

Ashwani Kumar Vs. State and anr

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Court : Delhi

Decided On : Jul-22-2014

Judge : Sudershan Kumar Misra

Appellant : Ashwani Kumar

Respondent : State and anr

Judgement :

§~16 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3163/2014
ASHWANI KUMAR Through Petitioner Mr. Sanjeev Kumar and Mr. R. K.
Solanki, Advocates. versus STATE & ANR Through Respondents Ms. Nishi
Jain APP. SI Babu Lal, Vasant Kunj. Complainant in person. CORAM: HON'BLE
MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(Oral) Crl.M.A. No.10963/2014 Exemption, as prayed for, is allowed, subject to all just exceptions. This application is disposed off. Crl.M.C. 3163/2014 1. This petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.135/2012, dated 03.05.2012 registered under Section 498A/323/342/506 IPC at Police Station Vasant Kunj on the ground that the disputes between the petitioner and the complainant, who is arrayed as respondent No.2 has been settled. A copy of the Settlement Agreement that has been executed on 19.11.2013 before the Delhi Mediation Centre, Rohini District Court, Delhi between the petitioner and the second respondent, has also been annexed to this petition. The parties have settled their disputes on the following terms:

.....1) Both the parties shall get their marriage dissolved by a decree of divorce by mutual consent without leveling allegations and counterallegations against each other in accordance with law before the Court of competent jurisdiction at Delhi.

2) The respondent/husband Sh. Sushil shall pay a total sum of Rs.1,00,000/- (Rupees One Lac Only) to the complainant/wife, as full and final satisfaction of the complainant including all her claims past, present and future arising out of the marriage with respondent which shall include permanent alimony, maintenance and all other miscellaneous expenses.

3) The settled amount of Rs.1,00,000/- (Rupees One Lac Only) shall be paid in Cash/DD/Cheque by the respondent/husband to the complainant/wife as follows:i) First instalment of Rs.25,000/- (Rs. Twenty Five Thousand Only) at the time of recording statements in First Motion Petition U/s 13B(1) of Hindu Marriage Act which shall be filed by the parties jointly. ii) Rs.25,000/- at the time of withdrawal of present case, after first motion. (iii) Rs.25,000/- (Rs. Twenty Five Thousand Only) at the time of recording statements in Second Motion Petition U/s 13(B) (2) of Hindu Marriage Act which shall be filed by the parties jointly at the earliest stipulated period of six months. (iv) Rs.25,000/- (Rs. Twenty Five Thousand Only) at the time of quashing of FIR No.135/10, PS Vasant Kunj U/s 498-A/342/323/406 IPC.

4) The complainant/wife shall withdraw all the cases i.e. present case filed against the respondent/husband and his family members, after receipt of entire settled amount.

5) Both the parties also undertake not to interfere in the life of each other in future.

6) Both the parties belong to very poor section of the society and they are unable to engage the counsel for the purpose of filing the petition for divorce by mutual consent however, in such eventualities, they may approach to the DLSA, if they so desired.

7) There shall remain no case/claim/dispute due between the parties after compliance of the terms of the present settlement and that none of the parties

shall file any civil or criminal proceedings against each other in future and that if any other case/petition/complaint etc. between the parties is pending in any Court or Authority either against the parties or against their respective family members and whether it is in the knowledge of other party or not, the same shall be withdrawn/got disposed of by the respective party.

2. It is stated that towards implementation of the aforesaid settlement, the parties have approached the Family Court under Section 13 (B) (2) of the Hindu Marriage Act, 1955 seeking divorce by mutual consent and the same has been decreed on 28.05.2014. Further, that the complainant, Smt. Priya, has already received a sum of Rs.75,000/-, and the remaining amount of Rs.25,000/- has been handed over to her in cash today in Court. No other litigation or complaint is stated to be pending between the parties. The affidavit of the complainant has also been annexed to this petition. The complainant also confirms having executed this affidavit, and states that she does not wish to pursue the matter any further; and that she has received all the amounts; and also prays that the proceedings, which are the subject matter of the aforesaid FIR, and the FIR itself, be quashed as prayed for in the petition.

3. Issue notice.

4. Ms. Nishi Jain, Additional Public Prosecutor, accepts notice and state that states that looking to the fact that the matter has arisen out of a domestic dispute as a result of the unsuccessful marriage between the petitioner and the complaint / second respondent; and also in view of the fact that the complainant / second respondent is not willing to support the prosecution case; no useful purpose will be served in continuing with these proceedings.

5. In view of the overall circumstances, and looking to the pronouncements 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 27 (SC) where the Supreme Court held 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.

I am of the opinion that the disputes in question have arisen primarily out of a matrimonial relationship where the parties have resolved the entire dispute themselves; and since the complainant is now not interested in supporting the prosecution, the possibility of conviction is remote and bleak; and therefore, no useful purpose would be served in continuing with the proceedings, and the matter deserves to be given a quietus.

6. Accordingly, the petition is allowed and FIR No.135/2012, dated 03.05.2012 registered under Section 498-A/323/342/506 IPC at Police Station Vasant Kunj, and the proceedings emanating therefrom, are hereby quashed.

7. The petition stands disposed off. SUDERSHAN KUMAR MISRA, J JULY22 2014 dr

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