The High Court of Madhya Pradesh
MCRC 39588/2019
Arif Khan Vs. State of MP & Anr.

Gwalior, dtd. 20/09/2019

Shri M. Khan, Counsel for the applicant.

Shri Purushottam Rai, Panel Lawyer for the respondent No.1/State.

Shri SS Sikarwar, Counsel for the complainant/ respondent No.2.

This petition under Section 482 of CrPC has been filed for quashment of Crime No.656/2017 registered at Police Station Bahodapur, District Gwalior for offence under Section 376 of IPC and Section 3/4 of Protection of Children from Sexual Offences Act 2012 [in short " the POCSO Act"] as well as Sessions Trial No.221/2017 pending before the Court of Tenth Additional Sessions Judge, Gwalior.

(2) It is submitted by the Counsel for the applicant that during pendency of Sessions Trial, the parties have resolved their dispute with the intervention of elderly members of the society and the applicant has married the respondent No.2 and thus, now there is no dispute between them and they want to live their life peacefully. As the applicant has married the respondent No.2, therefore, the respondent No.2 does not want to proceed further with the case and accordingly, both the parties have amicably compromised the matter. It is further submitted that this Court has extra-ordinary jurisdiction to quash the proceedings on the basis of compromise. The counsel for the applicant has relied upon the judgments passed by the Supreme Court in the case of **Parbatbhai Aahir v. State of Gujarat,** reported in **(2017) 9 SCC 641**, **Gian Singh vs. State of Punjab** reported in **(2012)**

10 SCC 303 and **Narinder Singh & Ors. vs. State of Punjab & Anr.** reported in **(2014) 6 SCC 466.**

(3) It is submitted by the Counsel for the applicant that the respondent No.2 had lodged a report 05/10/2017 on the allegations that she is aged about 17 years and about a year back, she had gone to her sister's house. The applicant, who is nephew of her sister, used to visit the house. Thereafter, she came back to her parents' home. The applicant continued to visit her parent's home and started convincing her that he would marry her. About six months back, physical relations were developed on the promise of marriage. Thereafter, the applicant continued to have physical relations with her on the promise of marriage. For the last time, he had done wrong work with her on 03/10/2017 and on the said day when she insisted to marry, then he refused to do so. Thereafter, she informed this incident to her sister Chandni and grand-mother Mustari Devi. Accordingly, the FIR was lodged on 05/10/2017.

(4) It is submitted by the Counsel for the applicant that the police, after completion of investigation, filed the charge sheet and the applicant is facing trial for offence under Section 376 of IPC and under Section 3/4 of POSCO Act, 2012. It is further submitted that during pendency of trial, due to intervention of elderly members of society, both the parties have entered into compromise and accordingly, the applicant has married the respondent No.2 on 13/04/2019. *Nikahanama* has also been annexed with the petition. It is submitted that since both the parties are residing together peacefully, therefore, the prosecution of the applicant may be quashed on the ground of compromise.

(5) Apart from the above judgments, the counsel for the applicant has also relied upon the order dated 10/04/2019 passed by a Coordinate Bench of this Court in the case of **Pankaj Parmar and Others vs. State of MP in MCRC No. 6904/2019 (Gwalior Bench)** and submitted that in the said case the offence under Section 363, 376, 120-B of IPC and under Section 5/6 of the POSCO Act was registered, and the Coordinate Bench of this Court after considering the compromise has quashed the proceedings.

(6) *Per contra,* it is submitted by the Counsel for the State that the order passed by the Coordinate Bench of this Court passed in the case of **Pankaj Parmar (supra)** is *per incuriam* and it has not taken note of the judgments passed by the Supreme Court in the case of **State of M.P. vs. Madanlal,** reported in **(2015) 7 SCC 681** and **State of M.P. v. Laxmi Narayan,** reported in **(2019) 5 SCC 688.**

(7) Heard the learned Counsel for the parties.

