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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Delivered on 09.10.2024

+ **CRL.M.C. 7020/2023 & CRL.M.A. 26189/2023**

HAMEEDULLAH AKBAR@ FAHEEM MODH ZAI..... Petitioner

Through: Mr. Rajiv Mohan and Mr. Swapnil
Krishna, Advocates.

versus

STATE (GOVT OF NCT OF DELHI) & ANR. Respondents

Through: Mr. Raghuvinder Verma, APP for
State with SI Sita Ram Meena, PS.
NR-I, Crime Branch.

Mr. Manoj Taneja, Adv. for R-
2/complainant with R-2 (through VC
from USA).

+ **CRL.REV.P. 368/2019 & CRL.M.A. 6588/2019**

STATE (GOVT. OF NCT OF DELHI) Petitioner

Through: Mr. Raghuvinder Verma, APP for
State with SI Sita Ram Meena, PS.
NR-I, Crime Branch.

Versus

MS X & ORS. Respondents

Through: Mr. Manoj Taneja, Adv. for R-
1/complainant with R-1 (through VC
from USA).

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT



CRL.M.C. 7020/2023

1. The present petition has been filed under section 482 CrPC seeking quashing of FIR No. 14/2017 registered under sections 376/420/385/387/506/419/467/468/471/120B/34 IPC read with Section 14 of Foreigners Act and 66D & 66E of IT Act 2000 at P.S. Crime Branch along with all consequential judicial proceedings on the ground that the parties have arrived at a settlement.
2. Notice was issued in the present petition on 29.11.2023 and the State/Respondent No.1 was directed to file the status report. The State has filed its status report, which forms part of the record.
3. The brief facts of the case are:
 - (i) The FIR came to be registered on the basis of a complaint made by the complainant alleging that she is a US citizen and sometime in early 2016 the petitioner impersonated himself and fraudulently met her as one '*Faheem Mohd Zai*'. He developed friendship with the complainant/respondent no. 2 and started sending emails to her from his email ID. On the basis of false promise of marriage, the petitioner induced the complainant to have physical relations with him for the first time on 23rd November 2016 and several times thereafter. In order to convince her, the petitioner also got the respondent no. 2 sign some papers/documents for getting their marriage registered in Dubai.
 - (ii) At the relevant period of time i.e., in between 2016-2017, the petitioner on the basis of one false pretext or the other also exploited the complainant and their relations by fraudulently taking huge sum of money from the complainant on various occasions both by wire transfer as well as in cash approximately to the tune of 90,000 in US dollars.



(iii) On 16th January 2017, the complainant found out that the petitioner's real name is Hameedullah Akbar and he had also cheated many other girls of foreign origin in a similar manner. When the complainant confronted the petitioner, he promised to make amends and marry her. Later on, the complainant found out that the petitioner was already a married man and his wife was also pregnant.

(iv) Thereafter the petitioner threatened to throw acid on the face of the complainant and on 01.02.2017, in order to extort more money, the petitioner threatened of implicating the complainant in a false case. The petitioner had also taken indecent photos/ pictures of the complainant which he threatened to upload on the internet.

(v) This led to the registration of FIR and after the registration of FIR, the petitioner was apprehended and arrested by the Investigating Officer on 03.02.2017. Since then the petitioner is incarcerated.

(vi) On 09.02.2017, the statement of the complainant under section 164 CrPC was recorded before the Court of Ld. MM. During the investigation and upon enquiry, the office of FRRO, Delhi reported that on 03.07.2013, the petitioner arrived in India on a medical visa which expired on 31.12.2013 and he had been overstaying in India from 01.01.2014. He had not sought any extension of his visa. The petitioner despite being a foreign national from Afghanistan falsely and illegally managed to procure an Election ID card and PAN card in his real name as "*Hameedullah Akbar*". He was found using the adoption deed dated 13.01.2016 which was false and fabricated for various illegal purposes.

