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

+ CRL.M.C. 9018/2024

MOEED AHAMAD AND ORSPetitioners

Through: Mr Lewish Edward, Adv.

versus

STATE OF NCT OF DELHI AND ORSRespondents

Through: Mr Sanjeev Sabharwal, APP for State with Ms
Sanya Narula, Adv.
SI Nagendra Singh, PS- Mahendra Park.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **19.11.2024**

CRL.M.A. 34522/2024

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.A. 34584/2024

3. This is an application seeking condonation of 16 days' delay in re-filing the petition.
4. In view of the submissions made by the learned counsel for the petitioners and for the reasons stated in the application, the delay of 16 days in re-filing the petition is condoned.
5. The application is disposed of.

CRL.M.C. 9018/2024

6. This is a petition filed under Section 528 of BNSS (erstwhile Section 482 of CrPC) seeking quashing of FIR No. 436/2017 registered at Police Station – Mahendra Park and consequential proceedings emanating



therefrom. The said FIR was registered under Section 363 of IPC, and thereafter, the chargesheet has been filed under Sections 363/365/376/368/212/506/34 of IPC and Section 4 of POCSO Act.

7. He petitioners are present in Court and have been identified by their counsel, Mr Lewish Edward.

8. Respondent No. 2/complainant and respondent No.3/prosecutrix are also present in Court and have been identified by Investigating Officer, SI Nagendra Singh, PS - Mahendra Park.

9. The allegations in the FIR are made by the father of the minor child that his daughter, who was aged about 16 years on the date of the incident, had been kidnapped by the petitioner No. 1. Subsequently, the charge-sheet was filed.

10. During the pendency of the proceedings, the parties have arrived at a settlement dated 01.10.2024 wherein the complainant has settled the disputes and does not wish to prosecute the complaint/case. The prosecutrix and her father state that it was a case of love affair. On the date of the incident, the respondent No.3/prosecutrix was 16 years old and the petitioner No. 1 was 19 years old, and thereafter, both of them got married in the year 2019 according to Muslim rites & customs and have two minor children born out of the wedlock.

11. The respondent No.3/prosecutrix is 25 years old now and states that she is living happily with the petitioner No. 1.

12. Both the parties state that they have entered into the aforesaid settlement out of their own free will, volition and without any threat, force, undue influence or coercion. It is stated by the respondent Nos. 2 and 3 that they have has no objection if the aforesaid FIR is quashed *qua* the



petitioners.

13. Mr Sabharwal, learned APP vehemently opposes the quashing of the said FIR on the ground that the allegations are serious in nature being under Section 376 IPC.

14. A coordinate Bench of this Court has taken a view in the judgment dated 25.03.2021 in CRL.M.C.1015/2021 titled '**Vikash Kumar v. The State & Anr.**' Relevant paragraphs read as under:

*“8. In the present case, the allegation in the FIR is that the prosecutrix and the accused were working in the same place and have become friends. They fell in love and were living together for two years. The accused went to his native place and the FIR was lodged alleging rape. The prosecutrix has married the accused with whom she was living for two years. The prosecutrix in her affidavit has affirmed the statements made in the petition under Section 482 Cr.P.C. that the parties got married on 01.10.2020 according to Hindu Rites and Ceremonies. Their families have accepted the marriage and they have a child from the marriage. In the facts of the case, continuation of the proceedings would cause immense harm to the prosecutrix and the small child. **This Court is aware that offences like rape cannot be quashed by exercising jurisdiction under Section 482 Cr.P.C. if a compromise has been reached, but, at the same time, this Court cannot ignore and overlook the welfare of the small child and the future of the prosecutrix.***

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10. Mr. Raja Ram Sharma, learned counsel appearing for the petitioner has placed reliance on an order dated 07.09.2020 passed by this Court in Bitu Yadav @ Vikas Yadav v. State(NCT of Delhi) & Anr., [CRL.M.C.1761/2020], wherein this Court has quashed the FIR where the prosecutrix and the accused were married. Paras 17, 18 and 19 of the said order, read as under:

“17. In view of the submissions made by the respondent No.2 before this Court, the respondent No.2 is liable to be prosecuted. However, keeping in view the fact that the petitioner and respondent No.2 are married and living happy married life, I hereby refrain from taking any legal action



against the respondent No.2. A similar view was taken by this court in the case of Danish Ali v. State and Anr. in Crl.M.C.1727/2019.

