



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 8810 of 2024

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BHAVINBHAI DEVSHANKARBHAI MODHA & ORS.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR SHALIN MEHTA, SR. ADVOCATE with MR SANDEEP R LIMBANI(5977) for the
Applicant(s) No. 1,2,3

for the Respondent(s) No. 2

MR MANAN MAHETA, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

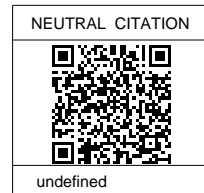
Date : 08/05/2024

ORAL ORDER

[1.0] Registry to accept vakalatnama of learned advocate Mr. Mahesh Pujara, who has instructions to appear for respondent No.2.

[2.0] RULE. Learned APP waives service of notice of Rule for and on behalf of respondent No.1 – State of Gujarat and learned advocate Mr. Mahesh Pujara waives service of notice of Rule for and on behalf of respondent No.2 – original complainant. With the consent of learned advocates appearing for respective parties, present petition is taken up for final hearing today.

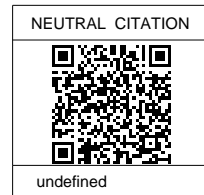
[3.0] By way of present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the petitioners have sought quashing of the impugned FIR being CR No.11208057230026 of 2023 registered with Cyber Crime Police Station, Rajkot City for the offences punishable under Sections



354A, 354C, 376D, 498-A, 506(2) 508, 509, 34 and 114 of the Indian Penal Code, 1860 (for short "IPC") and sections 66(e) and 67(a) of the Information Technology Act, 2000 as well as consequential proceedings thereto being Sessions Case No.267 of 2023 pending in the Court learned 4th Additional Sessions Judge, Rajkot.

[4.0] Heard learned Senior Advocate Mr. Shalin Mehta assisted by learned advocate Mr. Sandeep Limbani for the petitioners, learned APP for respondent No.1 – State of Gujarat and learned advocate Mr. Mahesh Pujara for respondent No.2.

[5.0] Learned Senior Counsel for the petitioners has submitted that settlement has taken place between the parties and now, no purpose would be served in continuing with such proceedings and hence, has sought quashing of the proceedings on the ground of settlement. Herein, the victim is the wife of petitioner No.2 and hence, no offence under Section 376 of the IPC is made out. Even, the accused persons are the family members and considering the relationship between the accused and respondent No.2, consent quashing is required to be considered. Further, in absence of any medical evidence, symptom or no proof of rape, if proceeding is not quashed then it would be nothing but rigmarole of trial and therefore, he has requested to consider the affidavit filed by respondent No.2 – original complainant. He has further submitted that the petitioners are behind the bars. He has relied on the unreported decision dated 10.08.2022 of the Hon'ble Supreme Court in the case of **Kapil Gupta vs. State of NCT of Delhi & Anr.** rendered in **Criminal Appeal No.1217 of 2022** and has requested to allow the present



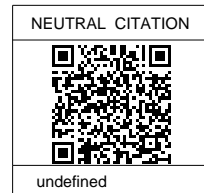
petition and quash and set aside the impugned proceedings.

[6.0] Learned APP has vehemently opposed the present petition and has submitted that after investigation sufficient evidence is collected which *prima facie* suggests involvement of present accused persons. Further, offences are not against a person but against the society as very serious allegations of non-compoundable offences are leveled. Even, the coordinate Bench has been pleased to reject application for regular bail of one of the accused that too after filing of the charge-sheet considering all the evidence and material collected during the investigation and considering the involvement of the present petitioners – accused. Hence, he has requested to dismiss the present petition.

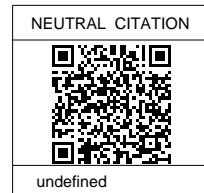
[7.0] Learned advocate Mr. Mahesh Pujara for respondent No.2 – original complainant has submitted that respondent No.2 has settled the dispute with the petitioners and has filed an affidavit of settlement stating that she do not want to further prosecute the present petitioners. He has therefore requested to pass appropriate order.

[8.0] Before discussing legal submissions made on behalf of the respective parties, it would be appropriate to refer to the facts in brief of the case on hand.

