Urgent

1352
14/3/24
District D/O

HIGH COURT OF DELHI AT NEW DELHI
No. 1907/... /Crl.Dated 14/3/24

From:

The Registrar General,
Delhi High Court,
New Delhi.

To,

1. The PA to Registrar General , Delhi High Court , New Delhi
2. The Learned Principal District & Sessions Judge (HQ)/ Central, Tis Hazari Courts, Delhi.
3. Learned Principal District & Sessions Judge, West, Tis Hazari Court, Delhi.
4. Learned Principal District & Sessions Judge, New Delhi, Patiala House Courts, Delhi.
5. Learned Principal District & Sessions Judge, South, Saket Courts, Delhi.
6. Learned Principal District & Sessions Judge, South-East, Saket Courts, Delhi.
7. Learned Principal District & Sessions Judge, East, Karkardooma Courts, Delhi.
8. Learned Principal District & Sessions Judge, North East, Karkardooma Courts, Delhi.
9. Learned Principal District & Sessions Judge, Shahdara, Karkardooma Courts, Delhi.
10. Learned Principal District & Sessions Judge, North West, Rohini Courts, Delhi.
11. Learned Principal District & Sessions Judge, Outer District , Rohini Courts, Delhi.
12. Learned Principal District & Sessions Judge, North, Rohini Courts, Delhi.
13. Learned Principal District & Sessions Judge, South West, Dwarka Courts, Delhi.
14. Learned Principal District & Sessions Judge, Rouse Avenue Courts, Delhi.
15. Learned Additional Sessions Judge-03, Patiala House Courts, New Delhi or successor court.
16. The Director(Academies) , Delhi Judicial Academy , Address: H2XF+QH2, Pocket 1, Sector 14 Dwarka, Dwarka, Delhi, 110075
17. The SHO/IO/AO Police Station Vasant Kunj North , New Delhi

CRL.M.C No. 753/2024

VIRENDER CHAHAL @ VIRENDER .....Petitioner

VERSUS

STATE AND ANR .....Respondent

Criminal Miscellaneous Petition Under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C) for seeking Quashing of FIR No. 389 Of 2020, Registered at Police Station Vasant Kunj North for the Offence Punishable Under Section 376 Of The Indian Penal Code, 1860

Sir/Madam,

I am directed to forward herewith immediate compliance/necessary action a copy of judgment/order dated 07.03.2024 passed in the above case by Hon'ble Ms. **Justice Swarana Kanta Sharma** of this Court.

Other necessary directions are contained in the enclosed copy of order.

Yours faithfully,

Admn. Officer Judl. (Crl.II)
12/3/2024

Encl: Copy of order dated :07.03.2024
and Memo of Parties.

IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl. M.C. No: _____ of 2024

IN THE MATTER OF:-

Virender Chahal @ Virender ...Petitioner

Versus

State & Anr. ... Respondents

MEMO OF PARTIES

Virender Chahal @ Virender
S/o Sh. Jagbir Singh
R/o Village Nimri, P.O. Baund Kalan
Distt.: Charkhi Dadri
PIN-127025

PETITIONER

VERSUS

1. State

   Through the SHO
   PS Vasant Kunj North
   South-West Delhi-110070

RESPONDENT No.1

2. Ms. X

RESPONDENT No.2

Petitioner

Through:

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on: 31.01.2024*
Pronounced on: 07.03.2024

\+ CRL.M.C. 753/2024

VIRENDER CHAHAL @ VIRENDER ..... Petitioner

Through: Mr. S.S. Hooda and Ms. Rashmi Rawat, Advocates

versus

STATE AND ANR. ..... Respondents

Through: Mr. Naresh Kumar Chahar, APP for the State with SI Mukesh Kumar, P.S. Vasant Kunj (North).

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

INDEX TO THE JUDGMENT

SWARANA KANTA SHARMA, J.

1. **At the threshold of adjudication in the present case lies an important question for consideration:** Should this Court invoke its inherent powers to quash an FIR alleging commission of offence of rape, on the ground of matter having been compromised between the accused and the victim? What increases this dilemma is the revelation that the very suggestion to explore such a compromise emanated not from the disputing parties, but from the learned Trial Judge itself.

2. The petitioner has approached this Court, by way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (*'Cr.P.C.'*), seeking quashing of FIR bearing no. 389/2020, registered against the petitioner at Police Station Vasant Kunj North, Delhi, for the offence punishable under Section 376 of the Indian Penal Code, 1860 (*'IPC'*) and all consequential proceedings emanating therefrom, on the ground that the matter has been settled and compromised between the parties.