(vii) After the completion of investigation and on the basis of collection of all the material and documents on 02.05.2017 the main



chargesheet was filed by the IO for the commission of offences punishable under sections 376/419/420/385/387/506/467/468/471 IPC & section 14 of the Foreigners Act and 66-D & 66-E of the IT Act, 2000. The cognizance of the offences was taken by the learned Chief Metropolitan Magistrate, Patiala House Court- New Delhi. On the basis of further investigation and upon collection of additional incriminating material another supplementary chargesheet was filed by the IO on 16.08.2017, wherein apart from the present petitioner, two other accused persons namely Ghulam Rasool Khan and Sagheer Ahmed Khan were also charge-sheeted and arrested for committing the offences under section 467/468/471/420/120B/34 IPC and Section 14(C) of the Foreigners Act, 1946.

(viii) It was found and revealed that the accused Ghulam Rasool Khan had got prepared the above said adoption deed and he along with one other accused Sagheer Ahmed Khan were found to be the attesting witness of the said false adoption deed which was recovered in original from the residence of the petitioner.

(ix) Both the said co-accused persons, Ghulam Rasool Khan and Sagheer Ahmed Khan also gave their statement as to how Smt. Ansari Begum, mother of Ghulam Rasool Khan was made to sign the said adoption deed. The specimen signature of all the accused persons were taken and sent to FSL for seeking expert opinion for comparison with those on original adoption deed.

(x) After receipt of the FSL report on the basis of all the material and conclusion drawn, 2nd supplementary chargesheet was filed by the IO wherein Smt. Ansari Begum was also made an additional accused and



was charge sheeted without arrest for having committed the offence punishable under section 467/468/471/182 R/w 120-B IPC.

(xi) In between it was revealed that accused Ghulam Rasool Khan (in JC) who was undergoing treatment at Govt. Hospital expired, accordingly the case proceedings against the said accused stood abated.

(xii) Further in view of the offence under section 376 IPC mentioned in the FIR as well as the chargesheet, the case was committed by the Chief Metropolitan Magistrate to the Court of Additional Sessions Judge for trial.

(xiii) On 19.01.2019 the learned Additional Sessions Judge ordered that the main chargesheet filed against the petitioner for having committed the offences punishable under section 420/376/385/387/506 IPC will be tried by the learned Additional Sessions Judge and the two supplementary chargesheets filed against Smt. Ansari Begum and Sagheer Ahmed shall be separated and will be sent to the court of Chief Metropolitan Magistrate for trial. Further, the petitioner was also to face trial before the Court of Chief Metropolitan Magistrate for having allegedly committed the offence under section 14 of the Foreigners Act.

(xiv) On 26.03.2019, the State of NCT of Delhi filed a Criminal Revision Petition No. 368/2019, challenging the legality and correctness of the impugned order dated 19.01.2019, in which stay of the trial proceedings was granted by this court vide order dated 28.03.2019.

4. Mr. Rajiv Mohan, learned counsel for petitioner submits that during the pendency of the proceedings, the parties have entered into an oral settlement and have amicably resolved all their disputes. He submits that in



terms of the said settlement, the complainant/respondent no. 2 has agreed to render full cooperation to the petitioner in getting the FIR quashed.

5. He submits that the complainant has already been paid the entire allegedly cheated amount which was agreed between the parties and she does not want to proceed, pursue and follow up the case proceedings any further.

6. He submits that besides arriving at an amicable settlement, the petitioner has also undergone a considerable period of incarceration by remaining in judicial custody for more than a period of 07 years and there has been no progress in the trial pending against the petitioner on account of stay order operating on all pending proceedings with regard to the present FIR.

7. He further submits that the trial is at an initial stage, the investigating officer has cited 55 witnesses across three chargesheets, all of whom need to be examined, therefore the trial is going to be a protracted one.

8. Relying on the Supreme Court decision in *Kapil Gupta v. State of NCT of Delhi, (2022) SCC OnLine SC 1030*, he contends that the present FIR may be quashed as the present petition for quashing has been filed at an early stage of proceedings.

