

Jagdish Vs. State and anr

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Court : Delhi

Decided On : Jul-15-2014

Judge : Sudershan Kumar Misra

Appellant : Jagdish

Respondent : State and anr

Judgement :

\$~26 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3036/2014
JAGDISH Through: Petitioner Mr. K.B. Sachdeva, Advocate with petitioner in person. versus STATE & ANR Through: Respondents Ms. Nishi Jain, APP for the State with SI Pratap Singh, PS Punjabi Bagh. Mr. Jagvir Bhadana, Advocate for R2 with R-2 in person. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(ORAL) Crl. M.A. 10528/2014 (for exemption) Exemption, as prayed for, is allowed, subject to all just exceptions. The application stands disposed off. CRL.M.C. 3036/2014 and Crl. M.A. 10527/2014 (for stay) 1. This petition has been moved under Section 482 of the Code of Criminal Procedure, 1973 by Sh. Jagdish praying that FIR No.200/2007 under Sections 498A/406/34 IPC registered at Police Station Punjabi Bagh and the proceedings emanating therefrom be quashed.

2. FIR No.200/2007 was registered on the complaint of Smt. Manju, who is arrayed as respondent No.2 to these proceedings, stating that she was married to the petitioner, Shri Jagdish, and further raising allegations attracting the provisions of Section 498A/406/34 IPC.

3. The charge sheet in the matter is stated to have been filed and the matter is now fixed for the complainants evidence.

4. Further a perusal of the order dated 22nd February, 2012 passed by learned Metropolitan Magistrate shows that charge under Section 498A IPC was framed against the petitioner alone. All the other accused persons, namely, Munni Devi, Meenakshi, Vijay and Hanuman, who are mother-in-law, sister-in-law, brother-in-law and father-in-law, respectively, were discharged.

5. It is stated that the matter has since been compromised and settled between the petitioner and respondent No.2. Further, the parties have also obtained a divorce by mutual consent in HMA No.78/2013 in terms of the judgment dated 27.02.2013, certified copy whereof has also been annexed to this petition. The said divorce was also based on a settlement arrived at between the parties. A joint statement incorporating the terms of settlement that was recorded in the first motion proceedings on 5th July, 2012 before Family Courts, has also been annexed. In terms of the said agreement, the petitioner had undertaken to give total amount of Rs. 1,50,000/- in three equal instalments whilst the second respondent had also undertaken not to claim any maintenance and also to withdraw all other pending proceedings. It was also agreed that the custody of the children will remain with respondent No.2/complainant. It is also stated that in terms of the aforesaid settlement, respondent No.2 has already received Rs.1,00,000/-. The remaining amount of Rs. 50,000/- has been handed over to her in Court today in the following manner:

6. (i) Rs.10,000/- in cash. (ii) Rs.40,000/- by way of Bankers Cheque dated 4th July, 2014 bearing No.319540 drawn on State Bank of India, East Patel Nagar Branch. Respondent No.2, who is present in person, who is identified by her counsel, also affirms all these facts and states that she has no further claim in the matter, and that she is not interested in pursuing the proceedings, and that the

same be brought to an end.

7. Counsel for the State also submits that no useful purpose will be served in continuing with the proceedings.

8. Consequently, and in view of the decision of the Supreme Court rendered in *Gian Singh v. State of Punjab*, (2012) 10 SCC303 which has referred to a number of matters for the proposition that even a noncompoundable offence can also be quashed on the ground of a settlement agreement between the offender and the victim, if the circumstances so warrant.

9. The Supreme Court has also held in *Narinder Singh and Ors. v. State of Punjab and Anr.* 2014(2) Crimes 27 (SC) as follows:

31. 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: (I) 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. (II) 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. (III) 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. 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. (IV) On the other, 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. (V) 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. (VI) 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 307 Indian 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. (VII) 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.

9. I am of the opinion that no useful purpose would be served in continuing the proceedings and the same deserve to be quashed.

10. Accordingly, the petition is allowed and FIR No.200/2007 under Sections 498A/406/34 IPC registered at Police Station Punjabi Bagh, and all the proceedings emanating therefrom, are hereby quashed.

11. The petition stands disposed off. SUDERSHAN KUMAR MISRA, J.

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