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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

MISC. CRIMINAL CASE No. 82 of 2024

BETWEEN:-

JITENDRA @ JITU SHARMA S/O SHRI MOHANLAL SHARMA, AGED ABOUT 68 YEARS, OCCUPATION: SERVICE R/O VILLAGE BANDERBELA TESHIL BADNAGAR DISTT. UJJAIN (MADHYA PRADESH)

.....APPLICANT

(BY SHRI RISHI KUMAR SOLANKI, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION BIRLAGRAM, NAGDA DISTRICT UJJAIN (MADHYA PRADESH)

.....RESPONDENTS

(BY MS. VINITA DWIVEDI, GA FOR STATE AND SHRI PRAKASH MALTARE, ADVOCATE FOR COMPLAINANT)

Reserved on: 24.01.2024

Delivered on:06.02.2024

This petition was heard and the Court has pronounced the the following:

ORDER

1. Heard finally, with the consent of the parties.
2. This petition under Section 482 of Cr.P.C. is preferred by the petitioners for quashment of the FIR dated 15.10.2023 registered bearing Crime No.329/2022, at Police Station Bilgram, Nagda District Ujjain under Sections 376, 450, 506 and 120-B of Indian Penal Code (hereinafter referred to as "IPC") and the consequent proceedings arising out of it.
3. As per the prosecution story, the complainant has lodged an FIR that

25.10.2023, at about 12:55PM, the prosecutrix was at her maternal home, her father was on duty, she was staying at home with her one year's child and minor brother then, the applicant who is relative of the prosecutrix, came to her house. When the prosecutrix was feeding to her son, the applicant sent her brother out of the home to carry some *Samose*, then the applicant closed the door from inside, caught hand of the prosecutrix, forced her to lay on bed and committed rape upon her forcefully against her will. The applicant threatened her to kill her family members if she disclose the incident to anyone. When her brother came, the applicant fled away from the spot. Hence, the police has lodged the FIR against the petitioner.

4. It is submitted by both parties that during pendency of the case, they have settled their dispute amicably and filed the compromise application before this Court.

5. As per the compromise application, both parties have entered into compromise with their mutual consent, they arrived at compromise voluntarily without any inducement or coercion.

6. Learned counsels for both the parties have submitted that since there is no dispute remaining between them, the proceedings of criminal case may be quashed by this Court by using extraordinary powers enshrined under Section 482 of Cr.P.C.

7. Per contra, counsel for the State has controverted the contentions of counsel for the petitioner and contended that since the offence is related to Section 376 of IPC, which is non-compoundable, cannot be permitted to be compromised by this Court by using extraordinary powers enshrined under Section 482 of Cr.P.C. as it is an offence against public interest.

8. Counsel for the petitioner has relied upon the judgement of Hon'ble Apex

Court passed in the case of **Ramgopal & Anr. vs. The State of Madhya Pradesh** passed in **CRA No.1489/2012** as well as on the judgments of coordinate Bench of this Court passed in **MCRC No.30563/2023 (Champalal vs. State of M.P. & Anr.)**, **WP No.27218/2023 (Sunil Dixit vs. State of M.P. & Anr.)**, **MCRC No.38432/2023 (Gopal vs. State of M.P. & Anr.)**, **MCRC No.17409/2023 (Lalit Silkigar vs. State of M.P. & Others)**, **MCRC No.790/2023 (Rahul Choudhary vs. State of MP & Anr)**, **MCRC No.2625/2023 (Ajay Batham vs. State of M.P. & Anr.)**, **MCRC No.43007/2023 (Manjit Singh & Anr. vs. State of M.P. & Anr.)** & in **MCRC No.478919/2023 (Deepak vs. State of M.P. & Anr.)**.

9. In turn, counsel for the State opposing the petition, has also placed reliance over the judgments of Hon'ble Apex Court passed in the case of **Gian Singh vs. State of Punjab & Anr. [(2012) 10 SCC 303]**, **Narender Singh & Ors. vs. State of Punjab & Anr. [(2014) 6 SCC 466]**, **State of Madhya Pradesh v. Madanlal [(2015) 7 SCC 681]** & **State of M.P. vs. Laxmi Narayan & Ors. [(2019) 5 SCC 688]**.

10. I have heard the counsel for the parties and perused the record as well as the judgments referred by counsel for parties.

11. From the face of report, it is clear that the offence under sections 376 IPC is non-compoundable.

12. Now, coming to the contentions raised by counsel for the petitioner and the law laid down by Hon'ble Apex Court in the case of **Ramgopal & Anr. (supra)** placed reliance by counsel for the petitioner is concerned, the case is not related to the offence under Section 376 of IPC but rather it is related only to the offence punishable under Section 294, 323, 326 read with Section 34 of IPC. Hence, the same shall not be attracted in the present case and is

distinguishable on basis of different facts.

