

Kuldeep Singh and anr Vs. State and ors

Kuldeep Singh and anr Vs. State and ors

SooperKanoon Citation : sooperkanoon.com/1171982

Court : Delhi

Decided On : Nov-12-2014

Judge : Sudershan Kumar Misra

Appellant : Kuldeep Singh and anr

Respondent : State and ors

Judgement :

§~11 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3440/2014 & CRL.M.A. 11904/2014 KULDEEP SINGH & ANR Through: Petitioners Mr. Sarfaraz Hussain, Advocate versus STATE & ORS Through: Respondents Mr. O.P. Saxena, APP for State R-2 in person Mr. Gautam Gupta, Adv. for R-3 with Mr. Ajay Kumar, Branch Manager, UBI CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ORDER

% 12.11.2014 1. This petition under Section 482 Cr.P.C. seeks quashing of FIR No.22/2011 registered on 17.02.2011 under Sections 420/468/471 IPC at Police Station Lodhi Colony, on the ground that the matter has been amicably settled between the parties.

2. Issue notice.

3. Mr. O.P. Saxena, Additional Public Prosecutor for the State, and Mr. Gautam Gupta, Advocate for the third respondent, enter appearance and accept notice.

The complainant, Geeta Tripathi, who is arrayed as respondent No.2 herein, is present in person.

4. The aforesaid FIR came to be lodged at the instance of the complainant alleging unauthorised fraudulent encashment of money from the account of the complainant with the Union Bank of India, Lodi Colony. It is stated that during the course of the proceedings in the court below on 16.02.2012, both the petitioners have given a joint undertaking to compensate the Union Bank of India with regard to the amount of loss suffered by that Bank since the Bank has credited the account of the complainant with the amount mentioned in the cheque within about two months of the encashment of the same by the petitioners.

5. Pursuant thereto, the petitioners are stated to have handed over a sum of Rs. 20,000/- to the Bank on 10.07.2012. The remaining amount of Rs. 58,000/- has been handed over to the Manager, Union Bank of India, who is present in person, in Court today. In addition, counsel for the petitioner, on instructions from his client, has also undertaken to pay further compensation to the Bank, as well as the complainant to the tune of Rs. 7,500/- each. The said amounts have also been handed over to the Manager, Union Bank of India and the complainant respectively.

6. The complainant states that she has no further grievance now and she does not wish to pursue the matter any further, and that the proceedings be closed.

7. Mr. Ajay Kumar, who is the Manager, Union Bank of India, Lodhi Colony, states that he has also been authorised to accept this amount and to give his no objection and to consent to the closure of these proceedings since the Bank has no further grievance in this regard.

8. Counsel for the State submits that looking to the overall circumstances, and since parties have settled the matter and where the complainant is no longer interested in pursuing the matter, no useful purpose would be served in continuing with these proceedings.

9. 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.

I am of the considered opinion that the matter deserves to be given a quietus where the parties have now settled the matter on mutually acceptable terms and both the bank and the complainant have also been compensated in the aforesaid manner and where the complainant is no longer interested in supporting the prosecution thereby diminishing the chances of its success.

10. Consequently, the petition is allowed, and the FIR No.22/2011 registered on 17.02.2011 under Sections 420/468/471 IPC at Police Station Lodhi Colony, and all proceedings emanating therefrom, are hereby quashed.

11. The petition, along with the accompanying application, stands disposed off.
SUDERSHAN KUMAR MISRA, J.

NOVEMBER12 2014 rd

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com