

Jitender Singh Vs. State and anr.

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Court : Delhi

Decided On : Jul-23-2014

Judge : Pratibha Rani

Appellant : Jitender Singh

Respondent : State and anr.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(CRL) 1332/2014
Reserved on :14.07.2014 Pronounced on :23.07.2014 % JITENDER SINGH
Through : Petitioner Ms.Geeta Luthra, Senior Advocate with Ms.Naina Dubey,
Advocate. versus STATE & ANR Through : Respondents Mr.Saleem Ahmed,
Standing Counsel for the State/R-1 with Ms.Charu Dalal, Adv. Mr.Anurag Jain and
Mr.Veer Pal Singh, Advocates with R-2/ Complainant in person. CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI PRATIBHA RANI, J.

Crl.M.A.No.10208/2014 (Exemption) 1. Exemption allowed, subject to all just exceptions.

2. Application stands disposed of. W.P.(Crl.) No.1332/2014 1. The Petitioner Jitender Singh is brother-in-law of RespondentNo.2 (who is the Complainant) against whom FIR No.394/2014 under Section 376 (2)(f) IPC has been registered at PS Prashant Vihar.

2. The quashing of FIR No.394/2014, PS Prashant Vihar has been sought mainly on the ground that the Respondentno.2 has entered into a settlement with the Petitioner. An affidavit to this effect has also been filed by the RespondentNo.2. Learned Senior Counsel for the Petitioner submitted that in view of the settlement, no purpose would be served by making the Petitioner to undergo the harassment and agony of trial when the Respondentno.2 is left with no grievance against the Petitioner. Thus, to meet the ends of justice, the FIR may be quashed.

3. Before dealing with the contentions by learned Senior Counsel for the Petitioner and whether in view of the alleged settlement entered into by the RespondentNo.2, the FIR can be quashed by this Court in exercise of its power under Article 226 of the Constitution of India or under Section 482 Cr PC, it is necessary to have a brief look at the FIR and also various developments thereafter.

4. The RespondentNo.2 P (name withheld to conceal her identity) got married to Narender on 28.02.2014 in Arya Samaj Mandir, Mukundpur against the wishes of her parents. After the marriage, her husband brought her to his sisters house who was residing in Sector-11, Rohini, Delhi alongwith her family. On 07.04.2014 her sister-in-law Sarita was admitted in hospital and Narender husband of Respondentno.2 stayed in the hospital to take care of his sister. The Petitioner, who is husband of Sarita and brother-in-law (Nandoi) of Respondent no.2 was at home alongwith children. After the children went to sleep, the Petitioner asked the Respondentno.2 to make tea for him. When she entered his room with tea, he locked the room. She asked Jijaji kya kar rahe ho, but without saying anything he forcibly did galat kaam with her. She requested for legal action against her brother-in-law Jitender.

5. During investigation, statement of Respondentno.2 under Section 164 Cr PC was recorded. However, during investigation of this case, she again filed an application for re-recording of her statement but the request was declined by the Court.

6. Ms.Geeta Luthra, learned Senior Advocate for the Petitioner has sought quashing of FIR on the following grounds :(i) The proceedings in question are

frivolous, untrue and abuse of the process of law. (ii) The affidavit filed by RespondentNo.2 shows that FIR has been got registered by her in a state of shock, anguish and depression emanating from the matrimonial discord and subsequent rejection by her father. (iii) The Respondentno.2 had a history of irrational and erratic behaviour symptomatic of mental illness which renders her judgment of situations and her actions faulty, unreliable and delusional. (iv) Observation of learned MM in the proceedings dated 28.05.2014 shows that even learned MM was convinced that Respondentno.2 was mentally ill and needed immediate medical attention. (v) The Respondentno.2 has also made written representation on 04.06.2014 claiming that she was under no duress to withdraw the case which is untrue, frivolous and bad in law. (vi) The present FIR may also be quashed in view of the legal position laid down in State of Karnataka v. L.Muniswamy (1977) 2 SCC699 Manoj Sharma v. State & ORs. (2008) 16 SCC1 Gudavalli Murali Krishna & Ors. v. Gudavalli Madhavi & Anr. (2001) 1 ALD689 Arun Goyal & Anr. v. State of Haryana 2011 (2) RCR (Crl.) 228, and Anjali Agarwal & Anr. v. State of Haryana 2011 (2) RCR (Crl.) 228, wherein in similar circumstances, the Court quashed the FIR observing that the continuation of proceedings would have constituted abuse of the process of law.

