

Tariq Khan and ors Vs. State and anr

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Court : Delhi

Decided On : Nov-10-2014

Judge : Sudershan Kumar Misra

Appellant : Tariq Khan and ors

Respondent : State and anr

Judgement :

§~3 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 4300/2014 and Crl. M.A. 14872/2014 (for stay) TARIQ KHAN & ORS Through: Petitioners Mr. Sheikh Imran Alam, Advocate with petitioners in person. versus STATE & ANR Through: Respondents Ms. Nishi Jain, APP for the State with SI Vivek Sharma, PS Gokalpuri. Complainant in person. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(ORAL) 1. This petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.606/2013 registered under Sections 420/506/34 IPC at Police Station Gokalpuri on 9th November, 2013 on the ground that the matter has been amicably settled between the parties.

2. Issue notice. Ms. Nishi Jain, Additional Public Prosecutor enters appearance and accepts notice on behalf of the State/respondent No.1.

3. Petitioners as well as complainant/respondent No.2-Iqbal Ahmed are present in person and are identified by the Investigating Officer/ SI Vivek Sharma, Police

Station Gokalpuri.

4. The aforesaid FIR is stated to have been lodged by respondent No.2/complainant as a result of some disputes with regard to a property transaction.

5. It is stated that the matter is still at the stage of investigation and the parties have arrived at an amicable settlement amongst themselves. A copy of the said settlement deed dated 27 th January, 2014 has also been annexed with the petition. Counsel for the petitioners, on instructions from the petitioners, states that in addition to the amount of Rs.5,96,000/- mentioned in the settlement deed, the petitioners are willing to pay any further sum towards compensation and costs as this Court may direct, keeping in view the fact that the original amount of money which the complainant has been induced to part with in September, 2012 was Rs.5,96,000/- itself. He further states that in this context petitioners have brought bankers cheque bearing No.207172 dated 8th November, 2014 drawn on Bank of India of Rs.35,000/- in the name of the complainant and a bankers cheque bearing No.207173 dated 8th November, 2014 drawn on Bank of India of Rs.65,000/- in the name of Bar Council of Delhi Indigent and Disabled Lawyers Fund.

6. Complainant states that the aforesaid compensation is acceptable to him. Bankers cheque of Rs.35,000/- has been handed over to the complainant/respondent No.2 in the Court today, who states that since he has now amicably resolved the disputes, therefore, he does not wish to continue with the matter any further, and prays that the same be closed.

7. Counsel for the petitioners undertakes to deposit the other bankers cheque bearing No.207173 dated 8th November, 2014 drawn on Bank of India in the sum of Rs.65,000/- with the Bar Council of Delhi Indigent and Disabled Lawyers Fund within one week from today. Proof of deposit of costs be also filed in this Court within two days thereafter, with a copy thereof to the Investigating Officer.

8. Counsel for the State submits that looking to the overall circumstances; where the parties have amicably settled all the disputes amongst themselves and the petitioners have also agreed to pay adequate compensation and costs, and the

complainant is no longer interested in supporting the prosecution, no useful purpose would be served in continuing with the proceedings.

9. 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 basis 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.

I am of the considered opinion that the matter deserves to be given a quietus at this stage itself, since the parties have settled the matter on terms and the petitioners have also compensated the complainant and have agreed to pay costs with the Bar Council of Delhi Indigent and Disabled Lawyers Fund and where the complainant is no longer interested in supporting the prosecution thereby reducing the chances of success of the prosecution, if launched.

10. Consequently, and subject to the payment as aforesaid, the petition is allowed and FIR No.606/2013 registered under Sections 420/506/34 IPC at Police Station Gokalpuri on 9th November, 2013 and all proceedings emanating therefrom, are hereby quashed.

11. The petition and the pending application stand disposed off.

12. A copy of the order be given dasti. SUDERSHAN KUMAR MISRA JUDGE
NOVEMBER10 2014/AK