9. Ld. Counsel has also referred to various decisions in *Jaskaran Singh Arora vs. State, NCT of Delhi & Anr – 2021 (2) JCC 970 (DHC)*; *Surg Lt. CDR Aashish Chandra Tiwary vs State, Govt of NCT of Delhi & Anr. – 2021 SCC OnLine Del 2451 (DHC)*; *Salauddin & Ors vs State & Anr. CRL MC 5828/2023*, wherein after looking into peculiar facts and circumstances, this Court has exercised the power under section 482 CrPC



thereby ordering for quashing of the FIR registered on the ground of amicable settlement.

10. With regard to the offences alleged against the petitioner, the Ld. Counsel for the petitioner submits that the petitioner has already undergone the maximum period of sentence that can be imposed upon the petitioner for most of the offences invoked against him, therefore, the continuation of the proceedings would serve no meaningful purpose and would merely be an exercise in futility, besides being oppressive and unwarranted.

11. Lastly, he contends that the facts of the present case are also particularly unique, giving rise to exceptional circumstances that warrant quashing of the FIR registered against the petitioner. Moreover, persisting with the proceedings would inflict significant injustice and prejudice upon both the parties.

12. Mr. Manoj Taneja, Ld. Counsel appearing on behalf of the complainant, supports the contentions of the Ld. Counsel for the petitioner and further adds that the peculiar and exceptional circumstances of the present case make it a fit case for exercising the inherent powers vested in this court for quashing the present FIR registered against the petitioner.

13. Elaborating on his submission, he submits that– (i) on 29.05.2024, the complainant herself appearing through VC before this court, had candidly stated that she wants complete closure of all the cases and she has no objection in allowing of the present quashing petition; (ii) the petitioner who is a foreign national has remained in judicial custody from the date of his arrest, he has already suffered long incarceration; (iii) in view of the stay of the trial court proceedings in CRL. Rev. P. 368/2019, the trial has not been undertaken after framing of charge; (iv) the complainant is a grown up,



educated and mature person who has voluntarily arrived at a compromise, without any force, pressure or coercion; (v) the complainant is a resident of USA who wants to move on with her life by giving a quietus to all the cases arising out of the present FIR in question and pending before the Courts in India.

14. He also relies upon the decision in *Kapil Gupta (supra)*. He further places reliance on the decisions of the Co-ordinate benches of this court passed in *Kanav Arora vs State of NCT of Delhi & Anr. 2023 SCC OnLine Del 5603 and Mohit vs Govt of NCT of Delhi & Anr. 2024 SCC OnLine Del 1222*, to submit that this Court has granted similar relief in these cases by ordering for quashing of FIRs involving similar provisions of Section 376 on the ground of settlement between the parties.

15. *Per Contra* the Ld. APP has argued on the lines of the status report. He submits that the petitioner is a foreign national who overstayed in India after his visa expired. Furthermore, the petitioner has a habit of using fake and false identities. He had impersonated himself as Faheem Mohd. Zai to deceive the complainant, developed friendship, promised to marry her and committed the offense of rape based on a false promise of marriage.

16. He submits that during the investigation the petitioner/accused was also found to have committed other offences of forgery etc. along with co-accused persons for which supplementary charge-sheet was filed.

17. I have heard the learned counsel for the petitioner, learned APP for the State, as well as, the learned counsel appearing on behalf of the complainant.

18. The law is well settled that ordinarily the Courts should not quash the criminal proceedings in heinous and serious offences on the basis of



settlement. However, it is equally well settled that the High Court by exercising its inherent powers can quash criminal proceedings or FIR or any complaint and section 320 CrPC does not limit or affect the power under section 482 CrPC. The exercise of such power entirely depends on the facts and circumstances of each case. The Supreme Court in *Shiji alias Pappu and others v. Radhika & Anr. (2011) 10 SCC 705*, considering the interplay between Section 320 CrPC and 482 CrPC has observed that even when the offence is not compoundable under section 320 CrPC, the same can still be quashed where the Court comes to the conclusion that conviction cannot be recorded and the trial will be an exercise in futility. The relevant part of the said decision reads thus:

17. It is manifest that simply because an offence is not compoundable under Section 320 CrPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 CrPC. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility.

