, 2012, the applicant came to the house of the complainant and stayed there for three days. During that period of time, the applicant had promised the complainant that he would marry her after he obtained a divorce. On the basis of this promise, the applicant started cohabiting with the complainant and had physical relations with her for three consecutive days. In December, 2012, the complainant got a divorce from her husband. The applicant visited the house of the complainant and stayed there for four days, during which, they had a physical relationship for four consecutive days.

3.2 It is further stated that the applicant visited the house of the complainant in February, 2013, for three days and in the month of March, 2013 for five consecutive days. The applicant also visited the house of the complainant in June, 2013 for two consecutive days and during all the above periods of time, a physical relationship took place between the applicant and the complainant. It is further alleged that in July, 2013, the applicant came to the house of the complainant and had an unnatural physical relationship with her for two consecutive days. When the complainant talked to the applicant about marriage, he tried to avoid the topic. In August, 2013, the complainant came to know that the applicant was trying to get married to some other girl. The complainant contacted him by way of E-mail and asked him about the same. She visited the applicant at Bangalore for three days and asked the applicant to marry her. At that point of time, the applicant allegedly hit her, treated her badly and ignored her request for marriage. Thereafter, the applicant left for Bombay and on 10.10.2013, he called the complainant and informed her that he was going to get married on 12.10.2013, to another girl at Delhi. On 21.10.2013, it is alleged that the applicant called up the complainant and spoke badly to her.

3.3 Under the circumstances, respondent No. 2 filed a complaint, on the basis of which the FIR in question has been registered."

4. It is the case of the applicant before this Court that now, respondent No. 2-complainant, no longer wants to proceed with the criminal prosecution or any proceedings against him in connection with the FIR in question, as the matter has been amicably resolved and settled between them. To this effect, respondent No. 2 has filed an affidavit, affirmed on 16.05.2015, which is on the record of the

application.

5. Mr. J.M. Panchal, learned advocate for Mr. Maunish T. Pathak, learned advocate for the applicant, has submitted that no doubt, one of the offences alleged against the applicant, that is, under Section 376 of the Indian Penal Code, is serious in nature. However, now that the complainant is no longer desirous of continuing with the criminal proceedings against the applicant and both the parties have resolved the matter amicably, the Court may consider quashing the FIR in question.

5.1 It is submitted that although there cannot be any blanket proposition that in all cases under Section 376, a compromise or amicable resolution of the dispute can be accepted, as the offence is a non-compoundable one. However, conversely, there cannot be any blanket proposition to the effect that there can be no settlement of a dispute between the parties, where the offence alleged is that under Section 376 of the Indian Penal Code. It would all depend on the facts and circumstances of each case.

5.2 Mr. Panchal, learned advocate for the applicant, has submitted that certain categories of rape cases, such as gang rape and cases where extreme cruelty and perversity has been displayed, such as, in the Nirbhaya Rape Case, where the accused were not known to the victim, and cases where there is criminal assault, where rape has been committed after making the victim unconscious, rape by persons in authority, such as, police personnel, doctors and superiors in office, it may be unacceptable to accept the compromise between the accused and the victim and quash the FIR and resultant proceedings.

5.3 However, certain categories of cases deserve consideration, such as, where there is a love affair between teenagers residing in the neighbourhood, cases where the accused and the victim are well-known to each other and the allegation of rape has been levelled only because the accused refused to marry the victim. The age, education, maturity, mental capacity to understand the consequences of the act by the victim, ought to be kept in mind. Similarly, cases of married women keeping relations with other persons also deserve to be looked at from another perspective.

5.4 It is further submitted that in the present case, the complainant is a married lady of thirty-six years, who has a son aged ten years. She is a highly qualified and mature lady, who can well understand the consequences of her actions. The applicant was not unknown to her. They were studying together in college and were in contact on Facebook and through E-mail. A relationship developed between the applicant and the complainant, though the marriage of the complainant was in subsistence. The case of the complainant is only that the applicant promised to marry her and, on that promise, developed a physical relationship with her. However, he did not marry her.

