

Joginder Chaudhary and ors Vs. the State and anr

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Court : Delhi

Decided On : Aug-04-2014

Judge : Sudershan Kumar Misra

Appellant : Joginder Chaudhary and ors

Respondent : The State and anr

Judgement :

\$~31 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3359/2014
JOGINDER CHAUDHARY & ORS Petitioner Through Mr. R.P.S. Bhatti,
Advocate. versus THE STATE & ANR Respondents Through Mr. Amit
Ahlawat, Additional Public Prosecutor . SI Surinder, police station Bhajanpura
(DIU/NE), Mr. A. A. Khan, Advocate for complainant. CORAM: HON'BLE MR.
JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(Oral) Crl.M.A. No.11654/2014 Exemption, as prayed for, is allowed, subject to all just exceptions. This application is disposed off. Crl.M.C. No.3359/2014 1. This petition under Section 482 Cr.P.C. praying for quashing of FIR No.140/2014 registered under Sections 448/380/34 IPC at police station Bhajanpura, has been moved by the petitioners all of whom were accused in the said FIR, on the ground that the matter has been amicably settled with the complainant, who is arrayed as respondent No.2 to this petition. The accused persons as well as the complainant are present in person in Court. They are identified by their respective counsel.

2. The Investigating Officer, SI Surinder, police station Bhajanpura (DIU/NE), is also present in Court.
3. The matter is stated to be under investigation and the charge sheet is yet to be filed. A Settlement Deed is stated to have been executed on 03.05.2014 between the parties, which has been annexed to this petition. Their signatures on the Settlement Deed are identified by counsel for the respective parties. Counsel for both the parties state, on instructions, that as envisaged in this settlement, all the cross cases filed by the parties against each other stand withdrawn. The full amount of Rs.3.5 lakhs is stated to have been paid by the petitioners to the complainant / respondent No.2, Saleem Khan, who also acknowledges the receipt of the same.
4. Issue notice.
5. Mr. Amit Ahlawat, Additional Public Prosecutor for the State, and Mr. A. A. Khan, Advocate for the complainant, accept notice.
6. Counsel for the State submits that looking to the overall circumstances, and also the fact that the complainant is no longer interested in pursuing the matter and is not supporting the prosecution; no useful purpose will be served in continuing these proceedings.
7. Under the circumstances, and keeping in view the fact that it is a dispute that has, admittedly, arisen as a result of a landlord and tenant relationship where the second respondent was tenant for over 13 years with the father of the petitioners; and that differences cropped up after the demise of the petitioners father; also looking to the fact that the petitioners are young men, out of whom, petitioners 2 to 5 are stated to be students; and keeping in view the pronouncements 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 non-compoundable 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.

And the judgment of this Court in *Basara and Ors. v. State and Anr.* in CrI. 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.

I am of the opinion that no useful purpose would be served in continuing with these proceedings where the complainant is also not interested in supporting the prosecution and the likelihood of the prosecution succeeding is remote. The matter therefore deserves to be given a *quietus*.

8. The petitioners also undertake to pay the costs of Rs.10,000/- each to the Indigent and Disabled Lawyers Fund of Bar Council of Delhi within one week from today. Proof of deposit of costs shall be filed in the Registry of this Court within two days thereafter.

9. Accordingly, the petition is allowed and FIR No.140/2014 registered under Sections 448/380/34 IPC at police station Bhajanpura, and all proceedings emanating therefrom, are quashed.

10. The petition stands disposed off.

11. Dasti. SUDERSHAN KUMAR MISRA, J AUGUST04 2014 dr

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