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Mohd Kamil Vs. State and Ors

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Court : Delhi

Decided On : Dec-01-2014

Judge : Sudershan Kumar Misra

Appellant : Mohd Kamil

Respondent : State and Ors

Advocate for Def. : Ms. Nishi Jain, Mr. Kapil Singhal

Advocate for Pet/Ap. : Mr. Ranjan Kumar

Judgement :

$~17 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3816/2014 MOHD KAMIL Through: ..... Petitioner Mr. Ranjan Kumar, Advocate with petitioner in person. versus STATE & ORS Through: ..... Respondents Ms. Nishi Jain, APP for the State with SI Kuldeep Singh, PS Gazipur. Mr. Kapil Singhal, Advocate for the complainant with complainant in person. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.(Oral) 1. This petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.27/2012 registered under Sections 498A/406/34 IPC at Police Station Ghazipur on 23rd January, 2012 on the ground that the matter has been amicably settled between the parties.

2. Issue notice. Ms. Nishi Jain, Additional Public Prosecutor and Mr. Kapil Singhal, Advocate enter appearance and accept notice on behalf of the State/respondent

No.1 and respondent No.2/complainant, respectively.

3. Petitioner as well as complainant/respondent No.2-Khurshida are present in person and are also identified by the Investigating Officer/ SI Kuldeep Singh, Police Station Ghazipur.

4. The aforesaid FIR is stated to have been lodged by respondent No.2/complainant consequent upon certain matrimonial and domestic disputes that had arisen between the parties pursuant to her marriage with petitioner No.1-Mohammad Kamil on 1st March, 2009. At the same time, complainant had also instituted proceedings under Section 12 of the Domestic Violence Act and suit under Section 2(VIII) A of the Dissolution of Muslim Marriage Act, 1939 before the Senior Civil Judge-cum-Rent Controller, Karkardooma Court, Delhi. The said court referred the matter to Mediation and ultimately on 14th March, 2014 in Case No.CS-354/13 a settlement was recorded between the parties at the Delhi Mediation Centre, Karkardooma Courts setting out all the terms and conditions thereof. A copy of the settlement so arrived has been annexed to this petition.

5. In terms of the settlement, the complainant has withdrawn suit under Section 2(VIII) A of the Dissolution of Muslim Marriage Act, 1939 on 1st April, 2014 since the petitioner has divorced the complainant in the customary manner which has been accepted by the complainant.

6. It is stated that petitioner No.1 had agreed to pay a sum of Rs.2,25,000/- in all to the complainant towards full and final settlement of all her claims and dues. Out of the said amount, Rs.75,000/- already stands paid to the complainant and the remaining amount of Rs.1,50,000/- has been handed over to the complainant today by way of two bankers cheques bearing Nos. 043039 and 043043, in the sum of Rs.50,000/- and 1,00,000/respectively, both dated 1st December, 2014 drawn on Bank of India. Out of the two bankers cheques, Rs.1,00,000/- is to be deposited by the complainant in the form of an FDR favouring the minor child of the parties, namely, Mohammad Riyan. In addition, after the receipt of this amount the complainant is also required to withdraw pending proceedings under Section 12 of the Domestic Violence Act which is stated to be listed for 10 th December, 2012 before the Court of Ms. Richa Parihar, Metropolitan Magistrate,

Karkardooma Courts. Further, the complainant has also signed Form Nos. 29 and 30 for the transfer of ownership of Pulsar Motor Cycle bearing registration No.DL7BE2750from the name of the complainant to the petitioner in the Court today.

7. The complainant approbates the aforesaid settlement and all the aforesaid steps that have been taken. She also states that she has no further grievance in the matter; and with the aforesaid payment, and nothing further remains due to her from the petitioners. Complainant undertakes to withdraw her pending complaint under Domestic Violence Act on the next date of hearing i.e. on 10th December, 2014. She states that she does not wish to pursue the matter any further and prays that the same be closed.

8. The statement and undertaking of the complainant are accepted by this Court and she shall remain bound by the same.

9. Additional Public Prosecutor appearing for the State submits that looking to the overall circumstances and since the matter pertains to a domestic and matrimonial dispute; where the parties have amicably settled their disputes and the complainant is no longer interested in supporting the prosecution, no useful purpose will be served in continuing with the proceedings.

10. Under the circumstances and looking to the decision of the Supreme Court in the case of Gian Singh v. State of Punjab, (2012) 10 SCC303 which has referred to a number of matters for the proposition that even a non-compoundable offence can also be quashed on the basis of a settlement between the offender and the victim, if the circumstances so warrant; by observing as under:

58. ....However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power,

quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

And also in Narinder Singh and Ors. v. State of Punjab and Anr. 2014(2) Crimes 67 (SC) where the Supreme Court 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. 29.2 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. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives. 29.3 Such a power is not 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. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender. 29.4 On the other hand, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of

matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves. 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. 29.6 Offences under Section 307 Indian Penal Code would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 Indian Penal Code in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307Indian Penal Code is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 Indian Penal Code. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship. 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 Indian Penal Code 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 Indian Penal Code 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.

I am of the opinion that this matter deserves to be given a quietus at this stage itself, since the parties have resolved their differences which has arisen primarily out of matrimonial and domestic disputes; moreover since the complainant is no longer interested in supporting the prosecution, its chances of success in the matter are in any case greatly diminished. 11 Consequently, FIR No.27/2012 registered under Sections 498A/406/34 IPC at Police Station Ghazipur on 23rd January, 2012 and all proceedings emanating therefrom, are hereby quashed.

12. The petition stands disposed off. SUDERSHAN KUMAR MISRA JUDGE DECEMBER01 2014 AK

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