5.5 Under the circumstances, when the complainant no longer wants to proceed with the criminal proceedings against the applicant, it would be in the interest of

the complainant, herself, that the FIR in question is quashed and set aside.

5.6 Learned advocate for the applicant has placed reliance upon a judgment of the Supreme Court in *Narinder Singh and Others Vs. State of Punjab and Another*, (2014) AIRSCW 2065 : (2014) CriLJ 2436 : (2014) 4 JT 573 : (2014) 4 SCALE 195 : (2014) 6 SCC 466 , especially the principles of law laid down in paragraphs 29.2 and 29.5 thereof, and has submitted that quashing of the FIR would secure the ends of justice not only for the applicant, but would also be in the interest of the complainant, who would be able to live in dignity with her son.

5.7 Learned advocate for the applicant has further relied upon a judgment in the case of *Prashant Bharti Vs. State of NCT of Delhi*, (2013) 2 AD 89 : AIR 2013 SC 2753 : (2013) CriLJ 3839 : (2013) 1 Crimes 195 : (2013) 2 JT 240 : (2013) 3 RCR(Criminal) 399 : (2013) 1 SCALE 652 : (2013) 9 SCC 293 : (2013) AIRSCW 4428 : (2013) 1 Supreme 493 , wherein the Supreme Court was dealing with a case where the prosecutrix had developed a physical relationship during the subsistence of her marriage.

5.8 It is submitted that, as noticed by the Supreme Court in *Prashant Bharti v. State (NCT of Delhi)* (supra), there is no question of inducing the complainant into a physical relationship under the assurance of marriage in this case, as well.

5.9 On the above grounds, it is submitted that the FIR in question and all resultant proceedings be quashed and set aside.

6. Mr. L.B. Dabhi, learned Additional Public Prosecutor for respondent No. 1, has opposed the prayers made in the application by submitting that the offence of rape is a serious and non-compoundable offence and, therefore, the FIR in question may not be quashed and set aside on the ground of a compromise between the parties, and the law may be permitted to run its own course.

7. Mr. Ankit Shah, learned advocate for respondent No. 2-complainant, has submitted that she is no longer desirous of continuing criminal proceedings against the applicant. Both the applicant and the complainant are highly reputed persons in society and are well educated. They are both serving in good positions. As the matter has been amicably resolved between the applicant and the complainant, the FIR in question may be quashed in the interest of the parties. He has identified the complainant, who is personally present before this Court.

8. Having heard the learned counsel for the respective parties, it would be fruitful to notice the settled legal position with regard to quashing the proceedings on the basis of a compromise between the parties.

9. In *Madan Mohan Abbot Vs. State of Punjab*, AIR 2008 SC 1969 : (2008) CriLJ 2243 : (2008) 4 SCALE 159 : (2008) 4 SCC 582 : (2008) 1 UJ 549 : (2008) AIRSCW 2287 : (2008) 2 Supreme 750 , the Supreme Court has held that it is advisable that in disputes where the question involved is of a purely personal nature, the courts should ordinarily accept the terms of compromise even in

criminal proceedings, since keeping the matter alive, with no possibility of a result in favour of the prosecution, is a luxury which the courts, grossly overburdened as they are, cannot afford. The time so saved can be utilised in deciding more effective and meaningful litigation. The relevant paragraphs of the judgment are quoted hereinbelow:

"5. It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the FIR and the other documents on record that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has, on 11-1-2004 passed away and the possibility of a conviction being recorded has thus to be ruled out.

