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An Assessment of the Judicial Approach in the Quashing of Compromised Rape Cases Using the High Court's Inherent Powers in India

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ABSTRACT

The offences such as rape, dacoity, murder, and attempt to murder are heinous offences which are against not only the individual but also the state. The High Courts across India have inherent powers under Section 482 of the Criminal Procedure Code, 1973. Using section 482, the High Courts can quash criminal proceedings, but they can do that only to secure the ends of justice. But there is a pattern which can be found where rape cases are being quashed by various high courts across the country due to compromise or settlement between the offender and the victim. Due to the fact that the victim would not assist the case after the compromise and would not provide any evidence, consuming the court's time. Running away from criminal culpability for a crime like rape because of a compromise would inspire others to follow that example. This compromise process gives the rape offender amnesty, and he may even force the victim to marry him. And the victim will be harassed for the rest of her life. Indirectly, such a liberal approach will create fertile ground for sexual violence. In India's criminal judicial system, the word "compromise" has become a new plague. In this article, the author investigates the decisions issued by various High Courts and their correct legal position. Furthermore, the author seeks to explain whether a compromised rape case has any benefits for the victim of rape if it is quashed by the High Court.

Keywords: *Compromise, settlement, rape, inherent powers, victim, High Courts.*

I. INTRODUCTION

There can be no settlements or compromise when the matter is regarding heinous offences such as attempt to murder, murder, rape, and dacoity. Even if the offender and the victim resolve their disputes these matters cannot be resolved because it is an offence against the state and not only an offence against the victim. In any instance, if an offender and a victim reach a

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compromise and the offender approaches the court for a sentence reduction as a result of the compromise, it will not be possible because rape is a serious and aggravated crime. There is no legality to such a compromise; it has no legal basis; nonetheless, we witness countless out-of-court settlements where the victim refuses to testify against the criminal, and the goals of justice are never satisfied. Section 482 of the Code of Criminal Procedure (CrPC), 1973 confers inherent powers on High Courts throughout the country to quash criminal proceedings, but there are certain guidelines to follow before quashing the cases. Rape is a heinous crime, but criminal proceedings for rape are being quashed due to various complexities in the case. In this article, the author investigates the decisions issued by various High Courts and their correct legal position. Furthermore, the author seeks to explain whether a compromised rape case has any benefits for the victim of rape if it is quashed by the High Court.

II. THE INTRIGUING CASES OF COMPROMISE

The High Courts have a huge challenge to face while judging cases of compromised rape cases. It's not a straightforward issue, it has composite issues merged into one big word that is “compromise” and such factors are unique in every case. Cases such as false pretext of marriage are later compromised because during the trial after the parties resolve disputes they get married, elopement cases, inter community romance and the most problematic issue is the false cases². So many times the High Court has to think of the welfare of the victim in cases where the victim has married the offender. In this types of cases the high court will either reduce the sentence or even quash the criminal proceedings of the rape case. Here the problem of the Court is that securing evidence after a case is compromised is very difficult and the witness will surely become hostile evidence due to this the court quashes the criminal proceedings of rape case keeping this view in mind.

*Dalbir Singh and Ors. vs State of Punjab*³, in this case one of the accused married the victim and the Punjab and Haryana Court quashed the proceedings of the rape case providing that both the complainant and the offender have settled the dispute amicably and continuing of criminal proceedings would be futile and the chances of conviction are totally bleak, as the complainant is not likely to support the case of the prosecution.

*Freddy @ Antony Francis & Ors. vs. State of Kerala*⁴, in this case during course of the trial the victim and the accused settled their dispute and married each other and then the Kerala

² Malavika Parthasarathy & Rupal Oza, Compromise in rape cases in Punjab and Haryana: gendered narratives animating judicial decision-making. 11. (Sept., 2020).

³ Dalbir Singh and Ors. vs State of Punjab Criminal Misc. No. M-27509 of 2015.

⁴ Freddy @ Antony Francis & Ors. v. State of Kerala 2018 (1) KLD 558.

High Court using S.482 of the CrPC quashed the criminal proceedings of the rape because it was compromised and the welfare of the victim was important.

Md. Jahirul Maulana vs. State of Assam⁵, in this case the victim and the offender have been married during the trial with a child out of wedlock, the high court quashed the case and further stated that litigation should not be looming over a happy family.