19. Likewise, in *Parbatbhai Aahir alias Parbathbhai Bhim Singh Bhai Karmur v. State of Gujrat, (2017) 9 SCC 641*, the Hon'ble Supreme Court observed that 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.

20. In *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466 the Hon'ble Supreme Court was dealing with prayer for quashing of FIR/criminal proceedings in respect of the offence under Section 307 IPC. The Court observed that the offence under Section 307 IPC would fall in the category of heinous and serious crime and therefore is to be generally treated as crime against the society and not against the individual alone. It was further observed that 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 the said provision. The Hon'ble Supreme Court spelled out the guiding principles to be borne in mind while quashing FIR in a serious offence like 307 IPC:

“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.”

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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 to 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.

(emphasis supplied)

21. In *Kapil Gupta (supra)* the question which had fallen for consideration of the Hon'ble Supreme Court was whether the FIR under Section 376 IPC could be quashed on the basis of settlement. The Apex Court in the light of the decision in *Narinder Singh (supra)* considering the facts and circumstances which were peculiar to the said case quashed the FIR observing as under:

12. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.



13. The Court has further held that it is also relevant to consider as to what is the stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.

14. The facts and circumstances as stated hereinabove are peculiar in the present case. Respondent 2 is a young lady of 23 years. She feels that going through trial in one case, where she is a complainant and in the other case, wherein she is the accused would rob the prime of her youth. She feels that if she is made to face the trial rather than getting any relief, she would be faced with agony of undergoing the trial.

15. In both the cases, though the charge-sheets have been filed, the charges are yet to be framed and as such, the trial has not yet commenced. It is further to be noted that since Respondent 2 herself is not supporting the prosecution case, even if the criminal trial is permitted to go ahead, it will end in nothing else than an acquittal. If the request of the parties is denied, it will be amounting to only adding one more criminal case to the already overburdened criminal courts.

16. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succour to Respondent 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary



powers of this Court be exercised to quash the criminal proceedings.

(emphasis supplied)

22. Now coming back to the facts, certain peculiar and special circumstances which are specific to the present case needs to be noted. Both the petitioner and the complaint are foreign nationals. In fact, both are of Afghanistan origin. However, the complainant is now citizen of United States of America and residing there with her family.

23. The petition is supported by the affidavit of the complainant, who has also been arrayed as respondent no.2. The relevant part of complainant's affidavit is reproduced for ready reference:

4. That I submit and state that in view of all the prevailing facts and peculiar circumstances submitted in the petition and also on account of the long passage of time from 2017, I also became desirous of arriving at an amicable settlement and compromise of all my disputes with the petitioner and for seeking to bring to an complete closure and give quietus to the present case in terms of the oral agreement and mutual understanding arrived at with by me along with the common family friend and mediator (Mr Sharam Gulzad) personally known to me and parents of the petitioner (all based in Dubai/UAE).

5. That I state and confirm that upon holding talks and discussions amongst us all an oral amicable settlement and compromise has been arrived at between myself and the petitioner (through his old parents and the common family friend and mediator – Mr. Sharam Gulzad, resident of Dubai/UAE) out of my free will and voluntary consent and without any undue pressure or coercion from any corner.

