IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment reserved on : 13.02.2026*
Judgment delivered on: 22.05.2026

\+ **CRL.M.C. 5219/2024**

ASHWINI PAL .....Petitioner

versus

STATE NCT OF DELHI AND ANR ..... Respondents

Advocates who appeared in this case:

For the Applicant : Mr. Nandan Kumar Rai & Mr. Gajendra Mohan Thakur, Advs.

For the Respondent : SI Prashant Malik, PS Laxmi Nagar

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HON'BLE MR JUSTICE AMIT MAHAJAN

J U D G M E N T

CRL.M.A. 21905/2025 ***(appln. on behalf of Respondent No. 2 for recall of order dated 03.12.2024)*** **& CRL.M.A. 21906/2025** ***(exemption)***

1. The present application has been filed by Respondent No.2/Ms. P (hereinafter "***Applicant***"), seeking recall of the order dated 03.12.2024 passed by this Court in CRL.M.C. 5219/2024 whereby FIR No.152/2024 registered at Police Station Laxmi Nagar under Sections 376(2)(n)/313/506 of the Indian Penal Code, 1860 ("**IPC**") and all proceedings emanating therefrom were quashed in exercise of powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("**BNSS**").

2. Succinctly stated, the record reflects that FIR No.152/2024 dated 29.05.2024 came to be registered at Police Station Laxmi Nagar for offences punishable under Sections 376(2)(n)/313/506 of the IPC

on the complaint made by Applicant herein. The allegations in the FIR, in substance, were that the Applicant and the original Petitioner/Sh. Ashwani Pal-Husband (hereinafter "***Respondent***"), were, then, in a live-in relationship during which the Respondent established physical relations with the Applicant, on the assurance of marriage and further caused termination of her pregnancy against her will by administering abortion pills. It was alleged that the Respondent subsequently refused to marry the Applicant, leading to registration of the FIR in question.

3. Undisputedly, subsequent to registration of the FIR, the parties solemnized their marriage on 31.05.2024 according to Hindu rites and ceremonies.

4. Thereafter, the Respondent approached this Court by way of CRL.M.C. 5219/2024 seeking quashing of the aforesaid FIR and all proceedings arising therefrom on the ground that the disputes between the parties stood amicably resolved and the parties have married.

5. This Court, *vide* order dated 03.12.2024, allowed the petition and quashed the FIR. The said order records that both parties were personally present before the Court and had been duly identified by the Investigating Officer and further records that the Applicant, upon being specifically queried by the Court, stated that:

a) she was in a consensual relationship with the Respondent;

b) the complaint had been lodged, due to certain misunderstandings between the parties and when the Respondent had refused to marry her;

c) subsequently, the marriage had been solemnized on 31.05.2024; and

d) she was happily residing with the Respondent and did not wish to pursue the proceedings arising out of the FIR.

6. The order also notes that the Petition was supported by a sworn affidavit of the Applicant affirming that she had no objection if the proceedings emanating from the FIR were quashed.

7. While passing the Order dated 03.12.2024, this Court examined the legal position governing quashing of criminal proceedings involving non-compoundable offences and specifically adverted to the decisions of the Hon'ble Supreme Court in ***Narinder Singh v. State of Punjab,* (2014) 6 SCC 466; *Parbatbhai Aahir v. State of Gujarat,* (2017) 9 SCC 641; *Kapil Gupta v. State of NCT of Delhi,* 2022 SCC OnLine SC 1030;** and ***Pramod Suryabhan Pawar v. State of Maharashtra,* AIR 2019 SC 4010.** This Court, specially noting that though offences under Sections 376(2)(n) and 313 IPC are grave offences involving mental depravity and ordinarily are not liable to be quashed merely on the basis of a settlement, however, taking into consideration the peculiar facts of the case including the statement of the prosecutrix that the relationship was consensual, that the FIR was lodged when marriage was refused, that the parties had already solemnized marriage and that she no longer wished to pursue the matter, exercised jurisdiction under Section 528 BNSS and quashed the proceedings.

8. Now, after about 6 months of passing of the aforesaid Order, the present application came to be filed seeking recall of the same.

9. Learned counsel appearing on behalf of the Applicant submits that the order dated 03.12.2024 was obtained by *fraud, coercion and misrepresentation* practised by the Respondent upon both the Applicant as well as this Court.