[8.1] The respondent No.2 got married with petitioner No.2 i.e. petitioner No.1 somewhere in the year 2022 and, thereafter, she started living at her matrimonial home. There are in all total three members at her marital home i.e, husband, mother-in-law and father-in-law. From the wedlock, two baby were born. It is



further alleged that after sometime of the marriage, the father-in-law i.e. petitioner No.1 herein started instigating petitioner No.2 (husband) to record the nude photographs and videos of the respondent No.2 so that they can upload it on one particular porn website. Accordingly, the petitioner No.2 started recording her nude videos in his mobile and thereafter, forwarded it on the mobile of her father-in-law. The mother-in-law of the complainant was also aware about the same and all these acts were being done in the presence of the mother-in-law also. As per the say of respondent No.2, as her marital family was in desperate need of money to prevent their hotel being sold out by other partners, they decided to record the nude videos of the respondent No.2 to upload on one porn website against which they will get money. Therefore, the husband of the respondent No.2 started recording their intimate moments in the camera of his mobile, which was objected to by respondent No.2. However, her husband said her to do whatever his father is saying. Then, she complained to her mother-in-law, who also stood with her son and husband and told respondent No.2 to act as per the say of her son and husband. Not knowing what to do, respondent No.2 merely relented. It is also alleged that when respondent No.2 was alone at home, the father-in-law was molesting her. The husband of respondent No.2 made her to do things, which according to the respondent No.2, were unnatural. Thus, to fulfill their common intention, all the accused persons, in connivance with each other, have committed the said offence. In this regard, FIR came to be filed for the offences punishable under Sections 354A, 354C, 376D, 498-A, 506(2) 508, 509, 34 and 114 of the IPC and sections 66(e) and 67(a) of the Information Technology Act, 2000.

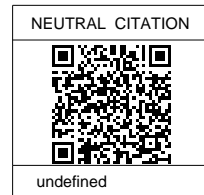


[8.2] After investigation, charge-sheet came to be filed for the offences punishable under Sections 354A, 354C, 376D, 498-A, 506(2) 508, 509, 34, 114 and 201 of the IPC and sections 66(e) and 67(a) of the Information Technology Act, 2000, which culminated into Sessions Case No.267/2023 and is pending before the Court of learned 4th Additional Sessions Judge, Rajkot. During the pendency of the Sessions Case No.267/2023, settlement is arrived at between the parties and respondent No.2 has filed an affidavit dated 02.05.2024, which is annexed with the petition at Annexure-I.

Hence, present petition on the ground of settlement.

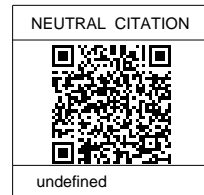
[9.0] I have given thoughtful consideration to the arguments canvassed by both the sides.

[10.0] At the outset, it is worth to mention that present is a petition on the ground of settlement seeking quashment of proceedings for the offences punishable under Sections 354A, 354C, 376D, 498-A, 506(2) 508, 509, 34, 114 and 201 of the IPC and sections 66(e) and 67(a) of the Information Technology Act. It is pertinent to note that the offences punishable under Sections 354A, 354C, 376D and 498-A of the IPC are non-compoundable. Said offences alleged against the petitioners are serious one and against the State and not against a person. The allegation is that petitioner No.2 committed forcible sexual assault on the respondent No.2 though the same is not made out against petitioner No.2 – husband but is made out against petitioner No.1 and these acts have been done with respondent No.2 against her will and such conduct is reprehensible and is crime against the society and defies and degrades victim



physically as well as mentally and shakes very core of life, liberty and dignity of a victim and such episode has put on peril sacramental marriage life of victim. Considering the aforesaid facts, present petition *prima facie* cannot be entertained on the ground of settlement.

[10.1] Now, turning back to the facts of the case, perusing the charge-sheet papers, it appears that husband, father-in-law and mother-in-law of respondent No.2 all are involved in the immoral sexual activity. Then, private and intimate moments of respondent No.2 with her husband have been recorded by father-in-law in camera of husband with the aid of mother-in-law and thereafter, said obscene photos and videos are uploaded on whatsapp group and on some porn website also. Even, accused father-in-law and mother-in-law have also actively involved and participated in commission of the offence and they have also with the aid of CCTV camera installed in the bedroom of respondent No.2 captured her private moments and the said moments being watched by father-in-law and mother-in-law of respondent No.2 and her husband and they have also taken nude photographs and videos of respondent No.2 and shared on whatsapp group. Even, it is alleged against the father-in-law that he touched the private parts of respondent No.2 while she was hospitalized and feeding her twins and the father-in-law even touched and squeezed her breast and under the pretext of applying skin ointment he used to penetrate his organs in the private parts of victim. This Court is of considered view that very serious allegations are leveled for which ample evidence is collected during the investigation including the nude photographs uploaded on the whatsapp groups and accused

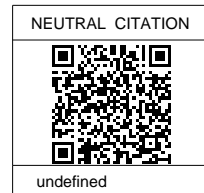


husband and his father have disrobed the victim and molested her chastity with common intention by making porn and nude photographs for making money i.e. only for their personal gain.

