

**A.F.R.****Court No. - 70****Case :- APPLICATION U/S 482 No. - 28758 of 2019****Applicant :- Kaleem And 4 Others****Opposite Party :- State Of U.P. And Another****Counsel for Applicant :- Atul Kumar****Counsel for Opposite Party :- G.A.****Hon'ble Sanjay Kumar Singh,J.**

1. Heard Sri Atul Kumar, learned counsel for the applicants and Sri Virendra Kumar Maurya, learned Additional Government Advocate assisted by Sri Prashant Kumar Singh, learned Brief holder for the State/opposite party no.1. Perused the record with the assistance of learned counsel for the parties.

2. The applicants have preferred this application for invoking inherent jurisdiction under Section 482 Cr.P.C. of this Court to quash the impugned charge-sheet dated 19.05.2019 arising out of case crime no. 0065 of 2019, cognizance order dated 01.07.2019 and proceedings of Case No. 1247/9 of 2019 (State Vs. Kaleem and others), under Sections 376, 504, 506 IPC and 3/4 D.P. Act against the applicant no.4 and under Sections 504, 506 IPC and 3/4 D.P. Act against the applicant nos. 1 to 3, Police Station Meerapur, District Muzaffar Nagar pending before Additional Chief Judicial Magistrate, Court No.3, Muzaffar Nagar.

3. Filtering out unnecessary details, basic facts of the case in brief are that the applicant no.1 (Kaleem) is husband, applicant no.2 (Mobeen) is father-in-law, applicant no.3 (Smt. Sayada @ Bhoori) is mother-in-law of victim Sabnam. On 10.03.2019, Mohd. Iqbal (brother of victim) lodged First Information Report regarding an incident dated 6.3.2019 against the accused-applicants registered as

Case Crime No. 0065 of 2019, under Sections 376D, 506, 504 IPC and 3/4 D.P. Act at Police Station Meerapur, District Muzaffar Nagar alleging inter-alia that marriage of his younger sister (victim Sabnam) was solemnized on 06.03.2019 with the applicant no.1. In the marriage, about a sum of Rs. seven lakh were spent by his family members, but the accused-applicants were not satisfied and started demanding rupees fifty thousand in cash and one Alto Car at the time of marriage. Anyhow, “*bidai*” ceremony was performed and Sabnam was sent to her matrimonial house, but on the nuptial night (first night of marriage) the accused-applicants entered into the room of victim Sabnam and started taunting/abusing for not fulfilment of their demand of dowry by her family members. On resisting by the victim Sabnam, they in abrasive tone threatened to see her. Thereafter, Daood (*brother-in-law/Jija* of the husband of victim) forcibly committed rape on victim in the first night of her marriage and therewith Kaleem (husband) following Daood also committed rape on victim. It is further alleged that after the aforesaid atrocities, she became unconscious. On the next day in morning, brother of victim received an information from unknown person that his sister in not well. On such information, informant (brother of the victim) alongwith his other family members reached at the matrimonial house of the victim and she was brought to Vashistha Hospital situated in Almaspur Chaupala, Muzaffar Nagar in a bad condition for her treatment. Seeing the crowd collected at the hospital, the accused persons ran away. Victim on gaining consciousness also told that her mother-in-law with intention to kill her choked her neck from *Dupatta*.

4. The applicants have filed the statement under Section 161 Cr.P.C. of the informant (brother of the victim), in which he has

reiterated the version of the FIR. Victim Sabnam in her statements under Section 161 Cr.P.C. as well as under Section 164 Cr.P.C. also supported the prosecution case making allegations as mentioned in the FIR. Statement under Section 164 Cr.P.C. of victim is being reproduced herein-below:-