6. That I submit and confirm that pursuant to the arriving at the oral understanding and amicable settlement, I confirm and affirm to have been paid and my having received the entire mutually agreed settlement amount which includes the return of the total cheated amount mentioned in the present case (approximately \$90,000 USD) and which amount was falsely taken by the petitioner from me in Nov



2016 to Feb 2017 on one false pretext or the other, along with reimbursement of \$10,000 USD for my incurring expenses in the present case. Therefore, as per settlement a total amount of \$1,00,000 USD has been paid to me by the above named common family friend cum mediator Mr. Sharam Gulzad. The said agreed amount has been paid to me for and on behalf of the present petitioner- Hameedullah Akbar @ Faheem Mohd Zai.

7. That after having received the above said settled amount from the parents of the petitioner (through the above-named mediator) all the disputes between the petitioner and me (as complainant of FIR) have been amicably compromised and settled and stand resolved. In this view of the said position and as mutually agreed upon, on 22nd Sept 2023, I have come from USA to India / New Delhi to perform my part of the understanding by signing, swearing the present affidavit which is to be and being filed as my supporting affidavit along with the present petition filed by the petitioner before this Hon'ble Court.

8. That I submit that in view the amicable settlement and compromise arrived at between the parties and being the complainant/ respondent no.2, I am giving my voluntary and free consent and also state that I have "No Objection" to this Hon'ble Court considering and allowing the present quashing petition filed by the petitioner under section 482/483 CrPC and ordering for the quashing of present FIR No. 14/2017 dated 02.02.2017, PS Crime Branch, New Delhi, registered u/s 420/376/385/387/506 IPC (registered on my written complaint/ Annexure- A) and all the consequential prosecution proceedings emanating and arising there from and pending before the two Ld. Trial Courts, at Patiala House Court, New Delhi, in terms of and as per the prayers made in the petition.

9. That I also submit that all the prosecution proceedings / cases emanating from the present FIR in question and pending before the Ld Trial Courts can be ordered to be closed and given complete quietus by this Hon'ble Court on account of all the facts and peculiar circumstances submitted in the accompanying petition. The petitioner



shall be bound by all the terms of settlement and undertaking given by him to the Hon 'ble Court in its letter and spirit.

10. That I have come from USA to Delhi and as such, pursuant to the filing of the present petition, I will also be personally appearing before this Hon'ble Court (along with my Counsel) in the present petition to give and record my statement and to also give my no objection for grant of all the relief(s) to the petitioner as prayed for in the present petition only on the ground of amicable compromise and settlement arrived between the parties.

11. That I have no objection to the present petition being allowed by this Hon'ble Court relief's granted in terms of all the prayers made for by the petitioner.

24. It is discernible from the complainant's affidavit that all the disputes between the parties have been amicably compromised and stands settled. Accordingly, the complainant/Respondent no.2 came forward from USA to render full cooperation to the petitioner in the present petition for getting the present FIR, registered on her complaint, along with all consequential proceedings quashed on the ground of settlement.

25. On 29.05.2024, the respondent no.2 appeared before this Court through Video Conferencing (from USA), along with her counsel. On being queried by the Court, she had categorically stated that she stands by her affidavit filed alongwith the petition and she wants complete closure of all the cases. She has no objection to the allowing of present petition by this Court. The complainant is aged about 46 years, she is an educated and mature person. This Court is satisfied that the complainant has voluntarily



and without any pressure or coercion given her consent for the quashing of FIR.

26. Notably, the trial has not been undertaken or proceeded with ever since the State obtained an order of stay of further trial proceedings on 28.03.2019 passed in CrI. Rev P. 368/2019 filed by it against the order dated 19.01.2019 passed by the learned Additional Sessions Judge in SC/24/2018, whereby the trial was ordered to be split – with the petitioner being tried for the offences mentioned in the main chargesheet by the learned Additional Sessions Judge while the co-accused Smt. Ansari Begum and Sagheer Ahmed being tried for the offences mentioned in the two supplementary chargesheets by the learned Chief Metropolitan Magistrate.