10. It is submitted that the Applicant had agreed to quashing of the FIR only because the Respondent and his family members had assured her that the marriage would be honoured sincerely and that she would be given a dignified matrimonial life.

11. It is contended that the very foundation of the quashing order stood premised upon the belief that the marriage between the parties was genuine and that continuation of criminal proceedings would adversely affect the future matrimonial life of the parties.

12. It is contended that the subsequent conduct of the Respondent demonstrates that the marriage itself was merely a device adopted to evade criminal prosecution. It is alleged that shortly after the FIR came to be quashed, the Applicant was subjected to physical violence, emotional abuse, financial exploitation and repeated threats by the Respondent and his family members, which show that he had no genuine intention to continue the marital relationship. Reliance has also been placed upon an alleged audio recording/transcript.

13. It is urged that the Applicant has been abandoned by the Respondent on 06.04.2025 and on her last visit to the matrimonial home, she was subjected to assault by the Respondent leading to her

hospitalization on 28.05.2025. Reliance has also been placed upon complaints made before the National Commission for Women and medical documents.

14. Hence, it is prayed that the above order of quashing be re-called.

15. *Per contra*, the it is submitted on behalf of the Respondent that at the outset that the present application is not maintainable in law. It is submitted that the order dated 03.12.2024 is a final judicial order passed after due consideration of the factual and legal aspects of the matter and after recording the voluntary statements of the parties before the Court. Once the order attained finality, this Court became *functus officio* and cannot reopen or review the same in view of the express embargo contained under Section 362 CrPC corresponding to Section 403 BNSS. Reliance has been placed on the decisions of the Hon'ble Supreme Court in ***Hari Singh Mann v. Harbhajan Singh Bajwa,* AIR 2001 SC 43** and ***Raghunath Sharma v. State of Haryana,* 2025 INSC 723** to contend that inherent powers under Section 482 CrPC/Section 528 BNSS cannot be invoked to review or alter a final judgment.

16. It is further submitted that once the parties are admittedly legally wedded, the allegation of consent obtained on a false promise to marry loses all force in law. A legally wedded husband cannot retrospectively be prosecuted for rape on the basis of a promise that has already been fulfilled by marriage.

17. It is further submitted that the allegations now raised by the Applicant pertain entirely to alleged post-quashing events relating to matrimonial disputed and, even if assumed to be true, the same would at best furnish fresh causes of action for which separate remedies are available under law.

18. It is also submitted that no material has been placed on record to demonstrate that any statement made before this Court at the time of quashing was forged, fabricated or false to the knowledge of the parties at that stage.

19. It is argued that the parties had admittedly solemnized marriage on 31.05.2024, much prior to the quashing order dated 03.12.2024, and had continued to reside together thereafter. Therefore, subsequent matrimonial discord cannot retrospectively invalidate the judicial order passed by this Court. The Respondent also disputes the correctness and admissibility of the alleged electronic evidence relied upon by the Petitioner and submits that the same cannot form the basis for recalling a final judicial order.

20. It has also been urged that the Applicant herself has a history of abusive and violent conduct towards the Respondent, including beating, hurting, and threatening him and she is already on bail from the Hon'ble Allahabad High Court in connection with serious offences under Sections 323, 304, 504 and 506 of the IPC and another FIR has also been registered against her in Allahabad under Sections 115(2), 352, and 35(2) of the Bharatiya Nyaya Sanhita.

21. It has also been urged that post marriage, the Applicant has continuously subjected the Petitioner to physical assaults, intimidation, and coercive conduct, resulting in grave emotional, mental, and financial hardship. The Applicant frequently expelled the Respondent from her residence, leaving him to reside at railway stations or roadside and even instigating him to commit suicide. On 13.03.2025, the Applicant attacked the Respondent, causing head injuries with bleeding and visible nail marks. Though PCR 112 was called, instead of recording his complaint, SI Aman, allegedly acting under the influence of Applicant's cousin sister SI Priyanka Gupta (a Delhi Police officer), illegally detained the Respondent.

