

Sameer Sabharwal and ors Vs. State and anr

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Court : Delhi

Decided On : Jul-16-2014

Judge : Sudershan Kumar Misra

Appellant : Sameer Sabharwal and ors

Respondent : State and anr

Judgement :

§~26 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3073/2014 SAMEER SABHARWAL & ORS Petitioners Through: Mr. Ashish Singh, Advocate versus STATE & ANR Through: Respondents Mr. P.K. Mishra, APP with SI Dharmendra PS Dwarka North CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(ORAL) CRL.M.A. No.10624/2014 Exemption, as prayed for, is allowed, subject to all just exceptions. The application stands disposed off. CRL.M.C. 3073/2014 1. This Criminal Miscellaneous case has been moved by the petitioners under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No.195/2013 registered under Section 498A/406 IPC, Police Station Dwarka North, South-West Delhi, New Delhi. It is stated that the chargesheet in the matter has not yet been filed.

2. Issue notice.

3. Counsel for the State, as well as counsel for the complainant, Mrs. Shalu Sabharwal, who is arrayed as respondent No.2 herein, enters appearance and accepts notice.

4. It is stated that the FIR No.195/2013 came to be registered at the instance of the second respondent on 21.06.2013 under Section 498A/406 IPC. In addition, a complaint under Domestic Violence Act was also filed by the second respondent which now stands compromised and withdrawn.

5. The parties are also stated to have obtained a divorce by mutual consent and the marriage of the first petitioner with the second respondent was dissolved on 30.04.2014.

6. Counsel for both the parties state, on instructions, from their respective clients, who are present in person in Court today, that all terms envisaged in the aforesaid agreement between the parties have been worked out, and that the first petitioner has also handed over a Managers Cheque dated. 27.06.2014 bearing No.006720 drawn on HDFC Bank Limited, Sector 15, Gurgaon, favouring the second respondent/complainant for Rs.10 Lacs dated 27.06.2014.

7. The second respondent/complainant, who is present in person also states that all the terms of the aforesaid settlement have been worked out, and that she has received all the sums of money envisaged therein. She also states that she does not wish to continue with the complaint, and that the matter be brought to an end.

8. Counsel for the State also states that looking to the circumstances, and the fact that the entire controversy has arisen due to domestic differences and since the matter has been amicably settled and the complainant is not supporting prosecution, no useful purpose would be served by continuing with the investigation.

9. The Supreme Court has held in *Narinder Singh and Ors. v. State of Punjab and Anr.* 2014(2) Crimes 27 (SC) 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.

10. Consequently, and also keeping in mind the decision of the Supreme Court rendered 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, I am of the opinion that no useful purpose would be served in continuing the proceedings and the same deserve to be quashed.

11. Accordingly, the petition is allowed and FIR No.195/2013 registered under Section 498A/406 IPC, Police Station Dwarka North, South-West Delhi, New Delhi, and all the proceedings emanating therefrom, are hereby quashed.

12. Dasti. SUDERSHAN KUMAR MISRA, J.

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