27. The petitioner is in custody from the date of his arrest i.e. 03.02.2017, therefore, he has been incarcerated for approximately 07 years and 08 months and that too at the pre-conviction stage when there is a presumption of innocence in his favour. In fact, he has been incarcerated for a period more than which he could be sentenced for various offences he has been charged with, except for offences under Sections 376 IPC and 467 IPC. Incidentally, for the offence under section 467 IPC there is no minimum punishment prescribed by the law. On account of stay of trial proceedings, till date not a single witness has been examined. The law is well settled that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well. Inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. Clearly, the delay in trial is not attributable to the petitioner, the constitutional guarantee of a speedy trial under Article 21 of the



Constitution is thereby violated.¹ The principles enshrined in Article 21 are equally applicable to a foreigner as it is to a citizen.²

28. As per the chargesheets prosecution has cited around 55 witnesses, therefore, the trial whenever it would recommence, is going to be a protracted one. In the circumstances of the present case no useful purpose will be served by allowing continuation of the prosecution proceedings by examining around 55 odd witnesses given the fact the complainant is a foreign national and she herself would not be available during the trial to support the case of the prosecution. Even securing the presence of the complainant as witness from the USA would be a very long drawn process. On a conspectus of above factors, continuation of criminal proceedings against the petitioner will be oppressive and unwarranted.³

29. Having regard to the fact that the complainant is not supporting the case of the prosecution, even if the criminal trial is permitted to go ahead, the chances of conviction are bleak. Therefore, continuation of criminal proceedings will be an exercise in futility. Further, the complainant, who is a foreign national, wishes to give complete quietus to all cases which are pending before the Courts in Delhi arising from the present FIR to live her life in peace in the USA.

30. In view of the above peculiar and exceptional circumstances, more particularly, the long incarceration of the petitioner, the trial being stalled at the very initial stage, the culmination of trial being nowhere in sight, the factum of complainant residing in the USA and her reluctance to continue the prosecution and further her earnest wish to give quietus to all the cases

¹ (1992) 1 SCC 225: Abdul Rehman Antulay & Ors vs R.S. Nayak & Anr.

² (2006) 4 SCC 620 : O. Konavalov v. Commander, Coast Guard Region



pending in Delhi arising out of the FIR in question and the chances of petitioner's conviction being bleak, the decision of the Hon'ble Supreme Court in *Kapil Gupta (supra)* is also squarely applicable to the present case.

31. In that view of the matter and to give succour to the complainant, this Court finds it to be a fit case wherein exercise of extraordinary powers of this Court to quash the criminal proceedings is warranted.

32. However, to bring complete quietus to the litigation as urged by the complainant, the FIR needs to be quashed not only against the petitioner but against another co-accused/Sagheer Ahmed Khan as well but the said accused is neither a petitioner in the present petition nor he has filed separate petition seeking quashing of FIR, though prayer in the present petition has been made to quash the FIR in entirety.

33. It is not to be forgotten that the present petition has been filed under Section 482 CrPC and this Court while exercising its inherent powers under the said provisions cannot shut its eyes if it finds that continuation of criminal proceedings against co-accused/Sagheer Ahmed Khan after quashing of the same *qua* the petitioner herein tantamount to doing injustice to the said co-accused as well as to the complainant given the fact that the role of the said co-accused is only subservient to the role ascribed to the petitioner and persistence of criminal proceedings against co-accused/Sagheer Ahmed Khan will not provide any respite to the complainant from the agony of prolonged criminal trial and other on-going proceedings.

34. The law is well settled that under Section 482 CrPC this Court must exercise its inherent powers *ex debito justitiae* to do real and substantial

³ (2002) 4 SCC 578 : P. Ramachanra Rajo vs State of Karnataka



justice for the administration of which alone courts exist. In exercise of the powers, the Court would be justified to quash any proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of Court or quashing of such proceedings would otherwise serve the ends of justice. Reference in this regard may be had to the recent decision of the Hon'ble Supreme Court in *Achin Gupta vs. State of Haryana and Anr.: 2024 SCC OnLine SC 759*. The relevant observations reads thus:

*“20. It is now well settled that the power under Section 482 of the Cr. P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr. P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. **There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.***

*21. The investigation of an offence is the field exclusively reserved for the Police Officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII of the Cr.P.C.. While exercising powers under Section 482 of the Cr. P.C., the court does not function as a Court of appeal or revision. As noted above, the inherent jurisdiction under the Section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. **It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. The authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any***



proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.” ...