BACKGROUND OF THE CASE

I. Facts of the Case

3. On, 15.10.2020, a complaint was received by the police against the accused i.e. petitioner, regarding commission of rape and blackmailing the victim i.e. respondent no. 2 by extending threats of making her photographs viral on social media. The victim had mentioned in her complaint that her husband used to remain out of station most of the time, and in the month of April, she had befriended the accused/petitioner on Facebook, who had impersonated himself as a traffic policeman, who was a bachelor and deployed on duty in Tughlaqabad, Delhi. The victim had sent a message to him and thereafter, she had also disclosed her address to him. As alleged, the accused had visited her at 6:00 AM on 23.08.2020 when her husband had gone out, and he had also brought some snacks and cold drinks. The accused had asked the victim to bring a glass and had poured the cold drink into that glass and had offered the same to her. It is alleged that the victim had become unconscious immediately after drinking the cold drink and when she had regained consciousness, she had found herself in bed, without any clothes, and the accused was also sitting on the bed. The accused had then shown her some nude photographs and had told her that from now onwards, she will have to follow the commands of the accused, or else, he would upload her inappropriate photographs on social media. It is further alleged that the accused had also told her that he will send a boy in the evening and she should come along

with him. At about 7:30 PM on the same day, a boy had come outside her house in a white colour Santro Car, and he had taken her in the said vehicle to a hotel. The accused had met the victim there and had taken her to a hotel located in front of Gurgaon Bus Stand and had committed rape upon her at 12:30 AM including unnatural sex with her forcibly, and had thereafter dropped her at her house on the next day morning. He had also allegedly extended threats to her that if she disclosed the details of these incidents to anyone, he would post her photographs on social media and also show the same to her parents and her husband. The accused had also told her that whenever he would call, she would have to come, or else, he would kill her husband. On 02.09.2020, the accused had visited the victim's house and had again established physical relations forcibly against her wish by extending the same threats to her. She had not disclosed anything to anyone or to the police as she was scared. The accused had also taken her to a hotel in Tughalqabad, Delhi many times and had committed rape upon her, and had also administered medicines to her on several occasions. Allegedly, the accused had also threatened her that since he was in Police, she could do no harm to him even by lodging a complaint, and rather, he would be able to defame her in the society. The accused had also shown photographs of several girls in his mobile phone to the victim, who were in naked condition and had told her that he had indulged in wrongful acts with all of them but no one was able to make any complaint against him due to his contacts and approach. Thereafter, the accused had kept on committing rape upon the victim by blackmailing her on several

occasions. On 01.10.2020, the accused had come to the house of victim when she was alone, and had established physical relations against her wish and had told her that he had been transferred to Bihar and that she should accompany him to Bihar. When she had refused to do so, he had told her neighbours that she was his wife and she was married to him and he had also shown photographs of hers with him and had told her that if she did not accompany him to Bihar, he would kill her husband. On 04.10.2019 at about 6:00 AM in the morning, she had received a phone call that she should come to Bihar as early as possible or else, he would get his husband killed. In these circumstances, the victim had then made a complaint to the police. When she had told the accused that she would lodge a complaint with the police, he had sent Rs.27,000/- through PhonePe to her at about 3:30 PM on 05.10.2020, which she had given back to him at the same time. The victim alleged that the accused had committed rape upon her, prepared her inappropriate photographs and had extended threats to her and her family members and therefore, legal action should be taken against him.

II. The Investigation

4. During the course of investigation, the victim was medically examined, and her statement under Section 164 of Cr.P.C. was also recorded before the learned Magistrate. The mobile phone of the victim was also taken into possession by the police. During investigation, the account details of the complainant and the accused

were also obtained, which revealed several entries of exchange of money. The same reads as under:

> "...During further course of investigation Notice U/S 91 CrPC were served upon Manager, Axis bank and Manager SBI bank seeking details of account statement of Complainant and accused. Thereafter account statement of prosecutrix bearing acc. No. ____ was analyzed wherein the accused has sent/transferred around Rs.63000/- details of which is-
> 1. Rs.1050/- and 1000/- on Dt. 24.08.20
> 2. Rs.2500/- on Dt. 31.08.2020
> 3. Rs.13,000/- on Dt. 03.09.2020
> 4. Rs.500/- on Dt. 06.09.2020
> 5. Rs.4000/- on Dt. 07.09.2020 44
> 6. Rs.6600/- on Dt. 10.09.2020
> 7. Rs.700/- on Dt. 11.09.2020
> 8. Rs.200/- on Dt. 16.09.2020
> 9. Rs. 300/- on Dt. 17.09.2020
> 10. Rs.3500/- on Dt. 18.09.2020
> 11. Rs.2,000/- on Dt. 24.09.2020
> 12. Rs.2000/- on Dt. 25.09.2020
> 13. Rs.27,000/- on Dt. 05.10.2020
> And Complainant also transferred around Rs.30,000/- to the account of accused bearing acc. No. 000000020230732578 details of which are:-
> 1. Rs.500/- on Dt. 30.08.2020
> 2. Rs.7,000/- and 700/- on Dt. 10.09.2020
> 3. Rs.27,000/- on Dt. 05.10.2020.."

5. The accused was granted interim protection by the learned Sessions Court on 06.11.2020 with direction to join the investigation. Mobile phone of the accused was also seized. The accused had informed the police that he was in a consensual relationship with the victim, and he even used to help her monetarily.

6. Notices under Section 91 of Cr.P.C. were also served upon some Hotels in question, and details of the accused and victim in the entry registers were obtained. CDR analysis and phone location

analysis was also carried out. After conclusion of investigation, chargesheet was filed for commission of offence under Sections 376/377/328/506 of IPC.

7. Thereafter, first supplementary chargesheet was filed alongwith the FSL reports received *qua* the voice samples of the victim. Second supplementary chargesheet was also filed containing the FSL report and analysis of the mobile phone of the accused/petitioner.

ARGUMENTS ADDRESSED BEFORE THIS COURT

8. Learned counsel for the petitioner has argued that the victim and the accused were in a consensual relationship for a very long period of time, and the petitioner was falsely implicated in this case. It is submitted by the learned counsel that on 08.12.2023, the learned Trial Court had put a specific query to the victim i.e. respondent no. 2 regarding settlement of the case, to which she had agreed to settle the matter. Consequently, the parties have arrived at a compromise and have entered into a Settlement Agreement dated 06.01.2024. It is stated that as per the said Settlement Agreement, the petitioner has agreed to pay a sum of Rs.3,50,000/- to the victim/ respondent no. 2, and the victim has admitted that whatever had happened between her and the petitioner, was out of her free will and they were in a consensual relationship. It is further pointed out that the Agreement mentions that the respondent no. 2 has also accepted that she has deposed against the petitioner in her statement recorded under

Sections 161 and 164 of Cr.P.C. and during her examination-in-chief before the learned Trial Court, due to misunderstanding. Therefore, it is prayed that the FIR in question be quashed, since the matter has been settled between the parties.

9. Learned APP for the State, on the other hand, argues that the allegations against the petitioner/accused are serious and grave in nature, and the victim has supported the case of prosecution in her statements recorded under Section 161 and 164 of Cr.P.C. as well as before the learned Trial Court. It is prayed that since the settlement agreement in this case clearly reveals that the accused is paying money to the victim to get the FIR in question quashed, the present petition therefore should be dismissed.

10. This Court has heard arguments advanced on behalf of both the parties, and has gone through the material that is available on record.

QUASHING OF FIR ON THE BASIS OF SETTLEMENT: PRINCIPLES TO BE FOLLOWED

11. The petitioner and respondent no. 2 have approached this Court, seeking quashing of FIR registered for offence under Section 376 of IPC. In such circumstances, this Court has to remain guided by the principles propounded by the Hon'ble Apex Court, which govern the Constitutional Courts while adjudicating petitions seeking quashing of criminal proceedings on the basis of settlement/ compromise.

I. General Principles

12. The Hon'ble Apex Court in case of ***Narinder Singh v. State of Punjab (2014) 6 SCC 466***, after taking note of its earlier decision in case of ***Gian Singh v. State of Punjab (2012) 10 SCC 303***, had laid down the following principles which would guide High Courts in adjudicating cases relating to quashing of criminal proceedings on the basis of settlement:

> "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)

13. In ***Parbatbhai Aahir Alias Parbathbhai Bhimsinhbhai Karmur v. State of Gujrat*** *(2017) 9 SCC 641*, three-Judge Bench of the Hon'ble Apex Court, after referring to several judicial precedents, had summarized the following principles:

"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 Criminal Procedure Code, 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)

II. Can FIR registered under Section 376 of IPC be Quashed on the Basis of Compromise?

14. If one takes note of the above-referred precedents, it would emerge that the consistent view that has been expressed by the Hon'ble Apex Court in catena of judgments is that an FIR which has been registered for commission of serious offences, including offence of rape, should not be quashed on the basis of settlement or compromise arrived at between the victim and the accused.

