

Vikash and ors Vs. State and ors

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Court : Delhi

Decided On : Jul-22-2014

Judge : Sudershan Kumar Misra

Appellant : Vikash and ors

Respondent : State and ors

Advocate for Def. : Mr. P. K. Mishra, Mr. Sandeep Yadav

Advocate for Pet/Ap. : Mr. C. P. Sharma

Judgement :

\$~22 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3172/2014
VIKASH & ORS Through: Petitioners Mr. C. P. Sharma, Adv. versus STATE &
ORS Through: Respondents Mr. P. K. Mishra, APP for State with SI
Manmohan Yadav, PS Dabri Mr. Sandeep Yadav, Adv. for R-2-4 CORAM:
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR
MISRA, J.

(ORAL) 1. This petition under Section 482 Cr.P.C. praying that the FIR
No.256/2014 under Section 427/452/323/506/34 IPC, stated to have been
registered on 11th April, 2014 at PS Dabri and all proceedings emanating
therefrom be quashed in view of Memorandum of Understanding arrived at
between the parties concerned on 18th July, 2014.

2. Issue notice.

3. Counsel for State, as well as counsel for respondent Nos. 2, 3 and 4, accept notice.

4. At the time of incident, the second petitioner, namely, Mr. Akhand Pratap Singh, was arrested the same evening and he was enlarged on bail by the court below on 13.04.2014 and continues to remain on bail.

5. Counsel for the petitioners submits that the incident arose out of an altercation in connection with the repair of a Samsung mobile phone belonging to third petitioner, namely, Smt. Pooja, which had been given to the complainant, Shiv Nath, at his shop. It is also alleged that the first petitioner, Vikas, who is main accused, left the shop and again returned with his elder brother Ahhand Pratap Singh and sister Ms. Pooja, who are arrayed as petitioner Nos. 2 and 3; and assaulted the shop owner and his employees, as well as damaged the shop with a baseball bat. It is also alleged that the fourth petitioner, Mr. Purshotam Dass, who is father of the first petitioner, Vikas, then came to the shop and further threatened and tried to intimidate the shop owner and his employees.

6. All the four petitioners as well as respondent Nos. 2, 3 and 4 are present in Court. They are all identified by their counsel, as well as the Investigating Officer.

7. It is also submitted that, in fact, the fourth petitioner/accused Purshotam Dass, who is the father of the petitioner No.1 Vikas, is a jeweller and has a jewellery shop in the vicinity of the shop of the complainant.

8. Counsel for respondent Nos. 2, 3 and 4, on instructions from the said respondents, also submits that the matter has been amicably settled; and that with a view to maintain peace and harmony in the community, the respondents have been persuaded to compromise the matter and to put a closure to the same.

9. Counsel for the petitioners, on instructions, from his clients, and particularly, Mr. Purshotam Dass, the fourth petitioner has also agreed to pay a sum of Rs.50,000/- to the second respondent, Shiv Nath, by way of compensation; and to also deposit another sum of Rs.10,000/- with the Indigent and Disabled Lawyers Fund of the

Bar Council of Delhi.

10. The aforesaid sum of Rs. 50,000/- has been handed over to Shri Shiv Nath, respondent No.2/complainant in Court today. Counsel for the petitioners, on instructions, states that the remaining amount of Rs. 10,000/shall be duly deposited with the Indigent and Disabled Lawyers Fund of the Bar Council of Delhi within two days from today. Let the same be done.

11. Counsel for the State submits that looking to the overall circumstances, and since the complainant, as well as the injured persons are not interested in pursuing the matter and are not supporting the case of the prosecution, no useful purpose would be served in continuing with the same.

12. Reliance has been placed on 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; 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.

13. In the judgment of this Court in *Basara and Ors. v. State and Anr.* in Crl. M.C. No.6621-24/2006 decided on 3rd September, 2007, it was, inter alia, held as under:

14.Peace has been brought in the locality with the intervention of the well wishers of the locality. When there is peace in locality, there will be peace in the town. When there is peace in town, there will be peace in city. When there is peace in city, there will be peace in State. When there is peace in State, there will be peace in country.....

15. The petition is accordingly allowed. FIR No.4/2005 registered against the petitioners under Section 307 read with Section 34 IPC with Police station Samay Pur Badli is quashed and all consequent proceedings pursuant thereto are also ordered to be dropped.

14. Keeping in view the overall circumstances and the fact that the parties are also carrying on their businesses in close proximity to each other, and appear to have settled the matter with a view to maintaining peace and harmony; and keeping in view the aforesaid decisions of the Supreme Court, as well as of this Court, I am satisfied that no useful purpose would be served in continuing with the proceedings and the matter deserves to be given a quietus.

15. Accordingly, the petition is allowed and FIR No.256/2014 under Section 427/452/323/506/34 IPC, stated to have been registered on 11.04.2014 at Police Station Dabri, and all proceedings emanating therefrom, are hereby quashed.

16. The petition stands disposed off.

17. Dasti. SUDERSHAN KUMAR MISRA (Judge) JULY22 2014 rd

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