(emphasis supplied)

35. For the sake of completeness of record, it is to be noted that in the chargesheets four persons were arraigned as an accused – (i) Hameedullah Akbar (ii) Ghulam Rasool Khan (iii) Smt. Ansari Begum and (iv) Sagheer Ahmed Khan. Co-accused Ghulam Rasool Khan expired and the criminal proceedings *qua* him abated as noted in the order dated 18.01.2018 of the learned Chief Metropolitan Magistrate. Likewise, co-accused Smt. Ansari Begum also passed away and the proceedings *qua* her abated as well, as noted in order dated 14.02.2023 passed by this Court in CRL.REV.P. 368/2019. Thus, apart from the present petitioner, the only surviving co-accused is Sagheer Ahmed Khan.

36. In the chargesheet, the limited role ascribed to co-accused Sagheer Ahmed Khan is that he is the signatory to an adoption deed of the petitioner, which is alleged to be forged. It is the case of the prosecution that the said adoption deed was prepared by Ghulam Rasool Khan, who was the son of Smt. Ansari Begum. At the relevant time, Smt. Ansari begum had gone to the residence of Sagheer Ahmed Khan who is son-in-law of Late Ansari Begum and Ghulam Rasool Khan went to the residence of Sagheer Ahmed Khan and obtained the signatures of Smt. Ansari Begum and also requested Sagheer Ahmed Khan to sign the same as an attesting witness to the said adoption deed and Sagheer Ahmed Khan obliged his brother-in-law i.e. deceased co-accused Ghulam Rasool, by signing as an attesting witness.

37. Even as per the prosecution case, there is no allegation that Sagheer Ahmed Khan was aware that the alleged adoption deed is a fabricated



document. Further, as per the disclosure statement of Sagheer Ahmed Khan which is a part of the chargesheet, he came to know about the adoption deed being forged and fabricated later on. Therefore, taking the case of the prosecution on its face value, there does not appear to be any involvement of co-accused Sagheer Ahmed Khan in the act of forgery nor any *mens rea* of conspiracy could be attributed to him. Therefore, no offence is made out against co-accused Sagheer Ahmed Khan.

38. Having regard to the above discussion, as well as, to serve the ends of justice and in order to provide relief to the complainant and to save her from the agony of criminal cases, the FIR No.14/2017 under Sections 376/420/385/387/506/419/467/468/471/120B/34 IPC read with Section 14 of Foreigners Act and 66D & 66E of IT Act 2000 and all proceedings emanating therefrom are quashed.

39. Since, the petitioner is a foreign national, who does not have a valid visa the Jail Superintendent is directed to forthwith hand over the petitioner to the FRRO, Delhi for being deported to his country in accordance with law, if he is not required in any other case.

40. The petition, alongwith pending applications, if any, is disposed of.

41. The Registry is directed to bring this order to the notice of FRRO, Delhi.

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42. The present criminal revision has been filed by the State against the impugned order dated 19.01.2019 passed by the learned Additional Sessions Judge whereby the Learned Sessions Judge directed that the main chargesheet filed by the investigating agency against the accused



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Hameedullah will be tried by the Court of learned Additional Sessions Judge and the two supplementary chargesheets filed against Hameedullah, Ansari Begum and Sagheer Ahmed Khan shall be tried by the Court of learned Chief Metropolitan Magistrate.

43. As the FIR in question itself has been quashed by this Court by the above order, the present criminal revision is rendered infructuous and is disposed of as such with all pending applications, if any.

VIKAS MAHAJAN, J.

OCTOBER 09, 2024
MK/dss