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Vishal Raj and ors Vs. State and ors

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Court : Delhi

Decided On : Oct-17-2014

Judge : Sudershan Kumar Misra

Appellant : Vishal Raj and ors

Respondent : State and ors

Judgement :

$~22 & 24 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 4715/2014 RAJU & ORS Through ..... Petitioners Mr. Sanjay Dubey, Advocate. versus STATE & ANR Through ..... Respondents Mr. O.P. Saxena, Additional Public Prosecutor. Sub Inspector Sumit Kumar. AND + CRL.M.C. 4753/2014 VISHAL RAJ & ORS .... Petitioners Through Mr. Sanjay Dubey, Advocate. versus STATE & ORS Through ..... Respondent Mr. O.P. Saxena, Additional Public Prosecutor. Sub Inspector Sumit Kumar. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(Oral) Crl.M.A. No.16045/2014 in Crl.M.C. No.4715/2014 Crl.M.A. No.16266/2014 in Crl.M.C. No.4753/2014 Exemptions, as prayed for, are allowed, subject to all just exceptions. These applications are disposed off. Crl.M.C. No.4715/2014 Crl.M.C. No.4753/2014 1. These two petitions under Section 482 Cr.P.C. seek quashing of FIR No.736/2014 registered under Sections 308, 324, 34 IPC; and FIR No.735/2014 under Sections 308, 34 IPC, both registered at Police Station Kalyan Puri; on the ground that the parties have settled the matter with each other.

The aforesaid FIRs are stated to be cross FIRs filed by the parties against each other.

2. Issue notice. Mr. O.P. Saxena, Additional Public Prosecutor for the State, enters appearance and accepts notice. The parties in both the matters are present in person. They are also identified by the Investigating Officer, Sub Inspector Sumit Kumar.

3. It is stated that the aforesaid FIRs came to be lodged at the instance of parties, who happen to be the neighbours living in the same locality, as a result of an altercation that had occurred amongst them whilst they were flying kites on 15.08.2014.

4. Both sides, who are present in Court, state that they have resolved their disputes, and that they do not wish to pursue the FIRs against each other.

5. Counsel for the State submits that looking to the overall circumstances, and since the parties are neighbours living in the same locality, and have amiably resolved their dispute; and the parties are not interested in supporting the prosecution; no useful purpose will be served in continuing with these proceedings.

6. Under the circumstances, and looking to 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 noncompoundable 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.

I am of the opinion that this matter deserves to be given a quietus where the parties have amicably settled the matter between themselves; and with a view to maintaining peace and harmony, subject to payment of costs of Rs.5,000/- by each petitioner in both cases with the Advocates Welfare Fund of the Bar Council of Delhi within one week from today. Proof of payment of the aforesaid costs shall be filed with the Registry of this Court within one week thereafter, with a copy to the Investigating Officer.

7. Consequently, the petition is allowed, and FIR No.736/2014 under Sections 308, 324, 34 IPC; and FIR No.735/2014 under Sections 308, 34 IPC, both registered at Police Station Kalyan Puri, and all proceedings emanating therefrom, are hereby quashed.

8. The petitions are disposed off.

9. Dasti. SUDERSHAN KUMAR MISRA, J OCTOBER17 2014 dr

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