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Akshay Bhardwaj and ors Vs. State and anr

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Court : Delhi

Decided On : Jul-30-2014

Judge : Sudershan Kumar Misra

Appellant : Akshay Bhardwaj and ors

Respondent : State and anr

Advocate for Def. : Mr. Amit Ahlawat

Advocate for Pet/Ap. : Mr. Santosh Kumar

Judgement :

$~17 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3302/2014 AKSHAY BHARDWAJ & ORS ..... Petitioners Through: Mr. Santosh Kumar, Advocate versus STATE & ANR Through: ..... Respondents Mr. Amit Ahlawat, APP for State CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.(Oral) CRL.M.A. 11422/2014 Exemption, as prayed for, is allowed, subject to all just exceptions. The application stands disposed off. CRL.M.C. 3302/2014 1. This petition under Section 482 Cr.P.C. seeks quashing of FIR No.44/2012 registered under Sections 323/341/308/34 IPC dated 09.03.2012 at Police Station Kanjhawala, Delhi, at the instance of respondent Nos. 2, 3 and 4, who are the complainants, against all the petitioners, since the matter is stated to have been compromised between the parties in terms of a compromise deed dated 10.04.2014. A certified true copy of the said deed of

compromise has also been annexed to this application.

2. According to the FIR lodged, it appears that a quarrel ensued between the four accused persons before this Court and the three complainants, i.e. respondent Nos. 2, 3 and 4, in the vicinity of a tent house, owned by respondent No.2, over the use of a toilet at the said tent house by some of the accused, which escalated into violence.

3. The complainants, who are present in Court today, have stated before this Court also that they do not wish to proceed in the matter, and the matter has been amicably settled. The petitioners/accused are also present and they have expressed remorse and regret for the incident, and undertake to conduct themselves properly in future.

4. Counsel for the petitioner states that as per the MLC, the injuries inflicted on the complainants are of simple nature. He further states that since the complainants are not interested in pursuing the matter any further, it is appropriate that the matter be quashed.

5. Consequently, in view of the above; and looking at the ratio of the decision 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; and also Narinder Singh and Ors. v. State of Punjab and Anr. 2014(2) Crimes 27 (SC) where the Supreme Court held 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 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 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. (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.

6. And the judgment of this Court in Basara and Ors. v. State and Anr. in Crl. M.C. No.6621-24/2006 decided on 3rd September, 2007, wherein it was, inter alia, held as under:

14. .....Peace has been brought in the locality with the intervention of the well wishers of the locality. When there is peace in locality, there will be peace in the town. When there is peace in town, there will be peace in city. When there is peace in city, there will be peace in State. When there is peace in State, there will be peace in country.....

15. The petition is according allowed. FIR No.4/2005 registered against the petitioners under Section 307 read with Section 34 IPC with Police station Samay Pur Badli is quashed and all consequent proceedings pursuant thereto are also ordered to be dropped.

7. Keeping in view the circumstances and the fact that the parties have settled the matter and the complainants are now not willing to proceed with the FIR and since both the parties are carrying on business in the same vicinity, and there being little likelihood of the prosecution succeeding, it is best if a quietus is given on the matter.

8. Consequently, the aforesaid FIR No.44/2012 registered under Sections 323/341/308/34 IPC dated 09.03.2012 at Police Station Kanjhawala, Delhi, and the proceedings emanating therefrom, are quashed, subject to each of the petitioners paying a sum of Rs. 3,000/- to each of the complainants, i.e. respondent Nos. 2, 3 and 4 in this petition, within three days from today. Proof of payment of this amount shall be placed by the petitioners in this Court within three days thereafter, and also before the trial court on 26.08.2014.

9. The petition stands disposed off accordingly. SUDERSHAN KUMAR MISRA Judge JULY30 2014 rd

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