

Delhi High Court

Sunil Raikwar vs The State And Anr. on 29 January, 2021

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 186/2021

Date of decision: 29th January, 2021

IN THE MATTER OF:
SUNIL RAIKWAR

..... Petitioner

Through

Mr. Amit Gupta, Advocate

versus

THE STATE AND ANR.

..... Respondents

Through

Ms. Kusum Dhalla, APP for the State

Mr. Rahul Raheja, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner has filed this petition under Section 482 CrPC for quashing FIR No.389/2019 dated 22.11.2019 registered at Police Station Patel Nagar for offences under Section 377 IPC read with Section 4 of the Protection of Children from Sexual Offences Act (POCSO Act).

2. The respondent No.2/ complainant filed the instant FIR stating that he is a resident of H.No.26/70 Ist floor, West Patel Nagar, Central Delhi working as a mason and stays with his son aged seven years. He stated that on 20.11.2019, he returned after finishing his work at 8.00 p.m., and found his son crying. When he enquired from his son, his son told him after he left for work at 2.00 p.m., the accused who stays in the same building had come and sodomised him.

3. It is stated in the complaint that the underwear of the child was wet with blood. The FIR was lodged on 21.11.2019 and on completing investigation, the final report has also been filed stating that there is enough material to proceed against the petitioner for offences under Section 377 IPC and Section 4 POCSO Act.

4. The instant petition has been filed for quashing of the FIR primarily on the ground that due to intervention of elders of the society and friends, the parties have decided to amicably put an end to the disputes and differences. The affidavit of respondent No.2/complainant has also been filed stating that all the disputes have been settled between the respondent No.2 and the petitioner and that respondent No.2 has no objection to the FIR No.389/2019 dated 22.11.2019 registered at Police Station Patel Nagar for offences under Section 377 IPC read with Section 4 of the POCSO Act being quashed.

5. Heard Mr. Amit Gupta, learned counsel for the petitioner, Mr. Rahul Raheja, learned counsel for the respondent No.2/complainant and Ms. Kusum Dhalla, learned APP for the State.

6. The respondent No.2 has also joined the proceedings through video conferencing.

7. Section 377 IPC and Section 4 of the POCSO Act are non- compoundable offences. It is well settled that while exercising powers under Section 482 CrPC to quash criminal proceedings for non-compoundable offences on the basis of compromise, the High Court should scan the entire facts to find out the thrust of allegations and the crux of the settlement (refer State of Maharashtra v. Vikram Anantrai Doshi & Ors reported as (2014) 15 SCC 29).

8. The High Court cannot mechanically quash FIRs for non- compoundable offences by exercising powers under Section 482 CrPC just because parties have decided to bury their hatchets. It is well settled that the power under Section 482 CrPC is to be distinguished on the powers which lies on the court to compound the offences compoundable under Section 320 of the Code. No doubt, under Section 482 of the Code, High Court has the power to quash even in those cases which are not compoundable, where the parties have settled the matter between themselves, but the power has to be exercised fairly and with caution. The Supreme Court in Narinder Singh & Ors v. State of Punjab & Anr reported as (2014) 6 SCC 466 has observed as under:

"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.

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 supplied)

9. Similarly, in *Parbatbhai Aahir & Ors v. State of Gujarat & Anr* reported as (2017) 9 SCC 641 the Supreme Court has observed 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."

(emphasis supplied)

10. The Supreme Court in *Shiji & Ors v. Radhika & Anr* reported as (2011) 10 SCC 705 has observed as under:

"18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in

the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked." (emphasis supplied)

11. In the present case, the petitioner has been accused of offences under Section 377 IPC and Section 4 of the POCSO Act. The victim is a small boy of seven years. The offence alleged against the petitioner is grave. The POCSO Act was enacted only because sexual offences against children were not being adequately addressed by the existing laws and the purpose of the Act was to provide protection to children from sexual assault and sexual harassment and for safeguarding the interest and well being of children.

Permitting such offences to be compromised and quashing FIRs will not secure the interest of justice. An offence under Section 377 IPC committed on a child of seven years or an offence under Section 4 of the POCSO Act shows the mental depravity of the offender and cannot be said to be private in nature. It has serious impact on the society.

12. The father of the victim cannot be permitted to settle the dispute with the accused. He is not the victim and the courts have to safeguard and protect the interest of children against onslaught by bad forces. We cannot lose sight of the fact that the accused is being prosecuted for an offence that shocks the value system of a society and this is not a matter that can be permitted to be settled as a compoundable minor offence. Deterrence to others committing similar offence is a must and they cannot get a signal that anything and everything can be compromised. A perusal of the charge sheet which records the statement of the child given to the investigating officer shows that there is sufficient material to proceed against the petitioner for offences under Section 377 IPC and Section 4 of the POCSO Act. Needless to say, that this is only a prima facie reaction and the court trying the case is expected to decide the case without being inhibited by any remarks made hereunder. The court cannot permit quashing of the FIR because the father of the victim has decided to enter into a compromise with the petitioner/accused.

13. This court is desisting from imposing any costs on the parties for filing a petition under Section 482 CrPC for quashing of FIR in respect of a heinous offence against a small child on the ground that the parties have entered into a compromise as it will cause serious prejudice to the rights of the petitioner.

14. Accordingly, the present petition is dismissed.

SUBRAMONIUM PRASAD, J.

JANUARY 29, 2021 hsk