[10.2] So far as submission of learned Senior Counsel for the petitioners that offence under Section 376 of the IPC is not made against the husband and father-in-law is concerned, it is to be noted that considering the nature of allegations, the offence is made out against father-in-law and all accused being family members with common intention and in abatement offence being committed and in aid of sections 34 and 114 of the IPC, petitioners have been arraigned as accused. Even otherwise, there are serious allegations of the offences punishable under Sections 354A, 354C, 376D, 498-A, 506(2) 508, 509, 34 and 114 of the IPC and sections 66(e) and 67(a) of the Information Technology Act, 2000.

[10.3] So far as offence under Section 354 of the IPC is concerned, whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, is said to have committed the offence under Section 354 of the IPC. Herein, intention and act of accused persons are very clear. Due to their criminal force, they compelled the victim knowing fully well and knowing that due to such act on their part, the modesty of the victim would be outraged.

[10.4] So far as offence under Section 354C of the IPC is concerned, if any man who watches, or captures the image of a woman engaging in a private act in circumstances where she



would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such images are punishable under this section. Herein, though fully aware of the provided act, accused have watched on telephone by installing CCTV footage and though fully aware that privacy of victim is compromised and fully aware of the fact that her private parts and genitals are exposed and she is outraged and her body is not fully covered though the said act being published in the whatsapp group.

[10.5] So far as section 376 of the IPC is concerned, accused persons being the family members have abused the victim. The offence of rape is extremely reprehensible and hated crime. Section 375 of the IPC reads as under:

"375. Rape.—

A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

*(First.)— **Against her will.***

*(Secondly.) — **Without her consent.***



*(Thirdly.) — With her consent, when her consent has been **obtained by putting her or any person in whom she is interested, in fear of death or of hurt,***

(Fourthly.) — With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly.) — With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly.) — With or without her consent, when she is under eighteen years of age.

(Seventhly.) — When she is unable to communicate consent.

Explanation 1.— For the purposes of this section, "vagina" shall also include labia majora.

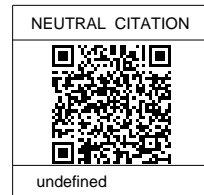
*Explanation 2.— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates **willingness to participate in the specific sexual act:***

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.— A medical procedure or intervention shall not constitute rape.

Exception 2.— Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

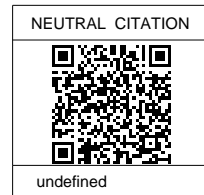
Keeping in mind the aforesaid fact, section 375(b) of the IPC clearly covers the act of accused father-in-law also and the act on the part of victim as a consent or free consent as she has



not given any free consent and that too for disseminating her private moments. It is needless to say that the said private moments are captured and watched by the accused persons and uploaded and made viral in whatsapp groups and acted in furtherance of common intention and have abetted the offence.

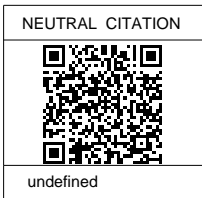
[10.6] Keeping the aforesaid facts in mind, offence under Sections 66(e) and 67(a) of the Information Technology Act are also made out. As the offences against woman are made out, as discussed above, compounding of such offence under Section 77A of the Information Technology Act also provides that the Court shall not compound any offence where such offence affects the socio-economic condition of the country or has been committed against a child below the age of 18 years or woman.

