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Jagdish Vs. the State and anr

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Court : Delhi

Decided On : Oct-14-2014

Judge : Sudershan Kumar Misra

Appellant : Jagdish

Respondent : The State and anr

Advocate for Def. : Mr. O.P. Saxena, Mr. S.D. Pushkar

Advocate for Pet/Ap. : Mr. Karam Hussain

Judgement :

$~5 * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.M.C. 3898/2014 JAGDISH Through: ..... Petitioner Mr. Karam Hussain, Advocate with petitioner in person versus THE STATE & ANR Through: ..... Respondents Mr. O.P. Saxena, APP for State with SI Roshan Lal, PS Nangloi Mr. S.D. Pushkar, Adv. for R-2 with R-2 in person CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(ORAL) CRL.M.A. 13331/2014 Exemption, as prayed for, is allowed, subject to all just exceptions. The application stands disposed off. CRL.M.C. 3898/2014 1. This petition has been moved under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of FIR No.629/2007 registered under Section 498A/406/34 IPC on 04.08.2007 at Police Station Nangloi on the ground that the matter has been settled between the parties.

2. Issue notice.

3. Counsel for the State, as well as counsel for the second respondent/complainant, Seema, enter appearance and accept notice. The complainant, as well as the petitioner, Jagdish, are present in person. They are identified by the Investigating Officer, Sub-Inspector Roshan Lal, Police Station Nangloi.

4. It is stated that the aforesaid FIR came to be filed by the complainant, as a result of certain domestic and matrimonial disputes that had arisen consequent upon the marriage of the second respondent/complainant with the petitioner on 06.05.1984. In addition, the complainant is also stated to have instituted proceedings under Section 125 of the Code of Criminal Procedure, 1973 seeking maintenance. Thereafter, in an execution taken up by the complainant in respect of maintenance granted by the Court being Execution No.28/2012, the matter was referred to mediation by the Executing Court, and on 06.09.2013, the parties arrived at a mutually acceptable settlement before the Mediation Centre. A copy of the settlement deed dated 06.09.2013, setting down all the terms thereof, has also been annexed to the petition.

5. Consequent upon the aforesaid settlement, the complainant and the first petitioner have also obtained a decree of divorce by way of mutual consent under Section 13B(2) of the Hindu Marriage Act on 23.07.2014. A copy of the said decree has also been annexed to the petition. Further, as agreed between the parties, the complainant was entitled to receive a sum of Rs. 2,75,000/- from the first petitioner. Out of this, a sum of Rs. 2 Lacs is stated to have been already received by the complainant and the remaining amount of Rs. 75,000/- has been handed over to her by way of a Demand Draft bearing No.205570 dated 07.08.2014 drawn on ICICI Bank. The complainant approbates the aforesaid settlement and states that with the receipt of this aforesaid amount of Rs. 75,000/- in Court today, nothing further is due to her from the petitioner, and that she has no further claims against him. She also states that she is no longer interested in pursuing the matter, and the proceedings be closed.

6. Counsel for the State states that looking to the overall circumstances, and since the matter has arisen primarily out of domestic and matrimonial disputes, which has been appropriately settled between the parties on terms, and where the complainant is no longer interested in supporting the prosecution, no useful purpose will be served in continuing with these proceedings.

7. Looking to 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 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; by observing as under:

58. ....However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

And also in 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 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 307Indian 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.

And specifically in respect of matrimonial disputes in Jitendra Raghuvanshi & Ors. v. Babita Raghuvanshi & Anr. (2013) 4 SCC58 where the Supreme Court held as follows:

15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. They institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed.

I am also of the considered opinion that the matter which has arisen primarily out of a domestic and matrimonial dispute, and which has been settled on terms, deserves to be given a quietus, more so, since the complainant is no longer interested in supporting the prosecution thereby reducing its chances of success.

8. Consequently, the petition is allowed, FIR No.629/2007 registered under Section 498A/406/34 IPC on 04.08.2007 at Police Station Nangloi, and all the proceedings emanating therefrom, are hereby quashed.

9. The petition stands disposed off. SUDERSHAN KUMAR MISRA, J.

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