(8) The Supreme Court in the case of **Narinder Singh (supra)** has held 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 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 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, those criminal cases having overwhelmingly and pre-dominantly 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.
29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea

> compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.
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> 29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

(9) From the plain reading of paragraph 29.3, it is clear that the power under Section 482 of CrPC should not be exercised in those prosecutions which involve heinous and serious offences like murder, **rape,** dacoity etc. as such offences are not private in nature and have a serious impact on the society. However, for the offence alleged to have been committed under "Special Statute" like the Prevention of Corruption Act, the prosecution cannot be quashed merely on the basis of compromise between the victim and the offender.

(10) In the present case, the applicant is also facing trial for offence under Section 3/4 of POCSO Act, 2012. The POSCO Act 2012 is, undisputedly, a "Special Statute" and any offence under the "Special Statute" cannot be quashed on the basis of compromise.

(11) This Court in the case of **Monu @ Ranu Kushwah & Others vs. State of M.P. & Another** by order dated 30.11.2016 passed in **M.Cr.C.11891/2016** has held as under:-

> "**20.** In the light of the judgments passed by the Supreme Court in the cases of **Gian Singh (supra)** and **Narinder Singh (supra)** while deciding the application for quashing of FIR on the ground of compromise, the Court is under obligation to consider the nature and gravity of the offence. It was submitted by the counsel for the applicants that so far as the observation given by the Supreme Court in the cases of **Gian Singh (Supra)** and **Narinder Singh (supra)** in paragraph 29.3 is concerned the same cannot be applied to the offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In **Narinder Singh (supra)**, the Supreme Court in paragraph 29.3 has observed as under:-
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> > "(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."
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> **21.** It was contended by the counsel for the applicants that since the Supreme Court has referred to Prevention of Corruption Act and for offences committed by public servants working in that capacity, therefore, word the "special statutes" should be interpreted in the light of these two acts only. So far as the reference to Prevention of Corruption Act and offences

> of public servant is concerned, the same is merely illustrative in nature and is not exhaustive. As it has already been observed that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been enacted to check the tendency of untouchability in the society which is also prohibited under Article 17 of the Constitution of India, it is held that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is a **Special Statute** and, therefore, the power to quash the proceedings on the basis of compromise cannot be exercised. Furthermore, the orders on which the counsel for the applicants has placed reliance, the co-ordinate Bench of this Court has nowhere decided that whether proceedings for offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 can be quashed on the basis of compromise or not?.....”

(12) Thus, where the applicant is facing Trial for an offence punishable under the Special Statute, then the prosecution cannot be quashed on the basis of compromise.

(13) Section 375 Sixthly of IPC is relevant, which reads as under:-

> **"Sixthly —With or without her consent, when she is under eighteen years of age."**

(14) Thus, it is clear that where the prosecutrix is a minor below 18 years of age, then her consent would be immaterial. When an offence is made out against the accused irrespective of the fact that whether the prosecutrix was a consenting party or not, then certainly, the prosecution cannot be quashed merely on the ground that at a later stage the prosecutrix has entered into a compromise. Once the consent of the minor prosecutrix is immaterial for registration of offence, then such consent shall still remain immaterial for all practical purposes at all the stages including for compromise. Merely because, the minor prosecutrix has later on agreed to enter into a compromise with the applicant, would not be sufficient to quash the

proceedings. Since the POCSO Act, 2012 is a Special Act, therefore, in view of the provisions of Sections 375 Sixthly of IPC, the consent of the prosecutrix is material. Thus, this Court is of the considered opinion that the prosecution of the accused for offence under Section 3/4 of POCSO Act, 2012 cannot be quashed merely on the ground that the prosecutrix has compromised the matter with the accused.