18. Taking into account the aforesaid facts and the fact that the petitioner and respondent No.2 are in love affair since 2013 and they are married, this Court is inclined to quash FIR as no useful purpose would be served in prosecuting petitioner any further.

19. For the reasons afore-recorded, FIR No.384/2020 dated 31.07.2020, for the offence punishable under Sections 376/506 IPC, registered at PS-Dwarka North, Delhi and consequent proceedings emanating therefrom are quashed.”

(emphasis added)”

(emphasis supplied)

15. Further, a Coordinate bench of this Court in CRL. M.C. 4168/2022 titled as ‘**Sonu @ Sunil vs. State of NCT of Delhi & Ors.**’ vide judgment dated 26.04.2024 observed as under:-

“26. Of late, however, the Courts are faced with petitions where children, who are about to attain the age of majority, in ignorance of the statutory prohibitions and restrictions and consequences, in the name of love, commit acts which would otherwise amount to offence under the provisions of the Child Marriage Act, POCSO Act, and the IPC. Though, being minor, their consent is immaterial, however, factually it is there. This situation makes the Courts face with two consequences, either to go strictly by the mandate of the statute and convict the boy and impose punishment on him, which is rather severe in these statutes, or to exercise its power under Section 482 of the Cr.P.C. to protect the otherwise innocent children/adult by quashing the criminal proceedings. The Courts when faced with such a dilemma, has been adopting the route of exercising its power under Section 482 of the Cr.P.C., to quash such criminal proceedings where it finds that the girl was nearing the age of majority; had gone with the boy of her own free will (though it may be immaterial in law); is happily living with the boy, either in matrimony or otherwise, after attaining the age of majority;



and in some circumstances where such relationship has also resulted in children being born. The Court, in such circumstances, is persuaded to save the lives of such an accused, rather than to make him undergo trial and eventual punishment, which would not only ruin innocent lives of the parties to such a relationship, but may be, also of the children that are born therefrom. In this regard, apart from the judgments that have been cited by the learned Amicus, I may also refer to the judgment of the Supreme Court in Kapil Gupta v. State of NCT of Delhi and Another, 2022 SCC OnLine SC 1030, wherein the Supreme Court, while quashing an FIR and consequential proceedings where the accused had been charged with offence under Section 376 of the IPC, observed as under:-

“13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.”

27. Reference should also be had to the judgments of this Court in Rahul Verma v. State & Anr., 2013 SCC OnLine Del 469 and Vijay Kumar v. The State Govt. of NCT of Delhi & Anr. (judgment dated 22.05.2023 in Crl.M.C. 2153/2021).”

16. In offences under Section 376 of IPC or under POCSO Act, the Court



must be circumspect while quashing the FIR as these are offences against society, even when a compromise has been reached. But at the same time, the Court cannot overlook that both the parties i.e. respondent No. 3/prosecutrix and petitioner No. 1 are married and have children born from the wedlock. In the present case, the respondent No. 3 who is present in Court has herself made the statement that she wants to put a quietus to the matter without any undue influence, threat, pressure or coercion and out of her own free will. Further, there is no criminal intent involved in the act and it is not a case where there was a forceful physical relationship with the minor child on the date of incident. The minor child was in love with the petitioner and thereafter they both got married and two children are stated to be born from the wedlock.

17. I am convinced that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice. In the peculiar facts and circumstances of this case, this Court does not see any fruitful purpose if criminal proceedings are permitted to be prosecuted any further. In this view of the matter, there is no reason to continue the proceedings.

18. In this view of the matter, the aforesaid FIR and all consequential proceedings emanating therefrom are quashed.

19. The petition is disposed of accordingly.

JASMEET SINGH, J

NOVEMBER 19, 2024

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[Click here to check corrigendum, if any](#)