

**Avijeet Mullick Vs. State and anr**

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**Court :** Delhi

**Decided On :** Nov-11-2014

**Judge :** Sudershan Kumar Misra

**Appellant :** Avijeet Mullick

**Respondent :** State and anr

**Judgement :**

§~24 \* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 5042/2014 AVIJEET MULLICK Through: ..... Petitioner Ms. Kusum Lata Sharma, Advocate with petitioner in person versus STATE & ANR Through ..... Respondent Mr. P.K. Mishra, APP with ASI Dharamvir Singh, PS CAW Cell, Nanakpura. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(Oral) Crl. M.A. No.17281/2014 Exemption, as prayed for, is allowed, subject to all just exceptions. The application stands disposed off. CRL.M.C. 5042/2014 1. This petition under Section 482 Cr.P.C. seeks quashing of FIR No.65/2009 registered on 12.5.2009 under Sections 498A/406/34 IPC at Police Station Crime Against Women Cell, Nanakpura, on the ground that the matter has been amicably settled between the parties.

2. Issue notice.

3. Mr. P.K. Mishra, Additional Public Prosecutor for the State enters appearance and accepts notice. The second respondent/complainant, Chandana Biswas, is present in person. She is also identified by the Investigating Officer Assistant Sub-Inspector Dharamvir Singh, Police Station Crime Against Women Cell Nanakpura.

4. It is stated that the aforesaid FIR came to be lodged at the instance of the complainant in connection with matrimonial and domestic disputes that had arisen between the petitioner and the complainant after their marriage on 02.02.2006. The complainant is also stated to have initiated proceedings under Section 125 Cr.P.C., as well as under Section 12 of the Protection of Women from Domestic Violence Act. At the same time, the petitioner/accused had initiated proceedings for divorce before the Family Courts. Whilst divorce proceedings were being contested, the matter was referred for counselling to the Counselling Cell, Family Courts, Patiala House Court, New Delhi, in Suit No.60/12, where, ultimately, on 07.03.2013, a settlement was recorded between the parties where the petitioner agreed to pay a total sum of Rs. 8,15,000/- to the complainant in full and final settlement of all her claims and dues. It was also mutually agreed that the daughter of the parties, namely, Ananya Mullick, shall remain with the complainant and that the petitioner shall, neither claim her custody nor have any visitation rights..... 5. The parties agreed to approach the Family Court by seeking a divorce by mutual consent and to bring to an end to all the other pending litigations. Ultimately, the parties were granted divorce by mutual consent in HMA No.316/2014 under Section 13B(2) of the Hindu Marriage Act on 05.05.2014. A copy of the decree sheet has also been attached to this petition. It is stated that all pending proceedings under Section 125 Cr.P.C. and Section 12 of the Protection of Women from Domestic Violence Act stands withdrawn. Out of the aforesaid agreed amount of Rs. 8,15,000/-, the remaining balance of Rs. 3 Lacs which was still due and outstanding, has been handed over to the complainant in Court today by way of Demand Draft No.006898 dated 09.10.2014 drawn on Yes Bank Ltd.

6. The petitioner specifically approbates the aforesaid terms and conditions set down in the settlement recorded before the Counselling Cell, Family Court, Patiala House, New Delhi, on 07.03.2013. The complainant also states that with the receipt of the amount of Rs. 3 Lacs in Court today as aforesaid, she has no further

claims against the petitioner and further that she is no longer interested in pursuing the matter and that the proceedings be closed.

7. Counsel for the State submits that looking to the overall circumstances, and since the parties have ultimately settled the matter, which primarily concerns with domestic and matrimonial disputes on terms, and where the complainant is no longer interested in supporting the prosecution, no useful purpose would be served in continuing with the proceedings.

8. Looking to the decision 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 between the offender and the victim, if the circumstances so warrant; by observing as under:

58. ....However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

And also in *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 specifically in respect of matrimonial disputes in *Jitendra Raghuvanshi & Ors. v. Babita Raghuvanshi & Anr.* (2013) 4 SCC58 where the Supreme Court held as follows:

15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed.

I am of the considered opinion that looking to the circumstances where the complainant has settled all her disputes with the petitioner and has also received compensation on terms which have been recorded before the Counselling Cell, Family Courts, Patiala House, New Delhi, the matter deserves to be given a quietus since no useful purpose would be served in continuing with the proceedings where the complainant is no longer interested in supporting the prosecution thereby diminishing the chances of its success.

9. Consequently, the petition is allowed, and FIR No.65/2009 registered at Police Station Crime Against Women Cell, Nanakpura on 12.5.2009 under Sections 498A/406/34 IPC, and all proceedings emanating therefrom, are hereby quashed.

10. The petition is disposed off. SUDERSHAN KUMAR MISRA, J.

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