(15) There is another aspect of the matter. When the consent of a minor girl is immaterial, then unscrupulous persons after the registration of offence, can get the investigation quashed on the basis of compromise. When the legislature has specially provided that the consent of a minor girl is immaterial, then the Courts cannot become an instrumentality in bypassing the specific provisions of law. The POCSO Act, 2012 is a Special Statute enacted with the object of protecting the children from sexual offences. Thus, this Court is of the considered opinion that "what cannot be done directly, cannot also be done indirectly. Further, the POCSO Act, 2012 was enacted to provide a robust legal framework for the protection of children from offences of sexual assault, sexual harassment and pronography while safeguarding the interest of the child at every stage of the judicial process. Protection of children from Sexual Offences (Amendment) Bill, 2019 provides for enhanced stringent punishment. Under these circumstances, this Court is of the considered opinion that if an accused is facing trial under the provisions of POCSO Act 2012, then his prosecution cannot be quashed in exercise of power under Section 482 of CrPC on the ground that the prosecutrix has entered into a compromise with the accused, and application for compromise is not maintainable.

(16) It is next contended by the Counsel for the applicant that the applicant is also facing trial for an offence under Section 376 of IPC and since the applicant has married the respondent No.2/prosecutrix , therefore, now there is no possibility of conviction of the applicant and thus, the trial of the applicant would be nothing, but a sheer wastage of valuable time of Court. Thus, the prosecution of the applicant for offence under Section 376 of IPC be quashed.

(17) Heard the learned Counsel for the parties.

(18) The moot question for consideration is that when the accused has married the respondent No.2/prosecutrix, then whether the prosecution of the accused for offence under Section 376 of IPC can be quashed or not ?

(19) The Supreme Court in the case of **State of M.P. vs. Madanlal,** reported in **(2015) 7 SCC 681,** has held as under :

> **"18.** The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error.

19. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the *élan vital*, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. It has to be kept in mind, as has been held in *Shyam Narain* v. *State (NCT of Delhi) (2013) 7 SCC 77* that: (SCC pp. 88-89, para 27)

> "*27.* Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilised norm i.e. 'physical morality'. In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men."

20. At this juncture, we are obliged to refer to two authorities, namely, *Baldev Singh* v. *State of Punjab (2011) 13 SCC 705* and *Ravindra* v. *State of M.P. (2015) 4 SCC 491 Baldev Singh* was considered by the three-Judge Bench in *Shimbhu (2014) 13 SCC 318* and in that case it has been stated that: (*Shimbhu case*, SCC pp. 327-28, para 18)

> "*18.1*. In *Baldev Singh* v. *State of Punjab* though the courts below awarded a sentence of ten years, taking note of the facts that the occurrence was 14 years old, the appellants therein had undergone about 3½ years of imprisonment, the prosecutrix and the appellants married (not to each other) and entered into a compromise, this Court, while considering peculiar circumstances, reduced the sentence to the period already undergone, but enhanced the fine from Rs 1000 to Rs 50,000. In the light of a series of decisions, taking contrary view, we hold that the said decision in *Baldev Singh* v. *State of Punjab* cannot be cited as a precedent and it should be confined to that case."

21. Recently, in *Ravindra*, a two-Judge Bench taking note of the fact that there was a compromise has opined thus: (SCC p. 497, paras 17-18)

> "*17.* This Court has in *Baldev Singh* v. *State of Punjab*, invoked the proviso to Section 376(2) IPC on the consideration that the case was an old one. The facts of the above case also state that there was compromise entered into between the parties.
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> *18.* In light of the discussion in the foregoing paragraphs, we are of the opinion that the case of the appellant is a fit case for invoking the proviso to Section 376(2) IPC for awarding lesser sentence, as the incident is 20 years old and the fact that the parties are married and have entered into a compromise, are the adequate and special reasons. Therefore, although we uphold the conviction of the appellant but reduce the sentence to the period already undergone by the appellant. The appeal is disposed of accordingly."
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> 22. Placing reliance on *Shimbhu*, we also say that the judgments in *Baldev Singh* and *Ravindra* have to be confined to the facts of the said cases and are not to be regarded as binding precedents."
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> (underline supplied)