15. In ***State of M.P. v. Madanlal*** *(2015) 7 SCC 681*, the Hon'ble Apex Court had expressed that:

> "We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of."

16. At the same time, it is also true that the Hon'ble Apex Court has also expressed that it is not an absolute rule that the FIR registered for offence under Section 376 of IPC cannot be quashed on the basis of compromise in any case. However, it is important to note that such cases adjudicated by the Constitutional Courts, including the Hon'ble Apex Court and the High Courts, often relate to those

situations where the victim and the accused are in relationship for a long period of time and FIR is registered owing to some misunderstanding, and they later get married to each other and start living together. Such intervention may also be made in cases where prosecution for offence under Section 376 of IPC has been an offshoot of some matrimonial dispute, in larger interest and for ensuring justice.

17. Needless to say, while adjudicating quashing petitions in such cases, the Courts will have to analyse all the facts and circumstances of a case including the contents of the FIR, statement of the victim recorded before the Magistrate, testimony recorded before the Trial Court, terms of settlement, *et al.*

ANALYSIS AND FINDINGS

I. Circumstances Leading To Execution Of Settlement Agreement Between The Accused And The Victim In the Present Case

18. The proceedings that took place in the present case are crucial to be taken note of. It is clearly revealed from the chargesheet, as well as from the contents of petition, that the victim/respondent no. 2 had levelled serious allegations of rape on multiple occasions, blackmailing the victim and extending threats to her, unnatural sexual intercourse, etc. against the accused/petitioner. She had reiterated her version given at the time of registration of FIR, in her statement recorded under Section 164 of Cr.P.C. before the learned Magistrate.

Charges in this case were framed against the accused, and the trial had begun. Thereafter, two supplementary chargesheets were also filed before the learned Trial Court. Charge was framed against the accused under Sections 376/328/354C/506/376(2)(n) of IPC vide order dated 05.04.2022.

19. This Court further notes that the examination-in-chief of respondent no. 2 i.e. the victim in this case had also been recorded partly before the learned Trial Court on 17.07.2023, wherein also, she had supported the case of prosecution and deposed against the present petitioner. There are specific allegations in the testimony regarding accused intoxicating the victim at her home and then establishing physical relations with her, without her consent, as well as of recording inappropriate photographs and videos of the victim and thereafter extending threats to her. Thereafter, the accused had allegedly established physical relations with the victim forcefully on two other occasions also and had extended threats to her.

20. However, **as informed to this Court and as mentioned in the settlement agreement, the learned Trial Judge had asked the victim on 08.12.2023 as to whether she wished to settle the matter with the accused.** It was on this query put by the learned Trial Judge, that the accused and the victim had decided to compromise the matter.

Contents of Settlement Agreement

21. Since the quashing of FIR has been sought on the strength of a Settlement Agreement entered into between the accused and the

victim, the contents of the Agreement dated 06.01.2024, relevant to be considered, are reproduced hereunder:

> "1. The Accused agrees to pay a sum of Rs. 3.50.000/- (Three Lakhs Fifty Thousand only) to the Prosecutrix subject to quashing of the FIR.
>
> 2. The Accused agrees to prepare a demand draft of Rs. 3,50.000/- in favour of the Prosecutrix to be presented on the date of hearing before the Hon'ble High Court.
>
> 3. The Accused agrees that the said demand draft shall be immediately handed over to the Prosecutrix if the Hon'ble High Court allows quashing of the FIR.
>
> 4. The Prosecutrix further agrees that she has deposed against the Accused in her statement recorded u/s 161 Cr. P.C., 164 Cr.P.C. and during her examination in chief before the Ld. Trial Court due to misunderstanding.
>
> 5. The Prosecutrix further agrees and states that whatever happened between her and the Accused had happened out of her free will and it was a consensual relationship.
>
> 6. The Prosecutrix further agrees she does not wish to carry on with the prosecution of the Accused and intends to get the FIR quashed.
>
> 7. That the Parties agree to take all necessary steps including affirming of Affidavits in their endeavour to get FIR No. 389 of 2020 dated 15.10.2020 registered at P.S. Vasant Kunj North quashed."