The High Courts have immense pressure when it comes to cases of compromise, they have to think about the welfare of the family and the victim but at the same time an offender is let loose every time he gets married to the victim. This kind of liberal approach creates a new rape culture and the honour and safety of women is at stake. Due to such compromises the offender is let off easily and let to roam in the streets as though he has not committed any crime. Such offenders should be dealt with an iron hand and not in liberal approach.

III. THE CORRECT LEGAL POSITION

Gian Singh vs. State of Punjab⁶ This is the most important case regarding the use of inherent powers of the High Court under Section 482 of CrPC. In this case there was a list of specific guidelines on the use Section 482 of CrPC given by the Supreme Court. It specifically mentions that the crimes such as rape, murder and dacoity which is an offence not only against the individual but also towards the state. Such cases cannot be quashed even though the accused and the victim enter the compromise or if settled.

Shimbhu & Anr vs. State Of Haryana⁷, the appellants' gang raped the victim for two days, a case was filed against the appellants. The appellants filed for reduction of sentence in the Supreme Court on the reason that there was a settlement between the appellants and the victim and later had produced an affidavit mentioning the settlement. The court rejected the appeal and held that there needs to be "adequate and special reasons" for such a consideration for reducing the sentence. Further held that, Rape is the crime committed here. It is a particularly heinous crime, a crime against society, a crime against human dignity, a crime that reduces man to the status of an animal. And finally, a compromise reached between the parties cannot be interpreted as a deciding factor on which a lesser punishment can be imposed. Rape is a non-compoundable offence, as well as an offence against society, and it is not a matter that should be left to the parties to negotiate and settle.

⁵ Md. Jahirul Maulana vs State of Assam Criminal Petition no. 234 of 2016.

⁶ Gian Singh v. State of Punjab (2012) 10 SCC 303.

⁷ Shimbhu & Anr vs. State Of Haryana (2014) 13 SCC 318.

Narinder Singh & Ors. vs. State of Punjab & Anr⁸, in this case the Supreme Court held that powers conferred under the Section 482 CrPC is to be differentiated with the powers for compounding of offences under Section 320. Further speaking of settlement the Supreme Court added “Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society”.

State of Madhya Pradesh vs. Madan Lal⁹, in this case the accused tricked the victim and then raped her. Later the mother lodged the F.I.R. The Supreme Court held that there can be no compromise between the accused and the victim legally. Further held that there can be no liberal approach just because there is a compromise or if there is a settlement between the parties.

Ananda D.V. vs. State & Anr¹⁰, In this case the appellant entered into a live-in relationship with the respondent no.2 and deceived the respondent no.2 on pretext of marriage and later during the trial they did end up getting married. And now they have settled their dispute. But the Delhi high Courts question was whether the parties who have got married and settled the dispute themselves should be the reason to quash the F.I.R registered under S.376 of IPC? The court relied upon the **Parbathhai Aahir @ Parbathhai Bhimsinhbhai Karmur & Ors**¹¹ in which the Supreme Court once again had discussed the extent and the power of the High Court under Section 482 of CrPC to quash the criminal proceedings on the basis of settlement in a heinous or serious offence. The following was discussed in the case:-

- (i) The inherent powers of the High Court has to be used for securing the ends of justice and to prevent the abuse of process of any court.
- (ii) Whether the F.I.R should be quashed on the ground that the offender and the victim have settled the dispute depends upon the facts of each case and guidelines can be formulated.
- (iii) While using the inherent powers regarding settlement plea the High Court has to see the gravity of the offence and the facts of the case. Heinous and serious offences such murder, rape, dacoity cannot be quashed even though the victim or the members of the victim family have settled the dispute with the offender. Such crimes have a great impact on society.
- (iv) Criminal offences having a civil flavour can be quashed only if the disputants agree on a

⁸ Narinder Singh & Ors. vs. State of Punjab & Anr (2014) 6 SCC 466.

⁹ State of Madhya Pradesh vs. Madan Lal Criminal Appeal No. 231 of 2015.

¹⁰ Ananda D.V. vs. State & Anr 2019 SCC OnLine Del 11163.