(20) The Supreme Court in the case of **State of M.P. vs. Laxmi Narayan,** reported in **(2019) 5 SCC 688** has held as under :-

> **"11.** At the outset, it is required to be noted that in the present appeals, the High Court in exercise of its powers under Section 482 CrPC has quashed the FIR for the offences under Sections 307 and 34 IPC solely on the basis of a compromise between the complainant and the accused. That in view of the compromise and the stand taken by the complainant, considering the decision of this Court in *Shiji vs. Radhika (2011) 10 SCC 705*, the High Court has observed that there is no chance of recording conviction against the accused persons and the entire exercise of a trial would be exercise in futility, the High Court has quashed the FIR.
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> **11.1.** However, the High Court has not at all considered the fact that the offences alleged were non-compoundable offences as per Section 320 CrPC. From the impugned judgment and order, it appears that the High Court has not at all considered the relevant facts and circumstances of the case, more particularly the seriousness of the offences and its social impact. From the impugned judgment and order passed by the High Court, it appears that the High Court has mechanically quashed the FIR, in exercise of its powers under Section 482 CrPC. The High Court has not at all considered the distinction between a personal or private wrong and a social wrong and the social impact. As observed by this Court in *State of*

> *Maharashtra* v. *Vikram Anantrai Doshi (2014) 15 SCC 29*, the Court's principal duty, while exercising the powers under Section 482 CrPC to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement. As observed, it is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. In the case at hand, the High Court has not at all taken pains to scrutinise the entire conspectus of facts in proper perspective and has quashed the criminal proceedings mechanically. Even, the quashing of the FIR by the High Court in the present case for the offences under Sections 307 and 34 IPC, and that too in exercise of powers under Section 482 CrPC is just contrary to the law laid down by this Court in a catena of decisions."

(21) The Supreme Court in the case of **Parbatbhai Aahir v. State of Gujarat,** reported in **(2017) 9 SCC 641** has held as under :-

> **"16.** The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:
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> **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.
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> **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.
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> **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.
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> **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.
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> **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."

(22) Thus, it is clear that where the accused is facing trial for the offence of rape, then conception of compromise under no circumstances can really be thought of.

These are crimes against the body of a woman. When a woman is violated, then "purest treasure" is lost. The dignity of a woman is an essential part of her non-perishable and immortal self and no one should ever think of painting it in clay. The honour of a woman cannot be put to stake by compromise or settlement. The Supreme Court in the case of **Madanlal (supra)** has further held that "sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error or to put it differently, it would be in the realm of a sanctuary of error". Thus, it is clear that even if the accused come forward with the case that now since he has married the prosecutrix, therefore, the prosecution should be quashed, then such prayer cannot be accepted under any circumstances.

(23) Further, Delhi High Court in the case of **Vikash Kumar @ Sonu Vs. The State by** order dated **1-8-2017** passed in **Crl.M.C. No. 2763 of 2017** has held as under :-

> **"20.** The two decisions relied upon by learned Senior Advocate for the petitioner in Mr.Manteshwar Hanumantrao Kattimani Vs. State of Maharashtra and Anr. (Supra) and Jaya D.Ovhal Vs. State of Maharashtra (Supra) are not binding precedents. Otherwise also, while considering prayer of the petitioner for quashing the FIR and consequential proceedings emanating therefrom, guiding principles are laid down in Gian Singh's case (Supra).
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> "21. The petitioner could not seek any assistance by placing reliance on Deeapk Gulati vs. State of Haryana (Supra) as it was an appeal against conviction for

committing the offence punishable under Section 365/366/376IPC wherein by giving benefit of doubt, the appellant/accused was acquitted.

