

Mehboob Khan and ors Vs. the State and anr

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Court : Delhi

Decided On : Aug-08-2014

Judge : Sudershan Kumar Misra

Appellant : Mehboob Khan and ors

Respondent : The State and anr

Judgement :

\$~30 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3480/2014
MEHBOOB KHAN & ORS Petitioners Through Mr. Deevesh Pratap Singh,
Advocate. versus THE STATE & ANR Respondents Through Ms. Nishi Jain,
Additional Public Prosecutor. SI Rahul Kumar, CAW Cell, Seelampur. Ms. Kirti
Madan, Advocate with R2 in person. CORAM: HON'BLE MR. JUSTICE
SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(Oral) 1. This petition under Section 482 Cr.P.C. praying that FIR No.359/2008 under Section 498-A , 406, 34 IPC read with Section 3 and 4 of the Dowry Prohibition Act, registered at Police Station Seelampur, and all the proceedings emanating therefrom, be quashed since the parties have settled the matter amongst themselves in terms of a settlement agreement 0accorded before the Mediation Centre, Karkardooma Court, Delhi on 04.03.2014 where the matter was referred by the Metropolitan Magistrate hearing a complaint under Section 125 Cr.P.C. instituted by the second response against the first petitioner, who is her husband.

2. Ms. Nishi Jain, Additional Public Prosecutor for the State; as well as the complainant Shaista Parveen, who is arrayed as second respondent herein; enter appearance and accept notice.

3. The Investigating Officer, Sub Inspector Rahul Kumar, identifies the complainant in Court.

4. Counsel for the complainant states that the entire amount of Rs1,75,000/- as envisaged under the aforesaid settlement recorded on 04.03.2014 has since been received by the complainant. The complainant also affirms this fact. She further states that the complainant shall withdraw case No.543/10/12, that is instituted by her under Section 125 Cr.P.C. and which is currently pending before the Family Court, and is coming up in October, 2014. The statement of respondent No.2 is accepted by this Court, and she shall remain bound by the same. Counsel, on instructions from the complainant, further states that nothing more is due to the complainant from the petitioners; and the first petitioner and the complainant also stand divorced according to their personal law. Respondent No.2 states that she is not interested in continuing with the present proceedings, and the same be quashed.

5. Counsel for the State submits that the matter appears to have arisen out of a purely domestic discord between the parties and since the complainant is not interested in supporting the prosecution, no useful purpose will be served in continuing the same.

6. Under the circumstances, and in view of the decisions of the Supreme Court 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 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.

I am of the opinion that the matter, which has arisen out of a domestic discord and where the parties have settled the matter; should be given a quietus, particularly since the complainant is not interested in supporting the prosecution; and no useful purpose will be served in continuing with these proceedings.

7. Consequently, the petition is allowed and FIR No.359/2008 under Section 498-A, 406, 34 IPC read with Section 3 and 4 of the Dowry Prohibition Act, registered at Police Station Seelampur, and all proceedings emanating therefrom, are hereby quashed.

8. The petition is disposed off. SUDERSHAN KUMAR MISRA, J AUGUST08 2014
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