7. Learned Senior Counsel for the Petitioner has also relied upon Narinder Singh & Ors. v. State of Punjab & Anr. Criminal Appeal No.686 of 2014, Yogesh Handa v. State of Punjab & Ors. 2013 (4) RCR (Crl.) 472, Crl.M.C. 3030/2009 dated 10.09.2009, V.K.Tulsian v. State 87 (2000) DLT54 Bijender v. State Crl.M.C. No.2572/2011 and Aneesa v. State Crl.M.C. No.3628/2011 in support of her contentions.

8. Ms.Geeta Luthra, learned Senior Advocate for the Petitioner submitted that on the day of occurrence, the Respondentno.2 was sleeping with the children of the Petitioner and there was hardly any occasion for the Petitioner to commit the offence as alleged in the FIR. She has also referred to the version of the Respondentno.2 wherein she has not used the word Rape but only galat kaam and galat kaam cannot be interpreted as Rape. Referring to the state of mind of the Respondentno.2 which has been noticed by learned MM in the proceedings dated 28.05.2014, learned Senior Advocate for the Petitioner submitted that it is a

case wherein despite marrying the person of her choice, the Respondentno.2 could not accept rejection from her father and at the same time, she was also not happy with her decision to marry Narender. She wanted to come out from this matrimonial alliance and that is why she falsely implicated the Petitioner by levelling serious allegations against him.

9. Learned Senior Counsel for the Petitioner, while referring the post FIR developments, submitted that now the family the RespondentNo.2 has accepted her as well her decision to part ways from her husband. Respondent No.2 has clearly stated in para 7 of her affidavit that she realised that she jeopardized the life of an innocent man in course of her rather irrational and erratic actions to satiate her trauma and anguish as she did not want to live with her husband and her father had refused to take her back, thus to save an innocent man from being prosecuted with false allegations, it is necessary that FIR in question be quashed by this Court.

10. During course of hearing, attention of learned Senior Counsel for the Petitioner was drawn to the decision of Apex Court in Gian Singh v. State of Punjab & Anr. 2012(9) SCALE257pointing out the instant case being registered under Section 376 IPC, even if there is settlement between the Complainant and the accused, this Court cannot quash the FIR in exercise of its power under Article 226 of the Constitution of India and under Section 482 Cr PC.

11. Learned Senior Counsel for the Petitioner again insisted that in view of the decision of Apex Court in Narinder Singh & Ors. v. State of Punjab & Anr. (Supra) and Yogesh Handa v. State of Punjab & Ors. (Supra), this court has ample power to quash the FIR.

12. On behalf of State, Mr.Saleem Ahmed, learned Standing Counsel has opposed the prayer for quashing of the FIR stating that from the proceedings dated 28.05.2014 recorded by learned MM, it appears that Respondent No.2 was under tremendous pressure to get the matter settled. It has been further submitted that in view of the decision of Apex Court in Gian Singhs case (Supra), the present FIR registered under Section 376 IPC cannot be quashed by this Court in exercise of its inherent power.

13. At the outset, it may be mentioned that in Narinder Singhs case (Supra), the quashing was sought in a case registered under Section 307/324/323/34 IPC on the basis of compromise entered into between the Petitioners and Complainant/RespondentNo.2. The Apex Court accepted the compromise between the parties and criminal proceedings were quashed in the facts and circumstances find mentioned in para 35 of the report which is as under :We have gone through the FIR as well which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute etc. is not stated in detail. However, a very pertinent statement appears on record viz., respectable persons have been trying for a compromise up till now, which could not be finalised. This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings. We, taking all these factors into consideration cumulatively, are of the opinion that the compromise between the parties be accepted and the criminal proceedings arising out of FIR No.121 dated 14.7.2010 registered with Police Station LOPOKE, District Amritsar Rural be quashed. We order accordingly. 14. In Yogesh Handas case (Supra), the High Court of Punjab & Haryana quashed the FIR under Sections 376/506 IPC for the reason that Petitioner had solemnised the marriage with the victim and they were happily living together, therefore, the continuation of FIR and criminal proceedings emanating therefrom were considered to be sheer abuse of the process of law. It may be relevant to note that

while quashing the proceedings in Yogesh Handas case, the decision of Apex Court in Gian Singhs case (Supra) has not been referred.