22. It would also be apposite to mention here that in a decision dated 3rd August, 2015 by Co-ordinate Bench of this Court in Crl.M.C. No.1824/2015, the petition under Section 482 CrPC filed by the petitioner for quashing of FIR registered under Section 376 IPC on the ground that complainant has got married to the petitioner, has been dismissed by passing the following order:-

> "This is a petition seeking quashing of the FIR No.163/2015 registered under Section 376 of the IPC at the behest of respondent No.2. Respondent No.2 is present. She is an adult stated to be 27 years of age. Her presence has been identified by the Investigating Officer. She states that she in fact wishes to marry the petitioner and the FIR has been got registered under a misunderstanding. She does not wish that any action should be taken against the petitioner. The petitioner is stated to be a Government servant.
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> In view of this factual matrix, the petitioner be not arrested till the time when the statement of the prosecutrix is recorded before the Sessions Judge.
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> Learned Public Prosecutor for the State under instructions from the Investigating Officer states that challan is almost ready and shall be filed positively within two weeks. The trial Judge will endeavour to record the statement of the prosecutrix as early as possible.
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> This Court is otherwise not inclined to entertain a quashing petition under Section 376 of IPC in view of the judgment of the Apex Court reported as 10 SCC 303 Gian Singh Vs. State of Punjab and Anr., With these directions, petition disposed of.
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> Order dasti under the signatures of the Court Master."

23.The above order passed in Crl.M.C. No.1824/2015 declining the prayer for quashing of the criminal proceedings despite the fact that the parties got married, was challenged by filing a Special Leave to Appeal

> No...../2016 (Crl.M.P. No.1865/2016) before the Supreme Court. The SLP also stands dismissed vide order dated 8th February, 2016."
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> (underline applied)

(24) The Supreme Court in the case of **Shimbhu vs. State of Haryana,** reported in **(2014) 13 SCC 318 : (2014) 5 SCC (Cri) 651,** has held as under :-

> "**20.** Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurize her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the court to exercise the discretionary power under the proviso of Section 376(2) IPC.
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> **21.** It is imperative to mention that the legislature through the Criminal Law (Amendment) Act, 2013 has deleted this proviso in the wake of increasing crimes against women. Though, the said amendment will not come in the way of exercising discretion in this case, on perusal of the above legislative provision and catena of cases on the issue, we feel that the present case fails to fall within the ambit of exceptional case where the Court shall use its extraordinary discretion to reduce the period of sentence than the minimum prescribed."

(25) So far as the order passed by the Coordinate Bench of this Court in the case **Pankaj Parmar(supra)** is concerned,it has not taken note of the judgments passed by the Supreme Court in the case of **Madanlal (supra), Laxmi Narayan (supra), Shimbhu (supra)** as well as the order passed by Supreme Court and the Delhi

High Court in the case of **Vikash Kumar @ Sonu (supra).** The Coordinate Bench of this Court has also not taken note of the fact that the POCSO Act, 2012 is a "Special Act" and thus, in the light of the judgments passed by the Supreme Court in the case of **Gian Singh (supra)** and **Narinder Singh (supra),** the compromise cannot be accepted where the accused is facing trial for offence punishable under the Special Act. The Coordinate Bench of this Court has also not taken note of the provisions of Sections 375 Sixthly of IPC which provides that sexual intercourse with or without consent of a girl below 18 years of age would be **''rape''**. Thus, when the consent of minor prosecutrix is immaterial at the time of commission of offence, then under no circumstances, her consent would become relevant for the purpose of compromise.

(26) Thus, with great respect, it is held that the order passed by the Coordinate Bench of this Court in the case of **Pankaj Parmar (supra)** has rendered *per incuriam* as the above-mentioned judgments and aspects have not been taken note of.

(27) It is further submitted by the counsel for the applicant that once the prosecutrix has entered into a compromise, then there is no possibility of conviction as she may not support the prosecution case in the trial.

(28) The submission made by the counsel for the applicant is misconceived and is hereby rejected.

