

Krishan Kumar Diwedi and ors. Vs. State and anr

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Court : Delhi

Decided On : Aug-07-2014

Judge : Sudershan Kumar Misra

Appellant : Krishan Kumar Diwedi and ors.

Respondent : State and anr

Advocate for Def. : Mr. O.P. Saxena

Advocate for Pet/Ap. : Mr. Rajendera P. Sharma

Judgement :

\$~3 * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.M.C. 3086/2014
KRISHAN KUMAR DIWEDI & ORS. Petitioners Through: Mr. Rajendera P. Sharma, Advocate with petitioners in person versus STATE & ANR Through: Respondents Mr. O.P. Saxena, APP with SI Anand Prakash, PS Khyala R-2 in person CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA (ORAL) 1. This petition has been moved under Section 482 of the Code of Criminal Procedure, 1973 praying that FIR1152011 under Section 498A/406/34 IPC registered at Police Station Khyala, and all the proceedings emanating therefrom, be quashed on the ground that the matter has been amicably settled. The petitioners and the complainant, Vandana, who is also arrayed as respondent No.2 herein, are present.

2. Issue notice.

3. Counsel for the State, as well as the complainant/second respondent, enter appearance and accept notice.

4. It is stated that the FIR in question came to be registered on 11.06.2011 as a result of certain matrimonial dispute that had arisen between the petitioners and the complainant, Vandana, who was married to the first petitioner, Shri Krishan Kumar Diwedi.

5. All the parties concerned are stated to have settled the matter in terms of a settlement agreement dated 29.03.2014 executed before the Delhi Medication Centre, Tis Hazari Courts, Delhi on 29.03.2014. A copy of the settlement agreement has also been placed on the record. It is further stated that the first petitioner, Shri Krishan Kumar Diwedi, has obtained a decree of divorce on a petition bearing No.888/2010 before the Court of the Civil Judge, C.D. at Gonda, U.P., which was decreed ex-parte on 18.10.2012.

6. In addition, he is also stated to have filed a complaint case bearing No.3349/2010 titled as Krishan Kumar vs. Shiv Ram Pandey & Ors., before the court of ACJM, Gonda, U.P.

7. Counsel for the petitioners states that the said complaint has been duly withdrawn in terms of the settlement agreed between the parties. At the same time, counsel for the complainant submits that his client also approbates the ex-parte decree and has no objection to the same, and that the same shall remain binding on his client.

8. Counsel for the petitioners, as well as counsel for the complainant, state that all aspects of the aforesaid settlement have been duly complied with, and the remaining amount of Rs. 1,25,000/- has been handed over to the complainant in Court today. The complainant, who is also identified by the Investigating Officer, as well as her counsel, acknowledges receipt of that money in Court today.

9. Both counsel state that with this payment, nothing further remains to be done. The complainant further states that she is not inclined to proceed with the matter any further and joins the petitioners, in their request that the proceeding be

brought to an end.

10. Counsel for the State submits that looking to the circumstances, and the fact that the matter primarily concerns a domestic dispute which has been amicably settled between the parties and especially where the complainant is not interested in supporting the prosecution, no useful purpose would be served in continuing with the proceedings.

11. Looking to the overall circumstances, and in view of the fact that the matter has been settled between the parties and keeping in mind the decision 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 67 (SC) where the Supreme Court held as follows:

29. 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:

29. 1 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. 29.2 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. 29.3 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. 29.4 On the other hand, 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. 29.5 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. 29.6 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. 29.7

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 considered opinion that matter deserves to be given a quietus since the matter concerns a domestic matrimonial dispute where the parties have entered into an amicable settlement; and since the complainant herself is not inclined to support the prosecution, there is little likelihood of the prosecution succeeding the case.

12. Consequently, the petition is allowed and the FIR1152011 under Section 498A/406/34 IPC registered at Police Station Khayala, and all the proceedings emanating therefrom, are hereby quashed.

13. The petition stands disposed off in the aforesaid terms.

14. Dasti. SUDERSHAN KUMAR MISRA, J.

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