[10.7] It is settled proposition of law that no exception under law can be so absolute that it becomes a license for the commission of a crime against society. The argument canvassed by learned Senior Counsel is not acceptable. The action of the offender which is shocking the sense of decency of a woman. Indian culture and society honours modesty of women and any act that is seen as an insult to modesty is considered not to be a grave offence only but moral wrong also. The offence of outraging the modesty of a woman is not limited to physical acts of violence but also includes any verbal or non-verbal conduct that is intended to insult the same. The offence is considered in present time the issue of the safety and security of women has come to the forefront with several instances and cases of sexual offences against women being reported. The Indian government



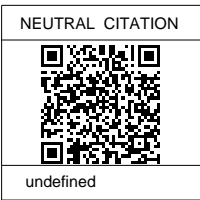
has taken steps to strengthen laws against sexual offences, including the introduction of stricter deterrents for rape and sexual assault. However, sexual offences against women continue to be a major problem, efforts are still needed to ensure that laws are effectively implemented. It is important for individuals to be aware of their rights and for society to take a zero-tolerance approach toward sexual offences. Modesty is not only limited to physical modesty but it also includes moral and psychological modesty. The moral modesty of a woman is said to be the sense of shame or bashfulness that a woman feels when faced with any act that is intended. In the case of **Ramkripal S/O Shyamlal Charmakar vs State Of Madhya Pradesh** reported in **(2007)11 SCC 265**, the Hon'ble Supreme Court of India had considered the relationship between Section 354 and Section 509 of the IPC. Further, it would be profitable to quote the decision of the Karnataka High Court in the case of **Hrishikesh Sahoo vs. State of Karnataka** reported in **2022 LiveLaw (Kar.) 89** wherein the Karnataka High Court has been pleased to observe that exemption to marital rape is regressive and would run counter to the principle of equality and Court has been pleased to hold that the charge framed against the husband due to exception to marital rape from the offence of rape as per Exception 2 to Section 375 of the IPC and that the said exemption cannot be termed as absolute.

[10.8] The Gauhati High Court in the case of **Swapna Barmen vs. Subir Das** reported in **2003 SCC OnLine Gau 196** had



held that under the provision of Section 509 of the IPC, the term 'modesty' does not only limit itself towards leading to the contemplation of a sexual relationship of an indecent character but also stands inclusive of indecency. Therefore, it is necessary to consider that any act which can be termed to have fallen short of rape needs to be attributed as outraging the modesty of the woman. Furthermore, it is significant to state that a woman can also be tried for the offence of outraging the modesty of any other woman as the codified sections of the Indian Penal Code.

[10.9] It is worth to mention that herein accused persons being husband, father-in-law and mother-in-law have done such disgusting behavior that too against their own wife and daughter-in-law. Offences alleged are nothing but pertain to socio-economic offence which would adversely affect the society and culture. Nonetheless, Article 21 of the Constitution of India gives fundamental right to live a life with dignity and self-esteem of a woman is also important. Herein, due to such sexual abuse which adversely affects the bodily integrity and destroy the traditional practice of the society, the victim is subjected to sexual intercourse under the misconception and her private lovemaking moments have been made viral in public without her consent and petitioner No.1 – father in law, who is as good as father of respondent No.2 has also taken undue advantage of situation and mother-in-law has also abetted in the offence. Keeping in mind the aforesaid facts, it is crystal clear that basic fundamental and human rights of respondent No.2 have been violated. Not only that, accused persons have shaken the confidence and eroded the efficacy of sacrosanct marriage



institution and petitioners being the father-in-law, husband and mother-in-law have failed in performing their sacrosanct and moral obligation to protect their daughter in law who is honoured in civilized and cultured society as “*Gruhlakshmi*”.

[11.0] At this stage, it would be apposite to refer to the decisions of Hon’ble Supreme Court in the case of **Gian Singh vs. State of Punjab and Another** reported in **(2012) 10 SCC 303** and **State of Madhya Pradesh vs. Laxmi Narayan and Others** reported in **(2019) 5 SCC 688**. In the case of ***Laxmi Narayan (Supra)***, it is observed and held as under:

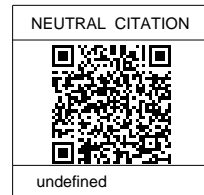
“Quashing would depend upon facts and circumstances of each case – Court has to apply mind to following - (i) whether crime against society or against individual alone and kind of dispute, whether civil or criminal, (ii) seriousness, nature and category / kind of crime / offence and how committed, (iii) whether offence under special statute, (iv) stage of proceedings, (v) conduct and antecedents of accused, whether accused absconding, why absconding and how he managed to compromise with complainant – criminal proceedings arising out of commercial transactions or matrimonial or family disputes when having overwhelmingly and predominantly civil character may be quashed when parties have resolved entire dispute amongst themselves – but such power cannot be used in respect of heinous and serious offences of mental depravity or offences like murder, rape and dacoity, etc. - such offences are not private in nature and have a serious impact on society.”