II. Beyond Bargain: Can Monetary Consideration Become Ground for Quashing FIR Registered under Section 376 of IPC?

22. A bare perusal of the Settlement Agreement entered into between the accused and the victim would reveal that the first clause of the agreement mentions that the accused would pay Rs. 3.5 lakhs to the victim in the present case, if the FIR is quashed by this Court.

23. **Money, it seems, is to be exchanged for getting a quietus to the present criminal proceedings for offence of rape—a proposition that is not only immoral but also strikes at the very core of our criminal justice system.**

24. In this Court's opinion, the offence of rape is a heinous violation of a woman's bodily autonomy and it stands as an offence against the society. While the Courts are often tasked with the responsibility of ensuring fairness and at times, reconciliation between the parties, there are certain areas where compromise is not only inappropriate but also fundamentally unjust.

25. To allow a settlement, such as the present one, to crystallize would amount to trivializing the sufferings of a rape victim, and reducing her anguish to a mere transaction. It would amount to giving a message to perpetrators of such offence that heinous act of rape can be absolved by paying money to the victim, a notion that is as repugnant as it is repulsive

26. It is also strange to note that on one hand, the Settlement Agreement mentions that the accused and the victim were in consensual relationship and the victim had deposed against the accused before the police, Magistrate, and Trial Court due to misunderstanding. However, the same is at odds with the fact that the accused is offering to pay a substantial amount of Rs. 3.5 lakhs to the victim, as a part and parcel of compromise arrived at between them. This raises significant doubts and uncertainties about the claims made within the Settlement Agreement. If the victim's prior statements given to the police, and to the learned Magistrate and before the

learned Trial Court were indeed based on a misunderstanding arising from a consensual relationship, the need for monetary compensation to settle the matter becomes questionable. Conversely, if the accused is offering money to the victim, it may also imply an acknowledgment of guilt on his part, which contradicts the assertion of a consensual relationship.

27. Thus, the motives and intentions behind the proposed compromise, as well as the credibility of the assertions made by both parties are unclear at this stage. The potential manipulation or coercion of the victim into accepting the settlement, particularly in light of the serious nature of the allegations involved in the case, cannot also be ruled out. At the same time, this Court also cannot discover as to whether the allegations levelled against the accused by the victim were true or not, since this can only determined after a full-fledged trial.

28. Though the learned counsel for the petitioner has relied upon the decision of Hon'ble Apex Court in case of ***Kapil Gupta v. State of NCT of Delhi*** *Crl.Appeal.No.1217/2022* to contend that FIR for offence of rape can be quashed on the basis of compromise, there is no gainsaying that every case has to be decided on its own merits as well as facts and circumstances. In case of ***Kapil Gupta*** *(supra)*, it was categorically expressed by the Hon'ble Apex Court that the stage of proceedings is a relevant consideration while deciding quashing petitions, and in the case before the Hon'ble Apex Court, the chargesheets had been filed but the charges had yet not been framed and thus, the trial had not begun. Contrary to this, in the case at hand,

the trial has already begun and the victim had also deposed against the accused in her partly-recorded examination-in-chief before the learned Trial Court. Thus, the decision relied upon by the learned counsel for petitioner can be of no help to him.

III. The Role of Learned Trial Court

29. This Court is disturbed by the fact that it was the learned Trial Court Judge, as stated at bar as well as in the petition which is accompanied by an affidavit regarding the truthfulness of averments made in the petition, who had enquired from the victim if she wished to enter into a compromise with the accused. The Settlement Agreement in question also mentions the same, and in fact, the Agreement also records that the parties have arrived at an agreement *"with the aid and assistance of the learned Trial Court"*.

30. The victim, who was present before this Court, also stated that she has entered into a settlement agreement only at the asking of the learned Trial Judge and this is mentioned in the Agreement itself, which is duly notarized.

31. It was stated at bar, that after the examination-in-chief of the victim had been recorded partly, the learned Trial Judge had suggested that a certain amount of money be paid to the victim and had asked her to settle the matter with the accused. The counsel for the accused also submitted before this Court that the counsel was present in the Trial Court at the said time, and since they were not

able to pay the said amount, the matter was settled for a lesser amount later.

32. The learned Trial Court in this case had framed charges against the present petitioner/accused and the prosecution evidence was being recorded before it. The victim's examination-in-chief had also been recorded partly, in which she had supported the case of prosecution, as noted above. Thus, this Court is unable to comprehend as to why the learned Trial Court Judge would have asked the victim to settle the matter with the accused, which involves offences of heinous nature such as Section 376 and 377 of IPC.