6. We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law."

10. In a more recent judgment in the case of *Gian Singh Vs. State of Punjab and Another*, (2012) 9 JT 457 : (2012) 9 JT 426 : (2012) 9 SCALE 257 : (2012) 10 SCC 303 , the Supreme Court has dealt with the question whether the inherent power of the High Court under Section 482 to quash criminal proceedings involving non-compoundable offences, in view of a compromise arrived at between the parties, can be exercised and, if so, under what circumstances. It has been held by the Supreme Court that where the offences concerned are purely private offences and do not involve any question of public policy, the power to quash criminal proceedings on the basis of compromise can be exercised. However, where the offences are serious and heinous, such power ought not ordinarily to be used. It has been elaborated by the Supreme Court in the above decision, that offences arising from commercial, financial, mercantile, civil, partnership or like transactions or offences arising out of matrimony relating to dowry, etc. or family disputes where the wrong is basically private or personal in nature and parties have resolved the dispute, come under the category of offences where the criminal proceedings may be quashed after the parties have amicably resolved and settled the issue. The principles of law enunciated by the Supreme Court in the above decision are encapsulated in the following paragraph of the judgment:

"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 F.I.R may be exercised where the offender and 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 victims family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominantly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

11. In *Narinder Singh And Others v. State of Punjab And Another* (supra), the Supreme Court was dealing with a case where the question arose whether the offence under Section 307 of the Indian Penal Code falling under the category of serious offence could be quashed on the basis of a settlement in exercise of power under Section 482 of the Code, as it can be termed as a serious offence having an impact upon society as held in *Gian Singh v. State of Punjab And Another* (supra). After having taken into consideration the several judgments, the Supreme Court has held as below:

"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 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, 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.

29.6 Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can

examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship."

(emphasis supplied)

12. In *Prashant Bharti v. State (NCT of Delhi)* (Supra), the Supreme Court has held as below:

"17. It is relevant to notice, that she had alleged, that she was induced into a physical relationship by Prashant Bharti, on the assurance that he would marry her. Obviously, an inducement for marriage is understandable if the same is made to an unmarried person. The judgment and decree dated 23.9.2008 reveals, that the complainant/prosecutrix was married to Lalji Porwal on 14.6.2003. It also reveals, that the aforesaid marriage subsisted till 23.9.2008, when the two divorced one another by mutual consent under Section 13B of the Hindu Marriage Act. In her supplementary statement dated 21.2.2007, the complainant/prosecutrix accused Prashant Bharti of having had physical relations with her on 23.12.2006, 25.12.2006 and 1.1.2007 at his residence, on the basis of a false promise to marry her. It is apparent from irrefutable evidence, that during the dates under reference and for a period of more than one year and eight months thereafter, she had remained married to Lalji Porwal. In such a fact situation, the assertion made by the complainant/prosecutrix, that the appellant-accused had physical relations with her, on the assurance that he would marry her, is per se false and as such, unacceptable. She, more than anybody else, was clearly aware of the fact that she had a subsisting valid marriage with Lalji Porwal. Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage. If the judgment and decree dated 23.9.2008 produced before us by the complainant/prosecutrix herself is taken into consideration along with the factual position depicted in the supplementary statement dated 21.2.2007, it would clearly emerge, that the complainant/prosecutrix was in a relationship of adultery on 23.12.2006, 25.12.2006 and 1.1.2007 with the appellant-accused, while she was validly married to her previous husband Lalji Porwal. In the aforesaid view of the matter, we are satisfied that the assertion made by the complainant/prosecutrix, that she was induced to a physical relationship by Prashant Bharti, the appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified."

(emphasis supplied)

13. It is, no doubt, true that one of the offences alleged against the applicant is that under Section 376 of the Indian Penal Code, the nature of which is serious and grave. It can be said that this offence would fall in the category of offences

that have a serious impact on society. Normally, in such cases, the Court would be cautious to quash the proceedings on the basis of a compromise. However, the facts of each case would differ and no straitjacket formula can be laid down. There can be several types of cases where the offence under Section 376 of the Indian Penal Code has been alleged. As pointed out by Mr.J.M. Panchal, learned advocate for the applicant, in cases of gang rape, rape by persons unknown to the victim, rape where extreme perversity, depravity and cruelty have been displayed, such as in the Nirbhaya Case, rape by or against family members, rape where the victim has been made unconscious, rape by persons in authority, such as, a Police Officer/s on a person in custody, doctor on his patient, a superior on his subordinate and rape on aged persons and small children, where the facts disclose extreme depravity, perversity and cruelty, it may not be prudent to quash the FIR and resultant proceedings only on the strength of a settlement between the parties.