In the case of ***Gian Singh (Supra)*** the Hon’ble Supreme Court has been pleased to observe as under:

“61. The position that emerges from the above discussion can be summarised 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 F.I.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High



Court shall be well within its jurisdiction to quash the criminal proceeding.”

Thus, it is settled proposition of law that when the offence is against the State, compounding of offence is not permissible.

[11.1] So far as question of compromise is concerned, it is needless to say that the present offence is registered for the offences punishable under Sections 354A, 354C, 376D, 498-A, 506(2) 508, 509, 34, 114 and 201 of the IPC and sections 66(e) and 67(a) of the Information Technology Act. Considering the aforesaid fact, it transpires that the offences alleged are not only against a person but against the State. Hence, merely because compromise took place between the parties is not a ground to exercise powers under Section 482 of the CrPC. In this regard reference is required to be made to the decision of Hon'ble Supreme Court in the case of **Shimbhu and Another vs. State of Haryana** reported in **(2014) 13 SCC 318** wherein it has been held as follows:

“Rape being an offence against society, factors pertaining to accused and victim, such as compromise arrived at between parties, old occurrence and long pendency of criminal trial, subsequent marriage of victim and having children, as also caste, creed, religion, socio-economic status, etc. not relevant to constitute adequate and special reasons and that subsequent compromise between parties whereby victim having no objection to reduction of accused's sentence to period already undergone, may often be an outcome of pressure and her compulsion and it would be unsafe to consider it a ground for reducing the sentence under the proviso and that rape is a non-compoundable offence and courts should not take softer view while awarding sentence for heinous crime life rape and held that proviso being an exception clause should be construed strictly.”

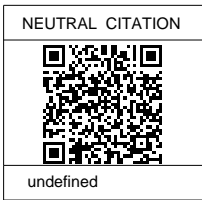
[11.2] It is necessary to consider whether the power



conferred by the High Court under section 482 of the CrPC is warranted. It is true that the powers under Section 482 of the CrPC are very wide and the very plenitude of the power requires great caution in its exercise. In this regard, this Court deems it fit to refer to the judgment of the Hon'ble Apex Court in the case of **Central Bureau of Investigation v. Aryan Singh** reported in **2023 SCC OnLine SC 379** as well as **Narinder Singh & Ors. Vs. State of Punjab & Anr.** reported in **2014 (2) Crime 67 (SC)**. In the case of **Aryan Singh (Supra)**, it is held that scope under Section 482 of the CrPC is very limited and High Court cannot conduct a mini trial. The Hon'ble Apex Court in para 10 held as under:-

“10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not.”

Thus, under Section 482 of the CrPC, Court should not hold a mini-trial and should not go into evidence or statements recorded by the police during investigation. In this regard,



reference is required to be made to the decision of the Hon'ble Apex Court in the case of **Manik B. vs. Kadapala Sreyes Reddy & Ors.** reported in **2023 Live Law 642 (3 Judges Bench)** wherein it is held that High Court should not elaborately discuss the statement of the witnesses recorded under Section 161 of the Cr.P.C. and whether statements are trustworthy or not is required to be decided while witness stands in the witness box at the stage of such trial and such exercise is not permissible while exercising jurisdiction under Section 482 as to entertain such proceedings is nothing but abuse of process of law.

[11.3] It is also appropriate to refer to the decision of the Hon'ble Supreme Court in the case of **Narinder Singh & Ors. vs. State of Punjab** reported in **(2014)6 SCC 466**, wherein in paragraph Nos.29, 29.1, 29.2 and 29.7, the Hon'ble Supreme Court has held as follows:

"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. When the parties have reached the settlement and on

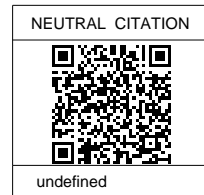


that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

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

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.”