“बयान 164 सीआरपीसी पीडिता शबनम पत्नी कलीम नि० किथौड़ा थाना मीरापुर मु०नगर व पुत्री फैय्याज नि० 248 केवलपुरी थाना सिविल लाइन मुजफ्फरनगर उम्र 27 वर्ष द्वारा सशपथ ब्यान किया कि मेरी शादी दिनांक 06.03.2019 को कलीम के साथ हुई थी शादी में मेरे माता पिता ने करीब 7 लाख रुपये खर्च किये थे। परन्तु कलीम उसके पिता मोबिन उसकी मा सायदा व बहनोई दाऊद शादी में दिये गये सामान से खुश नहीं थे और विदाई के टाईम 50 हजार रुपये नकद व गाड़ी की मांग करने लगे। मेरे घर वालों ने बहुत समझाया, यह लोग मुझे विदा करके ले गये। जब मैं ससुराल पहुंची रात को मेरे पति, सास, ससुर व नन्दोई मेरे कमरे में घुस आये आते ही इन लोगो ने मुझे दहेज का ताना मारा मेरी सायदा गले में दुपट्टा डालकर मारने का प्रयास किया मेरे सास, ससुर कमरे के बाहर चले गये। मेरे नन्दोई दाऊद ने मेरे हाथ बांध दिये पहले दाऊद ने मेरे साथ बलात्कार किया फिर कलीम ने बलात्कार किया गया। मैं बेहोश हो गयी मेरे घरवालो ने इन लोगों को फौन किया पर इन लोगो ने उठाया नहीं। इसलिये मेरे घरवाले दूसरे दिन ससुराल पहुंच गये और मेरी हालत देखकर मुझे हास्पिटल ले गये। मेरा जेवर, कपड़ा सब सामान ससुराल में ही है मैं अपनी मर्जी से बयान दे रही हूं। सुनकर तस्दीक किया। प्रमाणित किया जाता है कि यह वयान पीडिता के शब्दों में मेरे द्वारा स्वयं अंकित किया गया है। ACJ (SD) 2 मधु गुप्ता दिनांक 02.04.2019 मुजफ्फरनगर”

5. On 15.03.2019, victim Sabnam was medically examined, where her statement was also recorded by the doctor concerned. The brief statement of the victim as mentioned in the column of "description of incident in the words of narrator" in the medical examination report dated 15.03.2019 is reproduced herein-below:-

" शादी की रात को पहले ससुर एवं सास आये जिन्होंने दहेज के लिए डाटा तथा उसके बाद आदमी एवं नन्दोई ने जवरदस्ती करने की कोशिश करके बलात्कार किया जवरदस्ती दोनों हाथ बांध दिए थे। उसके बाद इसे खून जाने लगा तथा प्राइवेट डाक्टर के यहाँ भर्ती करके टांके लगवाये"

6. The Investigating Officer after investigation submitted charge-sheet dated 19.05.2019 against the accused Daood under Sections 376, 504, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act and against remaining other co-accused under Sections 504, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act mentioning that since accused Kaleem is husband of victim, therefore, rape committed by him, as per prosecution case will not come under the category of rape, on which, the Magistrate concerned took cognizance on 01.07.2019.

7. Record indicates that in the present case, earlier the victim was impleaded as opposite party no.2, but later before filing this application her name was scored out as opposite party no.2 by pen and mentioned as applicant no.5. Alongwith application, a joint affidavit of accused-applicant no.1 Kaleem and victim Sabnam has been filed and in the said affidavit the name of victim has find place as opposite party no.2.

8. It is submitted by learned counsel for the applicants that:-

(i) The applicants have been falsely implicated.

(ii) The allegations levelled against the accused-applicants in the FIR as well as in the statements of informant and victim are false and concocted.

(iii) The statement of the victim under Section 164 Cr.P.C. dated 02.04.2019 was recorded under the influence of her family members.

(iv) Now, the dispute between the parties concerned has amicably settled outside the Court and compromise deed dated 9.7.2019 has also been prepared. The affidavit of victim Sabnam and said compromise deed dated 9.7.2019 have been appended as Annexure No.6 to the application.

(v) It is also submitted that the applicant no.1 and victim is living together as husband and wife, therefore, the impugned charge-sheet and entire aforesaid impugned criminal proceedings against the applicants are liable to be quashed.