14. The offence of rape is not only an assault on the victim but is an assault on society itself. However, at the same time, the facts of each case would have to be looked into, which would differentiate the broad categories of cases where rape is alleged, insofar as exercise of power under Section 482 of the Code for quashing the proceedings on the basis of a compromise is concerned. In cases where rape is alleged due to a love affair turning sour, or a breach of a promise of marriage, where the parties are well known to each other for years together, and are mature persons who can understand the consequences of their actions, the refusal by a Court of law to quash the proceedings may not always be in the interest of securing the ends of justice, when the complainant has voluntarily and amicably settled the matter with the accused, and where the quashing of the proceedings would be in the interest of the complainant herself. It is reiterated that each case is required to be looked into on its own facts and the implications upon society at large. The examples given hereinabove are illustrative and not exhaustive and no straitjacket formula can be laid down.

15. In *Narinder Singh And Others v. State of Punjab And Another* (supra), the Supreme Court has stated that when the parties have reached a settlement for quashing the criminal proceedings, the guiding factor would be to secure the ends of justice and to prevent the abuse of the process of any Court. While exercising the power, the High Court has to form an opinion on the aforesaid objectives.

16. Examining the present case in light of the above principles of law, this Court is of the view that both the applicant and the complainant are respected members of society and hold high positions in their respective fields. The complainant is a lady, who has a son aged ten years. Both the parties were known to each other ever since their college days. It is only the allegation of a breach of promise to marry the complainant that has led to the allegation of rape, and that too during the subsistence of her marriage. In the view of this Court, it would be in the interest of the dignity and reputation of the complainant

herself, if the proceedings are quashed, as she is no longer desirous of proceeding with the criminal proceedings. In the considered view of this Court, the present is a fit case for the exercise of power under Section 482 of the Code, in order to secure the ends of justice and prevent the abuse of the process of the Court.

17. In the present case, the applicant and the complainant were known to each other, therefore, the possibility of inducement of the complainant by the applicant to enter into physical relationship on the promise of marriage appears to be remote.

18. Besides the above aspects, this Court is also called upon to examine as to whether the possibility of conviction is remote and bleak and the continuation of the criminal case would put the accused to great oppression and prejudice and, whether extreme injustice would be caused to him by not quashing the proceedings. The factual matrix of the case would bring it into this category.

19. When the complainant herself has stated that she no longer wants to proceed further with the criminal proceedings as the dispute has been amicably resolved between her and the applicant, the refusal to exercise power under Section 482 of the Code would compel the applicant to undergo unnecessary criminal proceedings which are not likely to end in conviction.

20. At the same time, the complainant can be rid of the unpleasant nature of the proceedings and live a life of dignity with her son, by putting the past behind her. The welfare and well-being of the victim is a relevant consideration in persuading the Court to secure the ends of justice, by quashing the criminal proceedings.

21. The complainant has remained present before this Court and has reiterated the stand taken by her in the affidavit, that she has no objection if the FIR and the resultant proceedings are quashed.

22. For the aforesaid reasons, the following order is passed:

"The FIR being C.R. No.I-87 of 2013 dated 31.10.2013, registered at Bopal Police Station, Ahmedabad, against the applicant for offences punishable under Sections 376, 377, 323 and 509 of the Indian Penal Code, the charge-sheet dated 01.01.2014 and the proceedings pending before the learned 8th Additional District Judge, Ahmedabad (Rural), being Sessions Case No. 154 of 2014 are hereby quashed and set aside."

23. The application is allowed. Rule is made absolute to the above extent.

Direct Service is permitted.