

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**  
**CrMMO No. 1250 of 2022**  
**Decided on: March 31, 2023**

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Kirpal Singh and another	Versus	.....Petitioners
State of Himachal Pradesh		...Respondent

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Coram  
**Hon'ble Mr. Justice Sandeep Sharma, Judge.**  
**Whether approved for reporting**

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For the petitioners: Mr. Lalit K. Sehgal, Advocate.

For the respondent: Mr. Anoop Rattan, Advocate General with Mr. Rajan Kahol and Mr. B.C. Verma, Additional Advocates General with Mr. Rahul Thakur and Mr. Ravi Chauhan, Deputy Advocates General.

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**Sandeep Sharma, J. (oral)**

By way of instant petition filed under S.482 CrPC, prayer has been made on behalf of the petitioners for quashing of FIR No.29, dated 25.3.2022 under Ss. 363, 366A, 376 and 506 IPC and S.6 of Protection of Children from Sexual Offences Act registered at Police Station Anni, District Kullu, Himachal Pradesh, alongwith consequential proceedings i.e. Case No. 12 of 2022 pending before learned Additional Sessions Judge, Fast Track Court, (Special Judge), Kinnaur at Rekong Peo, Himachal Pradesh, on the basis of compromise arrived *inter se* parties.

**2.** Precisely, the facts of the case, as emerge from the record, are that the FIR sought to be quashed in the instant proceedings came to be lodged at the behest of petitioner No.2/complainant, who alleged that, while she was studying in class 10<sup>th</sup> at Government Senior Secondary School Namhong, petitioner became acquainted with her

and since then, they were in touch with each other. Complainant alleged that petitioner No.1 wanted to solemnized marriage with her but since she was a minor and her father had refused to solemnize her marriage with petitioner No.1, she rejected the proposal of the petitioner No.1, but the petitioner No.1 kept on sexually assaulting her on the pretext of marriage, as a result of which, she became pregnant and now has delivered a girl child. Complainant alleged that since after delivery of the child, petitioner No.1 has failed to accept her as well as her daughter, action, in accordance with law be taken against petitioner No.1. Though, after completion of investigation, police has filed *Challan* in the competent court of law, but before the trial could go further, petitioners have entered into compromise, whereby they have resolved to settle the dispute *inter se* them amicably.

**3.** Learned Additional Advocate General states that though the petitioner No. 1 has committed a heinous offence punishable under Ss. 363, 366, 376 and 506 IPC and S.6 of the Protection of Children from Sexual Offences Act but since the petitioners have solemnized marriage with each other and out of their wedlock, a girl child has been born, it may not be in the interest of justice of the complainant and her minor child to continue with the criminal proceedings pending in the competent court of law, against the petitioner no.1.

**4.** Petitioner No.2, is also present in the court. This Court has ascertained the competency of petitioner No.2 to give statement and her ability to understand the consequences of her statement. Moreover, petitioner No.2 is accompanied by her parents and her

statement has been recorded without oath, in the presence of her parents and after being satisfied that petitioner No.2 is competent to give such statement and she understands the consequences of the same. Petitioner No.2 states that she had prior acquaintance with the petitioner No.1 and they both wanted to get married but on account of her minority, marriage could not be solemnized. She states that in fact they have got married in 2021 and FIR was lodged in 2022, due to some misunderstanding. She states that now she and her daughter have been accepted by the petitioner No.1, who is in jail at present and further by his parents, who have also come present in the court. She states that now she does not want to pursue the criminal proceedings against the petitioner No.1 and she shall have no objection, in case, FIR in question alongwith proceedings arising therefrom are quashed and set aside and petitioner No.1 is acquitted of the charges framed against him.

**5.** Learned Additional Advocate General, states that though petitioners have got married and female child has been born to them, but keeping in view the gravity of the offence alleged to have been committed by petitioner No.1, this Court may not exercise power under S.482 of the Code of Criminal Procedure to quash and set aside the FIR. However, he fairly accedes that the otherwise chances of conviction of the accused are remote and bleak in view of the statement made by petitioner No.2, more so when parties have contracted marriage and a child has been born to them, as such, respondent-State shall have no objection in case prayer made on

behalf of the petitioner for quashment of FIR alongwith consequential proceedings is allowed.

**6.** The question which now needs consideration is whether FIR's in question can be ordered to be quashed when Hon'ble Apex Court in **Narinder Singh and others** versus **State of Punjab and another** (2014)6 SCC 466 has specifically held that power under S. 482 CrPC is not to be exercised in the cases 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.

