

(2021) 03 DEL CK 0280

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 981 Of 2021

Pawan Gaur

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision : 26-03-2021

Acts Referred:

Constitution Of India, 1950 — Article 141
Indian Penal Code, 1860 — Section 354, 376
Code Of Criminal Procedure, 1973 — Section 320, 482

Citation : (2021) 03 DEL CK 0280

Hon'ble Judges : Subramonium Prasad, J

Bench : Single Bench

Advocate : B.P. Singh, Pratyaksh Roy, Meenakshi Chauhan

Final Decision : Dismissed

Judgement

Subramonium Prasad, J

1. The present petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) has been filed for quashing FIR No.47/2020 dated 19.02.2020, registered in Police Station Pahar Ganj, New Delhi, for offence under Sections 376 and 354 IPC on the ground that the parties have amicably settled the matter and the prosecutrix is not interested in prosecuting the petitioner.

2. On a complaint of respondent No.2, FIR No.47/2020 was registered on 19.02.2020 in Police Station Pahar Ganj, New Delhi, stating that she is staying with her mother at the address given in the FIR. It is stated that in the year 2009, the prosecutrix was working as a Probationary Officer in Bank of Baroda House Branch, India Gate where the petitioner was working as a Manager. It is alleged that the petitioner told her that he had links in the U.S.A. and he can get a job for her there and also help her settle there. In March, 2009, the petitioner lured the complainant calling her at his office at Pahar Ganj and forcefully tried to have physical relations with her, but she did not reveal the same to anyone in the hope that he would get her settled in U.S.A. It is stated that the petitioner has

established physical relationship with the prosecutrix. It is further stated that the petitioner told the mother of the prosecutrix that he has opened his company and in case the prosecutrix and her mother invest money in his company, he would give 2% monthly interest and also get a job for the prosecutrix. It is stated that the mother of the prosecutrix gave a loan of Rs.24,00,000/- to the petitioner in 2014. It is stated that after repeated requests, the petitioner gave interest of Rs.7,50,000/- from 2016 to 2017 after which he stopped giving money. It is stated that on 23.02.2019, the petitioner called the prosecutrix and told her to sit in the car while he calculates the amount which was due and payable by him. It is stated that when the prosecutrix sat in the car, he started misbehaving and starting touching her private parts. It is stated that the prosecutrix went away from the car and filed a complaint in Police Station Pahar Ganj on 25.02.2019. It is stated that the petitioner pleaded with the prosecutrix not to go ahead with the complaint and he would return the money. It is stated that two post-dated cheques of Rs.2,00,000/- and Rs.24,00,000/- were given by the petitioner. It is stated that after getting the cheques, no action was taken against the petitioner. It is stated that both the cheques got dishonoured. The complainant approached the Police Station and has given the complaint in question.

3. This petition has been filed on the ground that a Memorandum of Understanding has been entered into between the parties and the issues have been amicably settled. Other than stating that the parties have entered into an amicable settlement, no other ground has been raised in the petition on the merits of the case for quashing the complaints.

4. 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)

5. After relying on *Gian Singh (supra)*, the Supreme Court in *Narinder Singh & Ors. v. State of Punjab & Anr.* reported as (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)

6. 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)

7. The petitioner has been alleged of committing of an offence of rape. The grounds stated in the petition under Section 482 Cr.P.C. are oriented towards the fact that the parties have entered into a compromise and that no useful purpose will be served to continue with the prosecution. No ground has been raised on the merits of the case. In view of the judgments of the Supreme Court, which is

binding on all Courts under Article 141 of the Constitution of India, this Court is not inclined to quash the FIR in which offence under Section 376 IPC has been levelled against the petitioner, for the reasons that an offence under Section 376 IPC is one against the society and High Courts ought not to use the inherent powers under Section 482 Cr.P.C. in quashing FIRs under Section 376 IPC even if the prosecutrix has entered into a compromise with the accused.

8. In view of the above, the petition is dismissed.