¹¹ Parbathhai Aahir @ Parbathhai Bhimsinhbhai Karmur & Ors 2017 SCC Online SC 1189.

compromise.

And thus in the case of *Ananda D.V. vs. State & Anr*¹², the court held that rape being a serious offence which causes injury to not only women's body but also her honour and dignity and even such a settlement reached proceedings cannot be quashed because it has a serious impact on society as well. Further the court held that even though the Appellant and the respondent no.2 have married each other the court cannot quash the offence under Section 482 of CrPC.

*Vimlesh Agnihotri & Ors vs. State & Anr*¹³, in this case, the accused entered the home knowing that the victim's husband was not present, and then raped the victim with the help of other women, filming the crime and threatening that if she told anybody about it, he would post the video on the internet. Rape is an offence against the society. The Supreme Court has, time and again, directed that the High Court should not exercise its jurisdiction under Section 482 CrPC to quash an offence of rape on the ground that the parties have entered into a compromise. Therefore, the petition was dismissed with the observation that High Courts must not exercise its powers under Section 482 CrPC for quashing an offence of rape only on the ground that the parties have entered into a compromise.

IV. THE UNHEARD VOICE OF THE VICTIM

The true notion of justice is not met when the victim is still being re-victimized by marrying the offender or if she is being forced to marry the offender. The patriarchal notions compel her to take such a step where the victim sacrifices her honour and dignity and marries the victim. Before quashing a rape case which has been compromised the court should look into the facts of such compromise and whether this compromise was based on coercion or due to the fear of the offender. Such a compromise if known is due to coercion or fear then wouldn't this be that there is presence of criminal intimidation?¹⁴ If it is criminal intimidation then the court should not allow the petition for quashing the compromised rape case. The honest problem is enquiring the genuine consent given by the victim if this consent is born out of fear of society, family and finally the offender than the victim is revictimized and will experience a horrid lifestyle if married to the same offender. In *Shimbhu & Anr vs. State Of Haryana*¹⁵ the Supreme Court reiterated that, in the interest of justice and to avoid undue pressure/harassment on the victim, it would not be prudent to consider the compromise reached between the parties in rape cases

¹² Ananda D.V. vs. State & Anr 2019 SCC OnLine Del 11163.

¹³ Vimlesh Agnihotri & Ors vs. State & Anr CRL.M.C. 1524/2021.

¹⁴ Pratiksha Baxi., Justice is a Secret: Compromise in Rape Trials. Contributions to Indian Sociology - CONTRIBUTION INDIAN SOCIOLOGICAL. 44. 207-233. 10.1177/006996671004400301. (OCT.,2010).

¹⁵ Shimbhu & Anr vs. State Of Haryana (2014) 13 SCC 318.

to be a basis for the Court to exercise its discretionary power under Section 376(2) of the IPC. The Supreme Court is considering the victim's and society's interests in this case. What guarantee is there that the criminal will not perpetrate the same crime if he commits a serious crime and is let go as a result of a compromise? Punishment for a heinous crime is intended to dissuade the perpetrator, but if that goal is not reached, it creates fertile ground for future sexual violence.

V. CONCLUSION

The legislative intent is very clear, strict and unambiguous pertaining to punishment of rape. When already the judicial pronouncement is clear in *Gian Singh vs. State of Punjab*¹⁶, regarding the use of inherent powers to quash cases of serious offences, many of the times it is clearly misinterpreted. And sometimes the facts of the cases are such that high courts hands are tied and have to quash the case. However, the law is stringent and strict, and when heinous crimes are committed, no amount of undue or misplaced sympathy has a place. If the court discovers that the compromise was reached out of fear or threat, it might be classified as criminal intimidation, and the accused can be punished for it. In rape cases, the culture of compromise is beginning to increase the insensitivity for imposing appropriate punishments.

The Supreme Court has already stated its position on both criminal and civil offences, in cases of compromise. It has been repeatedly stated that heinous criminal offences should not be quashed under Section 482 of the Criminal Procedure Code. However, matters that have a civil flavour and are settled by both parties can be dismissed. Every case is distinct, and the courts must deal with a variety of viewpoints, but when crimes are committed against the state, suitable sanctions should be administered. In rape cases, the culture of compromise is beginning to increase the insensitivity for imposing appropriate punishments.

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