**7.** At this stage, it would be relevant to take note of the judgment passed by Hon'ble Apex Court in **Narinder Singh** (supra), whereby the Hon'ble Apex Court has formulated guidelines for accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings. Perusal of judgment referred to above clearly depicts that in para 29.1, Hon'ble Apex Court has returned the findings that 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 criminal proceedings even in those cases which are not compoundable and where the parties have settled the matter between themselves, however, this power is to be exercised sparingly and with great caution. In para Nos. 29 to 29.7 of

the judgment Hon'ble Apex Court has laid down certain parameters to be followed, while compounding offences.

**8.** Careful perusal of para 29.3 of the judgment suggests that such a power is not to be exercised in the cases 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. Apart from this, offences 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. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly arising out of commercial transactions or arising out of matrimonial relationship or family disputes may be quashed when the parties have resolved their entire disputes among themselves. Aforesaid view taken by Hon'ble Apex Court has been further reiterated in **Gian Singh v. State of Punjab and anr.** (2012) 10 SCC 303.

**9.** The Hon'ble Apex Court in case **Gian Singh** supra has held that power of the High Court in quashing of the criminal proceedings or FIR or complaint in exercise of its inherent power is distinct and different from the power of a Criminal Court for compounding offences under Section 320 Cr.PC. Even in the judgment passed in **Narinder Singh's** case, the Hon'ble Apex Court has held that while exercising inherent power of quashment under Section 482 Cr.PC the Court must

have due regard to the nature and gravity of the crime and its social impact and it cautioned the Courts not to exercise the power for quashing proceedings in heinous and serious offences of mental depravity, murder, rape, dacoity etc. However subsequently, the Hon'ble Apex Court in **Dimpey Gujral and Ors. vs. Union Territory through Administrator, UT, Chandigarh and Ors.** (2013( 11 SCC 497 has further reiterated that continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. Hon'ble Apex Court further observed that when offences of a personal nature, burying them would bring about peace and amity between the two sides.

**10.** Hon'ble Apex Court in its judgment dated 4th October, 2017, titled as **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others** versus **State of Gujarat and Another**, passed in Criminal Appeal No.1723 of 2017 arising out of SLP(Crl) No.9549 of 2016, reiterated the principles/ parameters laid down in **Narinder Singh's** case supra for accepting the settlement and quashing the proceedings.

**11.** In the case at hand, offences alleged to have been committed by the petitioner are heinous in nature, but keeping in view the fact that petitioner and complainant have solemnized marriage and even name of complainant has been entered as wife of the petitioner in the Parivar Register, this Court is of the view that it would be expedient in the interests of justice, that the criminal proceedings against the

petitioner are quashed, especially when the complainant has verified the factum of marriage *inter se* her and the petitioner and, in any case, if the criminal proceedings are allowed to continue against the petitioner, it is the complainant who would be the ultimate sufferer, in the changed scenario, where now she is wife of the accused and her interest is intermingling with that of the accused, being her husband. Moreover, this Court has onerous duty to ensure substantial justice to the parties, in exercise of power under S.482 CrPC, in the peculiar facts of the case, where, accused is now husband of the victim-prosecutrix. This court is also alive to the fact that a child has been borne out of wedlock of the parties in August, 2022, whose responsibility is also upon the petitioner, as such, welfare of not only the complainant, but the child of the parties is also involved, which fact is also required to be taken into consideration by this Court. Otherwise also, there are bleak and remote chances of conviction of accused and as such, this court sees no impediment in accepting the prayer made by petitioner for quashing of FIR.

**12.** Consequently, in view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court (*supra*), FIR No.29, dated 25.3.2022 under Ss. 363, 366A, 376 and 506 IPC and S.6 of Protection of Children from Sexual Offences Act registered at Police Station Anni, District Kullu, Himachal Pradesh lodged against petitioner No.1, alongwith consequential proceedings i.e. Case No. 12 of 2022 pending before learned Additional Sessions Judge, Fast Track Court, (Special

Judge), Kinnaur at Rekong Peo, Himachal Pradesh are quashed and set aside and the petitioner is acquitted of the charges framed against him. Petitioner No.1 be released forthwith, if not required in any other case. Registry to issue release warrants of petitioner No.1 to the Superintendent of Jail, concerned.

**13.** The petition stands disposed of in the aforesaid terms, alongwith all pending applications.

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**(Sandeep Sharma)**  
**Judge**

March 31, 2023  
(Vikrant)