22. Hence, it is prayed that the present frivolous application be dismissed as the same is filed only to harass the Respondent

23. I have heard learned counsel for the parties and perused the material placed on record.

Analysis and Findings

24. At the outset, it becomes necessary to examine the legal framework governing the power of recall or review in criminal proceedings. Section 362 CrPC (corresponding to Section 403 of the BNSS) reads as under:

> *"**362. Court not to alter judgment.—**Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."*

25. The provision embodies the well settled principle that once a Court has pronounced and signed its final judgment or order disposing of a criminal proceeding, it becomes *functus officio* and lacks jurisdiction to undertake a substantive review or reconsideration of the matter except to the limited extent expressly permitted by statute. The Hon'ble Supreme Court in ***Hari Singh Mann*** (supra) categorically held that the Court becomes *functus officio* the moment the final order disposing of the case is signed and such order cannot thereafter be altered except for correcting clerical or arithmetical errors. Similarly, in ***Raghunath Sharma*** (supra), the Hon'ble Supreme Court reiterated that inherent powers under Section 482 CrPC cannot be exercised in a manner that defeats the express statutory prohibition contained under Section 362 of the CrPC. The relevant extract is reproduced herein below: -

> *"8. Chapter XXVII of the Cr. P.C. deals with 'judgment'. It defines what a judgment is; in what language it should be delivered; its contents; effect (arrest, payment of compensation, release, etc.).* ***Section 362 provides that a Court shall not, once it has signed the judgment or final order disposing of a case, alter or review the same, except to correct an error clerical or arithmetic.***
> *9. The scope of this power has been discussed in several judgments of this Court.*
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> *9.1. Sanjeev Kapoor v. Chandana Kapoor7 discusses the scope of this power in the following terms:*
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> > ***"19. The legislative scheme as delineated by Section 369 of the Code of Criminal Procedure, 1898, as well as legislative scheme as delineated by Section 362 of the Criminal Procedure Code, 1973 is one and the same. The embargo put on the criminal court to alter or review its judgment is with a purpose and object. The judgments of this Court as noted above, summarised the law to the effect that criminal justice delivery system does not clothe criminal court with power to***

alter or review the judgment or final order disposing of the case except to correct the clerical or arithmetical error. After the judgment delivered by a criminal court or passing of the final order disposing of the case the court becomes functus officio and any mistake or glaring omission is left to be corrected only by appropriate forum in accordance with law."

9.2. In Hari Singh Mann v. Harbhajan Singh Bajwa8, this Court observed:

"10. Section 362 of the Code mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error. …"

9.3. It is clear from the above extracts that Section 362 Cr. P.C. provides for a fairly limited scope of the exercise of such power. Next, what is required to be seen is whether the phrase, "Save as otherwise provided by this Code" permits such alterations under Section 482 Cr. P.C.

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9.3.2. In Sooraj Devi v. Pyare Lal10, it was categorically held that:

"5. The appellant points out that he invoked the inherent power of the High Court saved by Section 482 of the Code and that notwithstanding the prohibition imposed by Section 362 the High Court had power to grant relief. Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code (Sankatha Singh v. State of U.P., [AIR 1962 SC 1208 : 1962 Supp (2) SCR 817 : (1962) 2 Cri LJ 288]). It is true that the prohibition in Section 362 against the court altering or reviewing its judgment is subject to what is "otherwise provided by this Court or by any other law for the time being in force". Those words, however, refer to those provisions only where the court has been expressly authorised by the Code or

other law to alter or review its judgment. The inherent power of the court is not contemplated by the saving provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail."

(Emphasis supplied)

9.3.3. The position in Sooraj Devi (supra) stands referred to/followed in Simrikhia v. Dolley Mukherjee11; State of Punjab v. Davinder Pal Singh Bhullar12; Gian Singh v. State of Punjab13; and Telangana Housing Board v. Azamunnisa Begum14.

