

Hemdendra Agarwal and anr. Vs. State and ors.

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Court : Delhi

Decided On : Sep-19-2014

Judge : Sudershan Kumar Misra

Appellant : Hemdendra Agarwal and anr.

Respondent : State and ors.

Judgement :

§~28 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 4261/2014
HEMDENDRA AGARWAL & ANR. Petitioners Through Mr. Vijay Chauhan and
Mr. Rahul Bhatia, Advocates. versus STATE & ORS. Through Respondents
Mr. Amit Ahlawat, Additional Public Prosecutor. Complainant in person. Sub
Inspector Badri Prasad. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR
MISRA SUDERSHAN KUMAR MISRA, J.

(Oral) 1. This petition under Section 482 Cr.P.C. seeks quashing of FIR
No.494/2004, registered at police station Connaught Place under Sections
409/418/420/424/468/471/477-A/120B IPC; on the ground that the parties have
settled the matter.

2. Issue notice. Mr. Amit Ahlawat, Additional Public Prosecutor, enters appearance
and accepts notice on behalf of respondents 1, 2 and 3. Respondent No.4 /
complainant, who is present in person, also accepts notice. He is also identified by
the Investigating Officer, Sub Inspector Badri Prasad.

3. It is stated that the aforesaid FIR came to be lodged at the instance of respondent No.4 alleging that the petitioners along with other co-accused had carried out certain illegal and unauthorized transactions with regard to accused had control at the relevant time. It is stated that thereafter, a Memorandum of Understanding was drawn between the complainant and the company, namely, Sharekhan Ltd., who is also one of the accused in the matter, with whom the other co-accused were also connected. The said Memorandum of Understanding was executed on 27.07.2011, wherein the complainant is stated to have been paid an amount of Rs.17 lakhs in full and final settlement of all his grievances.

4. It is also stated that after the proceedings came to be initiated by the complainant, two other co-accused had moved CrI.M.C. No.3444/2010 and CrI.M.C. No.3600/2010 before this Court seeking quashing of the aforesaid FIR, and the consequent proceedings, on merits. While the matter was pending consideration, the aforesaid Memorandum of Understanding was executed between the parties on 27.07.2011, and consequently, on 19.12.2013, the said two petitions came to be allowed and the proceedings in respect of the aforesaid FIR qua five petitioners in CrI.M.C. No.3444/2010 and one petitioner in CrI.M.C. No.3600/2010 came to be quashed, subject to costs. It is further stated that the petitioners in the instant petition are the remaining two accused.

5. The complainant, who is present in person,, approbates the aforesaid Memorandum of Understanding dated 27.07.2011 and states that he has received all his dues, and he has no further grievances and is no longer interested in pursuing the matter; and prays that the matter be closed.

6. Counsel for the State also submits that looking to the overall circumstances, where the parties have settled their grievances, and the complainant is no longer interested in supporting the prosecution; no useful purpose will be served in continuing with these proceedings.

7. Consequently, and looking to 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 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 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. 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 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. 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 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, wherein 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 according 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.

I am of the considered opinion that since the petitioners in this matter have settled with the complainant, and keeping in view the fact that the other co-accused have similarly settled the matter in terms of the Memorandum of Understanding, and the proceedings in respect of whom have been dropped by this Court by an earlier order passed on 19.12.2013; and where the complainant is no longer interested in supporting the prosecution, thereby reducing chances of its success, it is best to give a quietus to the matter at this stage, subject, of course, to the petitioners depositing a sum of Rs.10,000/- each as costs with the Indigent and Disabled Lawyers Fund of Bar Council of Delhi within one week from today. Proof of deposit will be filed in the Registry of this Court within one week thereafter, with a copy to

the Investigating Officer.

8. Consequently, the petition is allowed, and FIR No.494/2004, registered at police station Connaught Place under Sections 409/418/420/424/468/471/477-A/120B IPC, and all proceedings emanating therefrom, are hereby quashed.

9. The petition is disposed off. SUDERSHAN KUMAR MISRA Judge
SEPTEMBER19 2014 dr

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