33. The role of the judiciary in the criminal justice system is one of paramount importance, charged with upholding the basic principles of rule of law, and justice, fairness, and impartiality. In cases of heinous offences especially such as sexual assault or rape, the Courts are tasked with the responsibility of conducting trials that are transparent and as per law. Moreover, in cases involving commission of offence of rape, the trial must be conducted with utmost sensitivity and diligence.

34. The victim, as a key witness, deserves to be treated with compassion and respect, and her testimony has to be given due weight and consideration. Any suggestion of compromise with the accused, particularly coming from the learned Trial Court itself, would run counter to the very basic principles of our justice system and fair trial.

35. Furthermore, the very notion of suggesting a compromise in a case such as the present one reflects a fundamental misunderstanding

of the nature and gravity of offences like rape. These are not matters which can be resolved through payment of money or out-of-court settlements; they are crimes committed against the individual as well as society as a whole, for which accountability has to be fixed, perpetrators are to be punished and justice is to be delivered to the victims through the judicial process. It goes without saying that it is incumbent upon the judiciary to uphold the dignity and rights of victims of sexual assault, to ensure that they are afforded full protection of the law.

36. Therefore, this Court expresses concern over the conduct of the learned Trial Court Judge, if it is true, that the Trial Judge had suggested and assisted the accused and the victim, in a case under Section 376 of IPC, to settle the matter, while the same Court was recording the prosecution evidence.

CONCLUSION

37. Time and again, the Hon'ble Apex Court as well as this Court has held that criminal proceedings arising out of heinous offence such as rape cannot be quashed, merely on the basis of some settlement agreement executed between the accused and the victim, except in cases where there may be extraordinary circumstances to show that continuation of criminal proceedings in a case of serious nature would in fact result in abuse of process of law or miscarriage of justice. As expressed in case of ***State of M.P. v. Madanlal*** *(supra)*,

under no circumstance can one even think of compromise in a case of rape.

38. In the present case, the victim had levelled serious allegations of sexual assault against the accused i.e. petitioner herein in her initial complaint, and the same were supported in the statement recorded under Section 164 of Cr.P.C. as well as in her party-recorded testimony before the learned Trial Court. The prosecution evidence is being recorded in the present case, and the allegations against the accused are serious in nature of establishing physical relations without consent, blackmailing, and threat of killing the family members of the victim and posting her objectionable photographs on social media. Whether the relationship was consensual or non-consensual is a matter of trial and in case it would have been found at a later stage that the victim had leveled false allegations against the accused, the Court was at liberty to take appropriate action against her.

39. However, this Court is concerned that in case, the learned Trial Court Judge had suggested to the victim that she should enter into a compromise with the accused, as stated at bar by the learned counsel for the petitioner who was present in the Court at that time and the victim in the interaction with this Court, for a certain sum of money, which if true, is not acceptable and the Trial Courts need to be sensitized in this regard.

40. Be that as it may, this Court is not delving deeper into the issue of the compromise being suggested by the learned Trial Court Judge, as the petitioners are ultimately seeking quashing based on the

settlement, which cannot be allowed even on merit *sans* the compromise.

41. Moreover, the Settlement Agreement does not reflect as to why the parties have settled the case, except the fact that the victim had agreed to settle the case upon being asked by the learned Trial Court Judge and that the accused is willing to pay Rs. 3.5 lakhs to the victim in exchange of his exoneration in the present case.

42. Thus, having regard to the overall facts and circumstances of the case, and the law laid down by the Hon'ble Apex Court in the judicial precedents, this Court is of the considered opinion that the present petition for quashing of FIR, on the basis of compromise, cannot be allowed.

43. Since this Court has rejected the present petition and the trial is to take place before the learned Trial Judge, it will be appropriate and in interest of justice, that the case is tried by another judge, lest during trial any aspersion is cast regarding fair trial as averments were made regarding the conduct of the trial judge in this petition. This Court has passed this direction to ensure that justice should not only be done but also seem to be done.

44. The judgment be circulated through the learned Registrar General, Delhi High Court to all the learned Judges of District Courts of Delhi. The covering letter of such circulation will not mention the name of the judge of the Trial Court. A copy of the judgment be also sent to the Director (Academics), Delhi Judicial Academy for taking note of its contents.

45. In view thereof, the present petition stands dismissed.

46. It is however clarified that the observations made hereinabove are solely for the purpose of deciding present petition and the same shall not affect the merits of the case during the course of trial.

47. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 7, 2024/zp