

Naresh Kumar and ors Vs. State

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Court : Delhi

Decided On : Aug-04-2014

Judge : Sudershan Kumar Misra

Appellant : Naresh Kumar and ors

Respondent : State

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3360/2014
NARESH KUMAR & ORS Petitioners Through Mr. Davinder Hora, Advocate.
versus STATE Through Respondent Ms. Nishi Jain, Additional Public
Prosecutor. SI Rajesh Kumar. Mr. Himanshu Dutt, Advocate for complainant.
CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA %
SUDERSHAN KUMAR MISRA, J.

(ORAL) CrI.M.A. No.11655/2014 Exemption, as prayed for, is allowed, subject to all just exceptions. This application is disposed off. CrI.M.C. No.3360/2014 1. This petition under Section 482 Cr.P.C. for quashing of FIR No.13/2012 dated 03.012.2012 registered at Police Station Gulabi Bagh under Sections 498-A/406/34 IPC, since the matter has been settled between the parties.

2. Issue notice.

3. Ms. Nishi Jain, Additional Public Prosecutor, and MR. Himanshu Dutt, Advocate for the complainant, accept notice.

4. Counsel for the State submits that that the chargesheet has since been filed and charges are yet to be framed by the trial court. A settlement is also stated to have been arrived at between the parties before the Mediation Centre on 19.03.2014 where the matter was referred by the Family Court, Tis Hazari Court, Delhi in Execution No.191/2014. A copy of the said Settlement dated 19.03.2014 has also been annexed to this petition.

5. Both the petitioners as well as the complainant / respondent No.2 are present and are identified by their respective counsel.

6. The Investigating Officer has also identified the complainant.

7. Both counsel for the petitioner as well as second respondent also approve the settlement recoded on 19.03.2014 before the Mediation Centre. The settlement was arrived at on the following terms; .1. It is agreed that JD/Husband shall pay a total sum of Rs.5,00,000/- (Rs. Five Lacs Only) to the DH/Wife towards full and final settlement of permanent alimony istridhan, maintenance (Past, Present and Future) or any other entitlement arising out of the said marriage.

2. The amount of Rs. 5 Lacs shall be paid by the JD/husband to the DH/Wife in three instalment as per the following schedule. i. Rs. 1 Lac in cash payable at the time of withdrawal of petition u /s 125 Cr.P.C. as well as execution petitions by the DH/wife or on before 31.03.2014. ii. Rs.1 Lac in cash payable at the time of withdrawal of complaint u/s 12 D.V. Act by the DH/wife on or before 30.04.2014. iii. Rs.3 Lacs by way of DD payable at the time of quashing of FIR bearing No.12/13, u/s 498A/406/34 IPC, PS-Gulabi Bagh before the Honble High court on or before 31.07.2014. iv. Crl.M.C. No.3360/2014 It is stated / agreed by the parties that no Page 2 of 7 other case / complaint / representation, civil or criminal has been filed by them against each other apart from the litigation as mentioned herein above and in case any case / complaint or representation is found to be pending in any judicial or quasi judicial forum or any other authority, same shall be deemed to have been withdrawn unconditionally and unequivocally in view of the present settlement / agreement. v. Both the parties agreed that they shall not file any complaint or case against each other and their family members of each other in future. vi. The parties have settled their disputes out of their own free will and

without any force, pressure and coercion.

8. Counsel for respondent No.2 acknowledges the receipt of Rs.2 lakhs in terms of paragraph (i) and (ii) reproduced above of the aforesaid settlement. The remaining amount of Rs.3 lakhs have by way of a demand draft favouring the respondent No.2/ complaint bearing No.227402, dated 16.07.2014, drawn on ICICI Bank, has been handed over to counsel for the complaint / respondent No.2 in Court today.

9. Both counsel state that the nothing else remains between the parties and they jointly pray that the aforesaid FIR, and all the proceedings emanated therefrom, be quashed.

10. Counsel for the State also submits that looking to the fact that the matter has arisen out of a matrimonial dispute, and since the complainant is not ready to support the prosecution, no useful purpose will be served in continuing with these proceedings.

11. Under the circumstances, and keeping in view the fact that it is a dispute that has, admittedly, arisen as a result of a matrimonial dispute; 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.

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.

12. Accordingly, the petition is allowed and FIR No.13/2012 dated 03.012.2012 registered at Police Station Gulabi Bagh under Sections 498A/406/34 IPC, and all proceedings emanating therefrom, are quashed.

13. The petition stands disposed off.

14. Dasti. SUDERSHAN KUMAR MISRA, J AUGUST04 2014/dr

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