SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Moninder Singh and ors Vs. the State and anr

Moninder Singh and ors Vs. the State and anr

SooperKanoon Citation : sooperkanoon.com/1169975

Court : Delhi

Decided On : Oct-15-2014

Judge : Sudershan Kumar Misra

Appellant : Moninder Singh and ors

Respondent : The State and anr

Advocate for Def. : Ms. Nishi Jain

Advocate for Pet/Ap. : Mr. Bhupinder Singh

Judgement :

$~2 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3878/2014 MONINDER SINGH & ORS ..... Petitioners Through: Mr. Bhupinder Singh, Advocate with petitioners in person. versus THE STATE & ANR Through: ..... Respondents Ms. Nishi Jain, APP for the State with SI Raj Pal PS Tilak Nagar. Complainant in person. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(Oral) Crl. M.A. No.13311/2014 (for exemption) Exemption, as prayed for, is allowed, subject to all just exceptions. The application stands disposed off. CRL.M.C. 3878/2014 1. This petition filed under Section 482 Cr.P.C. seeks quashing of FIR No.60/2009 registered under Sections 406/498A/34 IPC at Police Station Tilak Nagar, Delhi on the ground that the matter has been amicably settled between the parties.

2. Issue notice. Ms. Nishi Jain, Additional Public Prosecutor enters appearance and accepts notice on behalf of the State.

3. Complainant as well as all the petitioners are present in person and are identified by Investigating Officer/ Sub-Inspector Raj Pal PS Tilak Nagar.

4. The aforesaid FIR is stated to have been lodged by respondent No.2/complainant consequent upon certain matrimonial and domestic disputes that have arisen between the parties pursuant to her marriage with petitioner No.1-Moninder Singh on 2nd June, 2005. Complainant had also initiated proceedings under Section 125 Cr.P.C. for grant of maintenance, however, on the reference made by the trial court the parties have recorded an amicable settlement before the Mediation Centre, Tis Hazari Courts, Delhi on 20th September, 2013. A copy of the said settlement has also been annexed to this petition. Consequent upon the settlement, the complainant and petitioner No.1 have obtained divorce by mutual consent under Section 13B(2) of the Hindu Marriage Act, 1955 in HMA No.1321/2014 on 28th May, 2014. At the same time the proceedings under Section 125 Cr.P.C. have also been withdrawn by the complainant. The settlement also envisaged payment of Rs.3,20,000/- to the complainant in full and final settlement of all her claims and dues from the petitioners. Out of the said amount of Rs.3,20,000/-, Rs.2,00,000/- already stands paid and remaining amount of Rs.1,20,000/- is paid to the complainant today by way of demand draft bearing No.170619 dated 8th October, 2014 drawn on Syndicate Bank, Kingsway GTB Nagar.

5. Complainant also approbates the aforesaid settlement and states that with the receipt of the aforesaid amount of Rs.1,20,000/- in the Court today she has received the entire amount of Rs.3,20,000/- agreed upon and nothing further remains due to her. She further states that she does not wish to continue with the matter any further.

6. Additional Public Prosecutor appearing for the State submits that looking to the overall circumstances and since the matter pertains to domestic and matrimonial dispute where the parties have amicably settled the matter and have obtained divorce by mutual consent; and are no longer interested in supporting the

prosecution, no useful purpose will be served in continuing the proceedings.

7. Under the circumstances and looking to the decision of the judgment of the Supreme Court in the case of 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 of the opinion that this matter deserves to be given a quietus, since the parties have resolved their differences and have obtained divorce by mutual consent; and since the complainant is no longer interested in supporting the prosecution because of which, the chances of success of the prosecution in the matter are now greatly diminished.

8. Consequently, FIR No.60/2009 registered under Sections 406/498A/34 IPC at Police Station Tilak Nagar, Delhi and all proceedings emanating therefrom, are hereby quashed.

9. The petition stands disposed off. SUDERSHAN KUMAR MISRA JUDGE OCTOBER15 2014/AK

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com