(vi) Learned counsel for the applicants in support of his submissions placed reliance on the following judgments:-

(a) Asha and another Vs. State of U.P. and another 2018 (6) ADJ 45.

(b) Vineet Kumar and others Vs. State of U.P. and another 2017 (13) SCC 369.

(c) Dr. Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others AIR 2019 SC 327.

9. Per contra, learned Additional Government Advocate has vehemently opposed the prayer of the applicants and refuting the submissions of learned counsel for the applicants submitted that:-

(i) The offence under Section 376 IPC is a serious offence against the society, therefore, the parties cannot be permitted to make compromise being non-compoundable offence.

(ii) It is also submitted that the alleged compromise deed dated 9.7.2019 has been prepared after submission of charge-sheet dated 19.05.2019 against the accused persons.

(iii) The said affidavit of compromise deed dated 9.7.2019 are not part of the case diary, therefore, the same cannot be taken into consideration at this stage.

(iv) It is also submitted that since the incident took place on the first night of marriage of the victim, therefore, it cannot be said that the accused persons have been falsely implicated.

(v) It is vehemently urged that since it is not a simple case of

matrimonial dispute, but a serious matter where victim has been raped by her brother-in-law (*Jija* of husband of the victim) on wedding night of her marriage as per allegations levelled by the victim in the present case, therefore, by saying that it is a matrimonial dispute, the applicant no.4 (Daood) cannot be let off at this stage from the offence committed by him only on the basis of alleged compromise. As such the present application is misconceived and is liable to be dismissed.

(vi) Learned Additional Government Advocate in support of his submissions placed reliance on the judgment of Apex Court in case of State of Madhya Pradesh Vs. Laxmi Narayan and others AIR 2019 SC 1296.

10. After having heard the arguments of learned counsel for the parties concerned, before delving into the matter, it is apposite to deal the judgments cited on behalf of the parties.

Firstly, I shall deal the judgments relied upon on behalf of the applicants.

(a) In the matter of **Asha and another Vs. State of U.P. and another 2018 (6) ADJ 45**, the facts of the case was that father of the victim lodged FIR that accused Anand Kumar has enticed away her daughter aged about 15 years. After investigation, charge-sheet was submitted against accused Anand Kumar under Sections 363, 366, 376 I.P.C. and  $\frac{3}{4}$  POCSO Act. Criminal Misc. Application under Section 482 Cr.P.C. was moved by the victim and accused on the ground that they are husband and wife and victim is residing with her husband. Father of the victim has lodged the false and fabricated FIR, because victim on her own free will and volition went in the company of accused. The victim after running away from her house

married with accused at Arya Samaj Mandir. The Investigating Officer in an arbitrary manner without doing fair investigation submitted charge-sheet. On the said facts that before lodging First Information Report, parties have already married with consent of each other and they are major. They are living peacefully as husband and wife, the High Court took a view that offence of rape or kidnapping or abduction has not been committed at all, therefore, criminal proceedings was quashed.

(b) In the matter of **Vineet Kumar and others Vs. State of U.P. and another 2017 (13) SCC 369**, the facts of the case was that accused has made several transactions with the complainant, her husband and son in the month of May, 2015. Accused gave Rs. 9 lakh to the husband and son of the complainant for business purpose and agreement dated 29.05.2015 was signed by the husband of the complainant and one of the accused acknowledging the payment of Rs. 6 lakh 60 thousand in cash and Rs. 2 lakh 40 thousand by cheque. Another agreement between the complainant and one of the accused was entered into on 01.06.2015 wherein it was acknowledged that complainant and her husband had taken Rs. 7 lakh 50 thousand in cash from the accused. Third agreement was entered into between the son of complainant and one of the accused on 31.08.2015 wherein son of complainant acknowledged that his parents have taken an amount of Rs. 14 lakh 50 thousand. Complainant and her husband gave cheque of Rs. 6 lakh 50 thousand to the accused for recovery of amount given by the accused. Later on, one of the accused filed complaint under Section 138 of Negotiable Instrument Act against husband and son of the complainant. Thereafter, on 30.10.2015 complainant filed an application under Section 156 (3) Cr.P.C. against all three accused