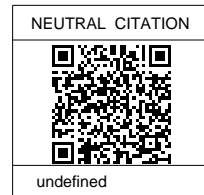
Herein, the case on hand does not fall in the purview of abuse of process of law. Even, if the petition is allowed on the basis of consent, it would amount to abuse of process of law. It is settled proposition of law that while deciding whether to



exercise power under Section 482 of the CrPC 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, this Court could have been liberal in accepting the settlement to quash the criminal proceedings/investigation if the investigation would have been still on but herein, investigation is over and charge sheet has been filed, which has culminated into Sessions Case No.267/2023. Therefore also, consent is not a ground to entertain the present petition as settlement affidavit is filed on 02.05.2024 i.e. after filing of charge-sheet.

[11.4] It is also worthwhile to refer to the decision of Hon'ble Supreme Court in the case of **Supriya Jain vs. State of Haryana** reported in **2023 LiveLaw (SC) 494** wherein it is held as under:

"...It is no part of the business of any of the courts to ascertain what the outcome of the trial could be, ~ conviction or acquittal of the accused. The small window that the law, through judicial precedents, provides is to look at the allegations in the FIR and the materials collected in course of investigation, without a rebuttal thereof by the accused, and to form an opinion upon consideration thereof that an offence is indeed not disclosed from it. Unless the prosecution is shown to be illegitimate so as to result in an abuse of the process of law, it would not be proper to scuttle it. The principles to be borne in mind with regard to quashing of a charge / proceedings either in exercise of jurisdiction under section 397, Cr. PC or section 482, Cr. PC or together, as the case may be, has engaged the attention of this Court many a time. Reference to each and every precedent is unnecessary. However, we may profitably refer to only one decision of this Court where upon a survey of almost all the precedents on the point, the principles have

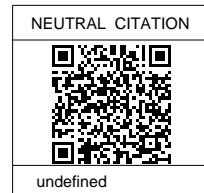


been summarized by this Court succinctly.”

Considering the aforesaid facts and serious nature of allegations being made, no case is made out to entertain the present petition on the ground of settlement.

[12.0] Insofar as unreported decision of the Hon’ble Apex Court in the case of ***Kapil Gupta (Supra)*** relied on by the learned Senior Counsel appearing for the petitioners is concerned, in the said case, victim was also facing the charge and she was also an accused and against both, accused and complainant, proceedings were going on and settled and considering the relationship between the accused and complainant, the Hon’ble Supreme Court has clearly stated in paragraph 17 of the said decision that Court should not normally exercise the powers of quashing the proceeding in the offence of rape but in the peculiar facts and circumstances of the case and in order to give succour to the complainant, the Hon’ble Supreme Court quashed the proceedings. Considering the peculiar facts of the said case, the Hon’ble Supreme Court has exercised the discretion. At this stage, it would be appropriate to refer to the decision of the Hon’ble Supreme Court in the case of **Parasa Raja Manikyala Rao And Anr vs State Of A.P reported in AIR 2004 SC 132**, wherein the Hon’ble Supreme Court has observed and held as under:

“...Each case, more particularly a criminal case depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of



one case against the colour of another. To decide therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

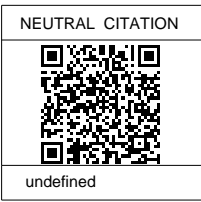
In the case of **Sushil Suri vs. CBI** reported in **(2011)5 SCC 708**, it has been observed and held as under:

"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. In deciding such cases, one should avoid the temptation to decide cases (as said by Justice Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

Herein, keeping in mind the severity of the act and the fact that it would adversely affect the society and as the offences are against the State, authority relied on by the learned Senior Counsel for the petitioners would not avail any assistance.

[13.0] Even, merely because witness has turned hostile and settlement took place is not a ground to allow the present petition. The prosecution has ample power to put leading question to the witness and if the testimony of such witnesses if evidences lend corroboration with other reliable evidence produced on record and considering the attending circumstances, Court may appreciate the evidence. This is very early stage to come to conclusion that if the witnesses turn hostile then it would be a futile exercise on the part of the Court to continue with such proceeding.

[14.0] In wake of aforesaid discussion, present petition being devoid of any merit stands dismissed in *limine*. However,



the learned trial Court is directed to expedite the trial as the petitioners are under-trial prisoners. It is made clear that the observations made in this order are tentative in nature and learned trial Court shall decide Sessions Case No.267/2023 on its own merits without being influenced by the observations made in this order. Rule is hereby discharged.

(HASMUKH D. SUTHAR, J.)

Ajay