13. Further, in **Gian Singh v. State of Punjab & Anr., (2012) 10 SCC 303**, the full Bench of Hon'ble Supreme Court has observed as under:

"61. The position that emerges from the above discussion can be summarized thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.:

- (i) to secure the ends of justice, or
- (ii) to prevent abuse of the process of any court.

In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed.

However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society..." (emphasis supplied)

14. In **Shimbhu v. State of Haryana, (2014) 13 SCC 318**, the Full Bench of Hon'ble Supreme Court has observed 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."

(emphasis supplied)

15. In Narinder Singh & Ors. v. State of Punjab & Anr., (2014) 6 SCC 466, the Supreme Court has observed as under:

"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."
(emphasis supplied)

16. So far as the judgments of the co-ordinate Bench of this Court in *MCRC No.30563/2023 (Champalal vs. State of M.P. & Anr.)*, *WP No.27218/2023 (Sunil Dixit vs. State of M.P. & Anr.)*, *MCRC No.38432/2023 (Gopal vs. State of M.P. & Anr.)*, *MCRC No.17409/2023 (Lalit Silkigar vs. State of M.P. & Others)*, *MCRC No.790/2023 (Rahul Choudhary vs. State of MP & Anr.)*, *MCRC No.2625/2023 (Ajay Batham vs. State of M.P. & Anr.)*, *MCRC No.43007/2023 (Manjit Singh & Anr. vs. State of M.P. & Anr.)* & in *MCRC No.478919/2023 (Deepak vs. State of M.P. & Anr.)* are concerned, the facts of these cases are confined to the peculiar circumstances and therefore, due to different factual matrix, they are not applicable to the case in hand, hence, distinguished.

17. In *State of M.P. v. Madanlal*, (2015) 7 SCC 681, the Supreme Court has observed 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."

(emphasis supplied)

18. Now, on this aspect, this Court can profitably rely on a full Bench decision of Hon'ble Apex Court rendered in **State of M.P. v. Laxmi Narayan & Ors., (2019) 5 SCC 688**, the Supreme Court has observed as under :

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1 That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved 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;"

(emphasis supplied)

19. However, the principle of law also came to be reiterated recently by the

Hon'ble Supreme Court in **Daxaben vs. State of Gujarat and Others [2022 Law Suit (S.C.) 882]**, wherein the Hon'ble Apex Court also considered the judgment of **State of M.P. vs. Laxmi Narayan & Ors., (2019) 5 SCC 688** and in para no.38 has held as under:-

38. However, before exercising its power under Section 482 of the Cr.P.C. to quash an FIR, criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the offence. Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim. **Crimes like murder, rape, burglary, dacoity** and even abetment to commit suicide are neither private nor civil in nature. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.

20. In view of the aforesaid propositions of law, the concept of compromise with regard to the offences of rape, cannot be accepted, because on this holy land where the belief has been prevailing since ancient golden days that "यत्र नार्यस्तु पूज्यते रमन्ते तत्र देवता" (where women is worshiped or honoured, divinity blossoms there). A women survives as a mother, wife, sister and daughter etc. of every person. Her body is known as her own temple as she is specifically known for her sacrifices. No one should be allowed to ravish her and later on, only on the basis of compromise under specific circumstances, allowed to be acquitted, specially when the legislature itself in its wisdom declines to allow such type of compromise. The offence of rape is not only grave or serious

offence which involved moral turpitude, but also it have a harmful effect on the social and moral fabric of the society and also deteriorate the public policy regarding safety and security of women.

21. No doubt, in the present case, the prosecutrix has filed a compromise for compounding the case against the petitioner which shows that she does not want to prosecute the present FIR against the petitioner. However, in view of the aforesaid discussion and law laid down by the **full Bench** of **Hon'ble Apex Court** the cases of **Gian Singh (supra), Shimbhu (supra) & State of M.P. v. Laxmi Narayan (supra)** as well as other judgements rendered in the case of **Narinder Singh (supra), State of M.P. vs. Madanlal (supra), and Daxaben (supra)**, it can be concluded that by simply entering into comprise, charges cannot be said to have been mitigated or quashed as the offence is against dignity of women as well as public interest.

22. In the result thereof, this petition filed under Section 482 of Cr.P.C. filed on behalf of the petitioner is liable to be and is hereby rejected.

(PREM NARAYAN SINGH)
JUDGE

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