alleging commission of offence under section 376(d), 323 and 452 IPC. During investigation, complainant refused to her internal examination and husband also denied for medical examination of his wife, as much time had been elapsed. The Investigating Officer after investigation submitted final report as the allegations were found false. The police also submitted report for initiating the proceedings under section 182 Cr.P.C. against the complainant. The complainant moved protest petition, which was allowed by the Magistrate concerned on 28.05.2016. On the said facts an Application under Section 482 Cr.P.C. was preferred before the High Court, which was allowed setting aside the order dated 28.05.2016 directing the Magistrate to pass fresh order. The Magistrate again vide order dated 03.08.2016 summoned the accused. Revision was filed before the Session Judge against the order dated 03.08.2016, which was dismissed vide order dated 22.10.2016. Accused again filed an Application under Section 482 Cr.P.C. to quash the order dated 03.08.2016, which was refused by the High Court. Aggrieved by the order of the High Court, accused approached the Apex Court by filing S.L.P., which has been allowed and criminal proceedings against the accused was quashed in the light of guideline laid down under the category no.7 as innumarated in case of State of Haryana and others Vs. Bhajan Lal and others 1992 SCC (Cr.) 426 considering that criminal proceedings is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

(c) In the matter of **Dr. Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others AIR 2019 SC 327**, the facts of the case was that FIR was registered on 06.12.2000 against accused-

appellant under Sections 376(2)(b), 420 read with Section 34 of the Indian Penal Code and under Section 3(1)(x) of the SC/ST Act. In the said case, accused-appellant was serving as a medical officer in the Primary Health Center and complainant was working as Assistant Nurse in the same health center. Both accused and complainant on account of having love affair started residing together. They were in relationship with each other and they resided some time at her house and some time at the house of the appellant. When the complainant came to know that accused-appellant has married with some other women, then she lodged complaint. The Apex Court on the said fact has held that there is clear distinction between rape and consensual sex. It was also held that if the allegations made in complaint are taken at their face value and accepted in their entirety, they do not make out a case of rape against accused-appellant, therefore, complaint registered under Section 376(2)(b) cannot be sustained. On the said observation, charge-sheet dated 14.06.2001 filed in the said case was quashed by the Apex Court.

Now Court proceed to deal with the judgment relied upon by the prosecution.

(a) Three judge Bench of the Apex Court recently on 5.3.2019 in the matter of **State of Madhya Pradesh Vs. Laxmi Narayan and others AIR 2019 SC 1296** has ruled that the criminal proceedings for the offence of “rape” cannot be quashed merely on the basis of compromise made between the victim and offender. The guideline laid down by the Apex Court in para 13 of the said judgment is reproduced herein-below:-

*"13. 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:*

*i) 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;*

*ii) 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;*

*iii) similarly, such power is not to be exercised for the offences under the special statutes like 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;*

*iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc., which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;*

v) *while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."*

11. In view of aforesaid discussions, it is apparent that the judgments relied upon on behalf of the accused-applicants are not helpful to the applicants as the aforesaid cases are distinguishable on the facts, as such the same are not applicable in the present case. Here it is apposite to mention that even one additional or different fact may make big difference between the conclusions in two cases and blindly placing reliance on a decision is never proper. It is trite law that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. Every case has to be decided on its own facts and no hard and fast rule can be laid down as regards the cases, which deserve quashing by the High Court in exercise of power u/s 482 of the Code of Criminal Procedure. If, considering the special facts of a case, the court decides to quash the charge-sheet on the basis of compromise in a particular case, that ipso facto does not justify quashing of the charge-sheet in every other case involving the commission of an offence punishable under the same provision of law or with equal or even lesser punishment. The nature of the offence than in fact is more important than the punishment prescribed for it.