15. The other decision referred to by learned Senior Counsel for the Petitioner i.e. State of Karnataka v. L.Muniswamy (Supra), Manoj Sharma v. State & Ors. (Supra), Gudavalli Murali Krishna & Ors. v. Gudavalli Madhavi & Anr. (Supra), Arun Goyal & Anr. v. State of Haryana (Supra), Anjali Agarwal & Anr. v. State of Haryana (Supra), CrI.M.C. 3030/2009 dated 10.09.2009, V.K.Tulsian v. State (Supra), Bijender v. State CrI.M.C. No.2572/2011 and Aneesa v. State (Supra) need not be dealt with in view of the legal position laid down in Gian Singhs case.

16. In the case of Gian Singh v State of Punjab & Anr. 2012 (9) SCALE257 the three Judges Bench of the Supreme Court dealing with the issue of quashing of FIR in non-compoundable cases held as under:

57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences Under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases

having overwhelmingly and pre-dominatingly civil favour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

17. The case in hand in which the Petitioner is seeking quashing of FIR has been registered under Section 376(2)(f) IPC. No doubt, in FIR the word Rape has not been used by the Respondent No.2 but at the same time, it cannot be ignored that her statement under Section 164 Cr PC has also been recorded during investigation. It may be apposite to quote the observation of Apex court in *Shimbhu & Anr. v. State of Haryana* 2013 (10) SCALE595 wherein the issue involved was whether the High Court of Punjab & Haryana was justified in taking recourse to Section 376(2) IPC to impose the sentence less than the prescribed minimum. While summarising the law on the subject, the Apex Court had also commented on the circumstances of the victim under which such type of compromise/settlement are entered into. The relevant portion of the report is extracted as under :

21. Thus, the law on the issue can be summarized to the effect that punishment should always be proportionate/commensurate to the gravity of offence. Religion,

race, caste, economic or social status of the accused or victim or the long pendency of the criminal trial or offer of the rapist to marry the victim or the victim is married and settled in life cannot be construed as special factors for reducing the sentence prescribed by the statute. The power under the proviso should not be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation.

22. Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurize her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) of Indian Penal Code.

23. It is imperative to mention that the legislature through the Criminal Law (Amendment) Act, 2013 has deleted this proviso in the wake of increasing crimes against women. Though, the said amendment will not come in the way of exercising discretion in this case, on perusal of the above legislative provision and catena of cases on the issue, we feel that the present case fails to fall within the ambit of exceptional case where the Court shall use its extraordinary discretion to reduce the period of sentence than the minimum prescribed.

24. This is yet another opportunity to inform the subordinate Courts and the High Courts that despite stringent provisions for rape Under Section 376 Indian Penal Code, many Courts in the past have taken a softer view while awarding sentence for such a heinous crime. This Court has in the past noticed that few subordinate

and High Courts have reduced the sentence of the accused to the period already undergone to suffice as the punishment, by taking aid of the proviso to Section 376(2) Indian Penal Code. The above trend exhibits stark insensitivity to the need for proportionate punishments to be imposed in such cases.

17. In view of settled legal position enumerated in Gian Singhs case, I am of the considered view that in an FIR registered with allegations of rape, which is an offence against society, despite the alleged settlement with the RespondentNo.2/ Complainant, this Court cannot exercise its inherent power to quash the FIR/criminal proceedings against the Petitioner. The writ petition is hereby dismissed. Crl.M.A.No.10209/2014 (Stay) Since the writ petition has been dismissed, the present application has become infructuous and the same is accordingly dismissed. PRATIBHA RANI, J JULY23 2014 st

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