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

% *Date of Decision: 02.06.2022*

+ W.P.(CRL) 1185/2022 & CRL.M.A. 10056/2022

ARSHAD AHMAD AND ORS

..... Petitioners

Through: Mr. Arun Bhardwaj, Senior Advocate with Mr. Abhishek Sharma and Mr. Rahul Sharma, Advocates.

versus

STATE NCT OF DELHI AND ANR

..... Respondents

Through: Mr. Ranbir S. Kundu, ASC for State with Mr. Mukul Dagar, Ms. Pooja and Mr. Agniwesh Singh, Advocates along with SI Jyoti Phogal, PS Mehrauli. Mr. Hilal Haider and Mr. Butul Khan, Advocates for R-2 with complainant in person.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

SWARANA KANTA SHARMA, J. (ORAL)

1. The instant petition under Article 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, has been filed by the petitioners praying for quashing of FIR bearing No. 655/2021 registered at Police Station Mehrauli for offences punishable under Sections 376/377/498-A of the Indian Penal Code, 1860 read with Section 34 IPC.

2. Notice. Mr. Ranbir S. Kundu, ASC accepts notice on behalf of the State.
3. All the petitioners are present before this Court and have been identified by their counsel Mr. Abhishek Sharma, Advocate as well as by the Investigating Officer (IO) SI Jyoti Phogal, PS Mehrauli.
4. Investigating Officer has also identified the complainant.
5. It was observed by the Hon'ble Supreme Court in ***Gian Singh v. State of Punjab, (2012) 10 SCC 303***, that it is encouraged to quash the FIR in circumstances wherein a compromise has been achieved. The relevant extract of the judgment reads 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.”

6. Further, it has been observed in ***Narinder Singh v. State of Punjab***, (2014) 6 SCC 466 that:

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

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.”

7. In the present case, which is a matrimonial dispute, it is noted that charge-sheet has been filed under Section 376 of the Indian Penal Code, 1860, however, in her statement under Section 164 Cr.P.C., the complainant has stated that only an attempt to rape had been made by her father-in-law. Charges have not yet been framed by the learned Trial Court.

8. The complainant is present in person and this Court has questioned the complainant regarding the same. She stands by her statement which she had given under Section 164 Cr.P.C. On a query made by this Court, complainant, who is present in person, states that she has entered into a compromise out of her own free will and without any pressure, coercion or threat. She states that she has no objection if the FIR is quashed.

9. Though any case coming to an end is a welcome step as it decreases the pendency of the Courts, more so, in matrimonial offences quashing is welcome as it shows that parties have decided to put an end to the *lis* as well as to the misery they undergo due to a matrimonial case pending between them. The fact that now-a-days Sections 376 and 354 of IPC are being used along with Section 498-A IPC, which later on are compromised and are brought to this Court for quashing, needs to be curbed. This Court appreciates the stand taken by the complainant and her wish to move on in life as her future

depends on settlement of this matrimonial dispute and quashing of this FIR. In case the FIR is not quashed in this case, the entire settlement between the parties will come to an end. The complainant is a young lady who is looking for a bright future for herself, which depends on quashing of the present FIR pursuant to a settlement which she states before this Court, she has entered out of her free will and without coercion, pressure or threat. She also states that it was a family dispute and she no more wants the same to be tried in any Court of Law in any form.

10. Though, ordinarily, cases under Section 376 IPC should not be quashed and should be taken as a crime against society at large, however, in the peculiar circumstances of this matrimonial dispute case where the complainant states that her future depends on quashing of the FIR and states that rape was not committed upon her, it will be in interest of justice that if the FIR in its entirety is quashed.

11. This case has consumed much time of the Court and that of the Investigating Agency. The Court wishes that the compromise would have taken place much earlier. However, through this order let a message be sent to the society at large that compromise is the best way possible to settle disputes and the sooner the better.

12. A Demand Draft in the sum of Rs.10,00,000/- (Rupees Ten Lacs Only) bearing No.507586 dated 31.05.2022 drawn on ICICI Bank, (07) Connaught Place, New Delhi has been handed over to the complainant in the Court today towards settlement amount.

13. Considering that it is a matrimonial dispute and quashing of this FIR will ensure a better future for all the parties, I am inclined to

quash the FIR. There is no legal impediment in quashing the FIR in question.

14. It is appreciated by the Court that as the parties have reached a compromise there would be no reason to continue the ongoing proceedings. Accordingly, FIR bearing No. 655/2021 registered at Police Station Mehrauli for offences punishable under Sections 376/377/498-A of the Indian Penal Code, 1860 read with Section 34 IPC and all consequential proceedings emanating therefrom, are quashed.

15. However, keeping in view the overall facts and circumstances of the case, I direct the petitioner to deposit a sum of Rs.12,500/- in the Delhi High Court Advocates Welfare Fund within a week and the receipt thereof will be filed in proof thereof.

16. Petitioner is also directed to deposit another sum of Rs.12,500/- in Advocates Welfare Fund, Rohini Courts within a week and the receipt thereof will be filed in proof thereof. The detail of the account of Advocates Welfare Fund, Rohini Courts is as under:

A/c Name : RCBA Lawyers Welfare Fund A/c
A/c. No. : 31317782727
Bank Name : State Bank of India
IFSC Code : SBIN0010323
Branch Add.: Distt. Court Rohini, Near Antriksh
Apartments, Sector-14, New Delhi-110085

17. The petition stands disposed of along with the pending application.

SWARANA KANTA SHARMA, J.

JUNE 2, 2022/nn