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10.1. State of M.P. v. Man Singh16, with reference to a decision rendered by a three-Judge Bench in State of Kerala v. M.M. Manikantan Nair17, makes this position clear as follows:

"7. It is well settled law that the High Court has no jurisdiction to review its order either under Section 362 or under Section 482 CrPC [State of Kerala v. M.M. Manikantan Nair, (2001) 4 SCC 752 : 2001 SCC (Cri) 808]. The inherent power under Section 482 CrPC cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits [State v. K.V. Rajendran, (2008) 8 SCC 673 : (2008) 3 SCC (Cri) 600 : 2009 Cri LJ 355]. After disposing of a case on merits, the Court becomes functus officio and Section 362 CrPC expressly bars review and specifically provides that no court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error [Hari Singh Mann v. Harbhajan Singh Bajwa, (2001) 1 SCC 169 : 2001 SCC (Cri) 113]. Recall of judgment would amount to alteration or review of judgment which is not permissible under Section 362 CrPC. It cannot be validated by the High Court invoking its inherent powers [Sooraj Devi v. Pyare Lal, (1981) 1 SCC 500 : 1981 SCC (Cri) 188 : AIR 1981 SC 736]."

(Emphasis supplied)

11. Again, in Narayan Prasad v. State of Bihar18 this Court reiterated that once a judgment has been passed, the powers under Section 482 Cr. P.C. do not permit its alteration or review. Such power is meant solely to secure the ends of justice and it cannot be taken to mean doing something that is expressly prohibited by statute.

> *12.* ***In view of the above discussion of law, the conclusion is that the impugned judgment was passed by the High Court without any authority or basis. Once the criminal cases had been quashed, under Section 482 Cr. P.C. on the ground of compromise entered into between the parties, one of the parties violating terms thereof is a ground entirely foreign to law, to once again invoke such powers and recall the order of quashing. Violations of a term of a compromise have their own avenues of law from which they can be enforced.****"*
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> (Emphasis Supplied)

26. Hence, there can be no quarrel with the proposition that criminal courts do not possess any inherent power of substantive review analogous to civil jurisdiction and once an order has been passed in exercise of powers under Section 482 of the CrPC, the Court should be slow in again exercising these powers to recall such order, passed to prevent abuse of process of law, on account of any alleged breach of conditions agreed to by the parties.

27. It has been urged by the Applicant that fraud vitiates all judicial acts and an order obtained by practising fraud upon the Court does not enjoy sanctity in the eyes of law. Therefore, the limited question which arises for consideration is whether the present application discloses circumstances sufficient to *prima facie* establish that the order dated 03.12.2024 was itself procured by fraud practised upon the Court.

28. In the considered opinion of this Court, the answer must be in the negative.

29. A careful reading of the order dated 03.12.2024 demonstrates that the FIR was not quashed merely on the basis of a future assurance by the Respondent that he would maintain cordial matrimonial

relations with the Applicant. Rather, the order records several material circumstances, that, *Firstly*, the Applicant herself personally appeared before this Court and categorically stated that she had been in a *consensual relationship* with the Respondent and that the complaint had been lodged, due to certain *"misunderstandings"* when the Respondent had refused to marry her. *Secondly*, the applicant acknowledged before this Court that the marriage between the parties had already been solemnized on 31.05.2024. *Thirdly*, the Applicant specifically stated before this Court that she was happily residing with the Respondent and did not wish to pursue proceedings arising from the FIR. *Fourthly*, the petition was supported by a sworn affidavit of the applicant affirming her no objection to the quashing of the FIR. *Fifthly*, this Court independently examined the legal permissibility of quashing proceedings involving offences under Sections 376(2)(n) and 313 IPC and exercised discretion after considering the applicable legal principles.

30. Thus, the order dated 03.12.2024 was not founded merely upon a speculative expectation of future matrimonial harmony but upon contemporaneous statements voluntarily made before the Court coupled with the admitted factum of marriage between the parties.

31. Additionally, this Court, while passing the impugned order was also conscious of the settled proposition of law that every breach of promise to marry would not *ipso facto* amount to rape. To attract the offence punishable under Section 376 of the IPC on the allegation of a false promise to marry, it must *prima facie* appear that the promise

itself was false from inception, made in bad faith, and with no intention whatsoever of being honoured at the time when such promise was extended. The promise must bear a direct nexus with the prosecutrix's decision to engage in the sexual relationship. A subsequent breakdown of the relationship, reluctance to marry, or failure of the relationship by itself cannot convert an otherwise consensual relationship into an offence of rape. The Hon'ble Supreme Court in ***Pramod Suryabhan Pawar*** (supra) has clearly drawn a distinction between a false promise made in bad faith and a mere breach of promise arising subsequently due to changed circumstances or failure of the relationship.