12. In **Bodhi Sattwa Gautam Vs. Subhra Chakraborty, AIR 1996 SC 922**, the Hon'ble Supreme Court observed, inter alia, as under:-

*"Unfortunately, a woman, in our country, belongs to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments and have, therefore, been the victim of tyranny at the hands of men with whom they, fortunately, under the Constitution enjoy equal status. Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life.*

*Women, in them, have many personalities combined. They are mother, daughter, sister and wife and not play things for centre spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the roles assigned to them by nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world.*

*Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will-power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects."*

13. Sexual offences constitute an altogether different class of crime which is the result of a perverse mind. By their very nature these crimes cannot be treated at par with matrimonial offence. Sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right of privacy and sanctity of a female and is a

serious blow to her supreme honor offending her self-esteem and dignity. Allowing quashing of charge-sheet, pursuant to a compromise, will, in such cases, only embolden the perpetrators of such crimes, which otherwise are on the increase, in society. If the accused in such a case is an affluent person and the prosecutrix comes from a socially or economically weaker strata of the society, quashing in such a case would only encourage commission of such offences, as the accused, using his money power or otherwise, may be able to induce the prosecutrix/victim to enter in to settlement with him and then seek quashing of criminal proceedings, on the strength of that settlement.

14. The present case, in hand, is not a simple case of matrimonial dispute, but it is aggravated form of cruelty, because as per the prosecution case bride (victim) has been forcibly raped by *Jija* of her husband and thereafter by her husband on her first night of marriage in barbarian manner in her matrimonial home on account of non fulfillment of demand of dowry, which is a serious offence, which suffocate the breath of life and sully the reputation of the victim. The rape is non-compoundable offence and it is an offence against the society, therefore, it is not a matter to be left for the parties to make compromise and settle the issue outside the Court. Though except the offence under Section 376 I.P.C. other sections of I.P.C. are compoundable, but it is not necessary that in all such cases, the consent given by the victim for compromising the case is a genuine consent. Possibility of giving consent under compelling circumstances against the wishes of the victim cannot be ruled out. There is every possibility that victim might have been pressurized by the accused persons by different means compelling her to opt for a compromise. The Court cannot always be assured that the consent

given by the victim is a genuine consent. The act and conduct of the accused-applicants in the present case are against the civilized norms. Such offences have serious impact on society and are distinct from other matrimonial offences, where parties have resolved their dispute and because of compromise between the victim and offender, possibility of conviction is remote and bleak. Genuineness of the compromise, which is not a part of the case diary or the prosecution case, cannot be adjudicated at this stage in the present application, which cannot be more appropriately gone into by the trial court at the appropriate stage.

15. In the light of above discussion and after elaborate and wholesome treatment of the issues as laid down by the Apex Court recently in case of Laxmi Narain (supra), I do not find any merit in the present application. The relief as sought by the accused-applicants cannot be granted under the facts and circumstances of the case. This Court is of the view that it is well settled that the appreciation of any foreign document, which is not part of the case diary is a function of the trial court at the appropriate stage. It is also settled by the Apex Court in catena of judgments that the power under Section 482 Cr.P.C. at pre-trial stage should not be used in a routine manner, but it has to be used sparingly, only in such a appropriate cases, where uncontroverted allegations made in FIR or charge-sheet and the evidence relied in support of same do not disclose the commission of any offence against the accused. Genuineness or otherwise of the allegation cannot be even determined at this pre-trial stage.

16. In view of above, the impugned criminal proceeding under the facts of this case cannot be said to be abuse of the process of the Court. There is no good ground to invoke inherent power under

Section 482 Cr.P.C. by this Court. Hence, criminal proceedings against the applicants is not liable to be quashed. As a fallout and consequence of above discussion, the relief as sought by the applicants through this application is **refused**.

17. The instant application lacks merit and is, accordingly, **dismissed**.

18. Office is directed to communicate this order to the concerned court below within two weeks.

**Order Date :- 22.8.2019**

AK Pandey