(29) The Supreme Court in the case of **Hemudan Nanbha Gadhvi vs. State of Gujarat** passed vide order dated 28th September, 2018 **in Criminal Appeal**

No.913 of 2016 has held as under:-

> **" 10.** It would indeed be a travesty of justice in the peculiar facts of the present case if the appellant were to be acquitted merely because the prosecutrix turned hostile and failed to identify the appellant in the dock, in view of the other overwhelming evidence available. In **Iqbal vs. State of U.P.**, 2015 (6) SCC 623, it was observed as follows:
>
> > "15. Evidence of identification of the miscreants in the test identification parade is not a substantive evidence. Conviction cannot be based solely on the identity of the dacoits by the witnesses in the test identification parade. The prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime, like recovery of articles which are the subject matter of dacoity and the alleged weapons used in the commission of the offence."
>
> **11.** The corroboration of the identification in T.I.P is to be found in the medical report of the prosecutrix considered in conjunction with the semen found on the clothes of the prosecutrix and the appellant belonging to the Group B of the appellant. The vaginal smear and vaginal swab have also confirmed the presence of semen. A close analysis of the facts and circumstances of the case, and the nature of the evidence available unequivocally establishes the appellant as the perpetrator of sexual assault on the prosecutrix. The serologist report was an expert opinion under Section 45 of the Evidence Act,1872 and was therefore admissible in evidence without being marked an exhibit formally or having to be proved by oral evidence.
>
> **12.** The contention on behalf of the appellant that the serological report was not put to him by the court under Section 313 Cr. P.C. and therefore, he has been prejudiced in his defence, has been raised for the first time before this court. The serological report being available, it was a failure on the part of the trial court to bring it to the attention of the appellant. The prosecution cannot be said to be guilty of not adducing or suppressing any evidence. In view of the nature of the evidence available in the present case, as discussed hereinbefore, we are of the opinion that no prejudice can be said to have been caused to the appellant for that reason, as held in **Nar Singh vs. State of Haryana**, (2015) 1 SCC 496:
>
> > "32…....When there is omission to put material evidence to the accused in the course of examination under Section 313 CrPC, the prosecution

> is not guilty of not adducing or suppressing such evidence; it is only the failure on the part of the learned trial court. The victim of the offence or the accused should not suffer for laches or omission of the court. Criminal justice is not one-sided. It has many facets and we have to draw a balance between conflicting rights and duties.
>
> 33.Coming to the facts of this case, the FSL report (Ext. P-12) was relied upon both by the trial court as well as by the High Court. The objection as to the defective Section 313 CrPC statement has not been raised in the trial court or in the High Court and the omission to put the question under Section 313 CrPC, and prejudice caused to the accused is raised before this Court for the first time. It was brought to our notice that the appellant is in custody for about eight years. While the right of the accused to speedy trial is a valuable one, the Court has to subserve the interest of justice keeping in view the right of the victim's family and society at large."

(30) Thus, it is clear that even if the prosecutrix turns hostile but still the accused can be convicted on the basis of scientific and other circumstantial evidence. Thus, it cannot be said that in case if the prosecutrix turns hostile, then there is no possibility of conviction of the accused at all.

(31) The stage of trial is also crucial.

(32) The Supreme Court in the case of **Narinder Singh(supra)** in paragraph 29.7 has held as under:-

> **"29.7.** While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of

> the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

(33) Thus, it is clear that for exercising power under Section 482 of CrPC for quashing the criminal prosecution on the basis of compromise, the stage of trial is also material. The applicant is facing trial from 2017. It has not been clarified that whether the prosecutrix has already been examined in the trial or not; and whether the prosecutrix has supported the prosecution case or not. It was necessary for the applicant to clearly plead about the stage of Trial. Since the petition as well as the submissions made by the parties are completely silent with regard to the stage of trial, therefore, this Court is of the considered opinion that on this ground also, the petition is liable to be rejected.

(34) Accordingly, this petition fails and is **hereby dismissed.**

(G. S. Ahluwalia)
Judge

MKB