

(2019) 02 DEL CK 0521

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 577 Of 2019

Pawan Shah & Anr

APPELLANT

Vs

State (Nct Of Delhi) & Anr

RESPONDENT

Date of Decision : 04-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 354, 354B, 509

Code of Criminal Procedure, 1973 — Section 164, 320, 482

Protection of Children from Sexual Offences Act, 2012 — Section 8

Citation : (2019) 02 DEL CK 0521

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Akhilesh Kumar, Neelam Sharma, Rakesh Kumar Chaudhary,
Priyanka Verma

Final Decision : Disposed Off

Judgement

Crl.M.A. 2416/2019 (Exemptions)

Allowed, subject to all just exceptions.

CRL.M.C. 577/2019

Quashing of FIR No. 61/2017, under Sections 354/354B/509/34 of IPC & 8 of POCSO Act, registered at police station Narela, Delhi is sought on the basis of affidavit of respondent No. 2 of 28th January, 2019.

Upon notice, learned Additional Public Prosecutor for respondent- State submits that respondent No.2 and prosecutrix are present in the Court and has been identified to be so, by learned Additional Public Prosecutor on the basis of identity proof produced by her.

Prosecutrix/Daughter of respondent No. 2, a minor is also present in the Court and she has been identified to be so, by learned Additional Public Prosecutor on the basis of identity proof produced by her and she has not supported the

prosecution case in her statement under Section 164 of Cr.P.C. Respondent No. 2 submits that the FIR of this case was registered under some misunderstanding and she supports the divergent view taken by her daughter in her statement under Section 164 of Cr.P.C. Respondent No. 2 and her daughter/prosecutrix submits that misunderstanding which led to registration of the FIR in question, now stands cleared between parties. Respondent No.2 affirms the contents of her affidavit of 28th January, 2019 supporting this petition and submits that to restore cordiality between the parties, the proceedings arising out of the FIR in question be brought to an end.

Supreme Court in *Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Vs. State of Gujarat* (2017) 9 SCC 641 has reiterated the parameters for exercising inherent jurisdiction under Section 482 Cr.P.C. for quashing of FIR / criminal complaint, which are as under:-

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot

appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

Since the misunderstanding which led to registration of the FIR in question now stands cleared between parties therefore, in view of the statement of the prosecutrix recorded under Section 164 of Cr.P.C., I find that continuance of proceedings arising out of the FIR in question would be an exercise in futility.

Accordingly, FIR No. 61/2017, under Sections 354/354B/509/34 of IPC & 8 of POCSO Act, registered at police station Narela, Delhi and the proceedings emanating therefrom are quashed qua petitioners.

This petition is accordingly disposed of.