32. Hence, the above principles and the factum of marriage between the parties was duly considered by this Court while exercising jurisdiction under Section 528 of the BNSS.

33. Significantly, the marriage between the parties had been solemnized on 31.05.2024, whereas the FIR came to be quashed much later on 03.12.2024. Thus, the marriage was not brought into existence immediately before passing of the quashing order.

34. Though the Applicant now seeks to contend that the Respondent never intended to honour the marriage and that the marriage itself was merely a device to evade criminal prosecute, such allegation essentially rests upon subsequent conduct and matrimonial discord which arose thereafter.

35. These allegations relating to physical violence, cruelty, emotional abuse, threats, financial exploitation, desertion, complaints

before the NCW and alleged hospitalization (i.e. events which allegedly occurred after the order dated 03.12.2024), even if assumed to be correct, themselves do not inevitably establish that the statements made before this Court on 03.12.2024 were false to the knowledge of the parties at that stage or that the order itself was procured by practising fraud upon the Court.

36. It is also apposite to mention that both parties have levelled extensive allegations and counter-allegations against each other pertaining to events allegedly occurring after the passing of the quashing order dated 03.12.2024. While the Applicant has alleged acts of cruelty, assault, abandonment, intimidation and emotional and financial abuse, the Respondent, in turn, has alleged physical violence, coercive conduct, threats and harassment at the hands of the Applicant. This Court is consciously refraining from entering into an adjudication upon the correctness, truthfulness or evidentiary value of such rival allegations in the present proceedings.

37. The subsequent matrimonial disputes and acrimony sought to be projected by either side cannot enlarge the limited jurisdiction of this Court in a recall application and even commission of fresh offences cannot automatically lead to the inference that the settlement recorded earlier or the judicial order passed thereupon stood vitiated *ab initio* by fraud.

38. Matrimonial relationships may unfortunately deteriorate after marriage, on account of a multitude of circumstances. At best, the allegations made by both parties reflect a subsequent breakdown of the

marital relationship and deterioration of matrimonial harmony after the quashing of the FIR.

39. Additionally, this Court is also unable to overlook the fact that the Applicant voluntarily appeared before the Court and made categorical statements supporting quashing of the FIR. No allegation is made that the Applicant was prevented from freely addressing the Court or that any statement recorded by the Court was inaccurately transcribed. The contention that the Applicant had been "*tutored*" to support the quashing petition is a matter which cannot be accepted merely on subsequent assertions, particularly when the statements were made before a judicial forum in the course of proceedings where the Applicant had the full opportunity to express her stand independently.

40. The present application, in substance, seeks reopening of a quashing order on the basis of subsequent matrimonial disputes and allegations arising after the FIR had already been quashed. Permitting such a course would fundamentally defeat the very object underlying the exercise of jurisdiction under Section 528 of the BNSS in matrimonial and private disputes, where criminal proceedings are quashed after parties voluntarily settle their disputes and choose to restore or continue their relationship. If every subsequent matrimonial disagreement, breakdown of marriage, or allegation arising after quashing were permitted to revive concluded criminal proceedings, no order passed on the basis of settlement or reconciliation would ever attain finality. The jurisdiction under Section 528 of the BNSS is

intended to secure finality to such settlements and prevent continuation of criminal proceedings where parties themselves choose to bury their disputes. Accepting the present contention would render such finality illusory and would expose concluded proceedings to perpetual uncertainty depending upon future developments in the matrimonial relationship.

41. At the same time, this Court deems it appropriate to clarify that no opinion is being expressed in the present order on the veracity or otherwise of the allegations made by the Applicant regarding alleged acts of cruelty, assault, intimidation, domestic violence or any other subsequent criminal conduct attributed to the Respondent. If the Applicant is aggrieved by any subsequent acts allegedly committed by the Respondent or any other person, it shall remain open to her to avail such remedies as may be available in law and any such proceedings shall be considered independently on their own merits uninfluenced by observations made herein.

42. Consequently, this Court finds no merit in the present application. The same is accordingly dismissed.

43. Pending applications, if any, also stand disposed of.

AMIT MAHAJAN, J

MAY 22, 2026

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