

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 10.11.2021**
Pronounced on : 05.04.2022

+ **W.P.(CRL) 2197/2021**

V. P. SINGH @ VIJENDER PAL SINGH Petitioner

Through: Mr. Krishan Kumar and Ms. Ashu
Chaudhary, Advocates with petitioner
in person.

Versus

STATE AND ANR. Respondents

Through: Ms. Kamna Vohra, ASC for the State.
Ms. Ritu, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 for quashing and cancelling the FIR No. 1199/2021 under Section 376 IPC registered at P.S. Mahendra Park and all the proceedings thereof.

2. Briefly stated, the facts of the case are that on 16.09.2021, when petitioner came to the house of Complainant/Respondent No.2 some

disputes arose between them and due to her temperamental issues, the Complainant/Respondent No. 2 reached the police station and got registered the present FIR bearing No. 1199/2021 against the Petitioner.

3. I have heard the learned counsel for the petitioner, learned counsel for the complainant (respondent No. 2), learned ASC for the State and perused the records of this case.

4. It is submitted by the learned counsel for the petitioner as well as counsel for the respondent No. 2 that the complainant herself has turned hostile and does not want to pursue the present FIR. It is further submitted that the complainant has given her statement under Section 164 Cr.P.C. wherein she stated that the physical relations established between them were consensual. It is further submitted that the learned Trial Court has granted the regular bail to the petitioner on the basis of statement under Section 164 Cr.P.C. of the complainant. It is further submitted that no grievance of the complainant remains against the Petitioner and she has given her NOC stating that she does not want to pursue the matter against the petitioner thus, no useful purpose would be served by continuing with the present case.

5. On the other hand, learned ASC for the State submitted that the allegations against the petitioner are grave and serious in nature. He further submitted that no doubt, the complainant has given NOC stating that she does not want to pursue the matter against the petitioner but the offence under Section 376 IPC, is a very serious offence, rather it is an offence against the society and the offender cannot be allowed to be let off in the

garb of said NOC. He further submitted that the FIR may not be quashed in the instant case on the basis of the fact that complainant has turned hostile.

6. In the present case, the petitioner is accused of offence under Section 376 IPC which is a heinous offence and the offence of rape not only destroys the personality of the victim but it also scars the mental psyche of the victim which remain embedded on the mind of the victim for years together. The charges of rape are of grave concern and cannot be treated in a casual manner.

7. The issue as to whether the High Courts, while exercising its jurisdiction under Section 482 Cr.P.C, should quash an offence under Section 376 IPC has come for consideration before the Supreme Court in a number of cases. The Supreme Court has, time and again, directed that the High Court should not exercise its jurisdiction under Section 482 Cr.P.C to quash an offence of rape on the ground that the parties have entered into a compromise.

8. In *Gian Singh v. State of Punjab & Anr.*, (2012) 10 SCC 303, the Supreme Court has observed as under:

"61. The position that emerges from the above discussion can be summarized 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...***

(emphasis supplied)

9. In *Shimbhu v. State of Haryana*, (2014) 13 SCC 318, the Supreme Court has observed as under:

"20. Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a

matter to be left for the parties to compromise and settle. Since the court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurize her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the court to exercise the discretionary power under the proviso of Section 376(2) IPC." (emphasis supplied)

10. In **State of M.P. v. Madanlal**, (2015) 7 SCC 681, the Supreme Court has observed as under:

"18. The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would

allow it to be extinguished. When a human frame is defiled, the “purest treasure”, is lost. Dignity of a woman is a part of her non- perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error.”
(emphasis supplied)

11. In *State of M.P. v. Laxmi Narayan & Ors.*, (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;" (emphasis supplied)

12. In *Narinder Singh & Ors. v. State of Punjab & Anr.*, (2014) 6 SCC 466, the Supreme Court 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."
(emphasis supplied)

13. No doubt, in the present case, respondent No. 2 has turned hostile in the Trial Court and respondent No. 2 has also filed an NOC on record dated 9.11.2021 stating therein that she does not want to pursue the present FIR against accused/petitioner and she has stated in her statement under Section 164 Cr.P.C. that the physical relations between her and the accused/petitioner were established with consent and she has no objection if the present FIR bearing No. 1199/2021 is quashed as she does not wish to pursue any proceedings in FIR No. 1199/2021. But by simply entering into a compromise, charges cannot be said to have been mitigated or that the allegations leveled by the respondent No. 2 regarding the alleged offence

lost its gravity by any means. Act of rape is not an act against individual but this is an offence against the society.

14. In view of the settled position enumerated in *Gian Singh's* case (*supra*) and other cases referred to hereinabove, the criminal proceedings emanating from FIR No. 1199/2021 registered at Police Station Mahendra Park, with the allegations of rape cannot be quashed in exercise of powers vested in this Court under Section 482 Cr.P.C. on the basis of NOC given by the complainant (Respondent No. 2) and the fact that she has turned hostile does not waive off the offence as alleged by the complainant against the petitioner.

15. The petition is dismissed. Pending applications, if any also disposed of accordingly.

RAJNISH BHATNAGAR, J

APRIL 5, 2022/p