

Ram Kumar and ors Vs. State of Delhi and anr

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Court : Delhi

Decided On : Nov-19-2014

Judge : Sudershan Kumar Misra

Appellant : Ram Kumar and ors

Respondent : State of Delhi and anr

Advocate for Def. : Mr. O.P. Saxena, Mr. D.K. Srivastav

Advocate for Pet/Ap. : Mr. J.N. Pathak

Judgement :

\$~20 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3271/2014 & CRL.M.A. 14677/2014 RAM KUMAR & ORS Through: Petitioners Mr. J.N. Pathak, Advocate Versus STATE OF DELHI & ANR Through: Respondents Mr. O.P. Saxena, APP for State with SI Jaspal Singh, PS Mangol Puri Mr. D.K. Srivastav, Adv. for R-2 CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(ORAL) 1. This petition has been filed under Section 482 Code of Criminal Procedure, seeking quashing of FIR No.803/2013 registered under Sections 380/451/448/506/120B IPC at Police Station Mangol Puri on 13.12.2013 on the ground that the matter has been settled between the parties.

2. This matter came up for preliminary hearing on a number of dates previously when counsel for the second respondent/complainant was also present. However, no formal notice appears to have been issued in the matter so far. Consequently, notice is now issued to the respondents.

3. Counsel for respondent No.1/State, as well as counsel for the second respondent/complainant, Shri Radhey Shyam, enter appearance and accept notice. The complainant, Shri Radhey Shyam, is present in person. He is also identified by the Investigating Officer, Sub-Inspector Jaspal Singh, Police Station Mangol Puri.

4. It is stated that the aforesaid FIR came to be registered at the instance of the complainant on 13.12.2013 alleging theft in property No.S-672, J.J.

Colony, Mangolpuri, New Delhi. It is also stated that prior to the institution of the FIR, Civil Suit No.6/2013 was already pending between the parties.

5. The matter is stated to be pending investigation. In the meanwhile, parties state that they have entered into a settlement on 4th July, 2014. Copy of the said settlement has also been annexed to the petition. In terms of the settlement, complainant-Radhey Shyam has agreed to pay a sum of Rs.27,00,000/- to the petitioners in full and final settlement of all their claims and in turn petitioners will hand over vacant possession of the premises in question. It is further agreed that bankers cheque for the said amount has been duly deposited before the Court of Sh. Naveen Gupta, Civil Judge, Rohini Courts, Delhi in Civil Suit No.6/2013.

6. After some hearing in this Court, and with a view to make effective implementation of the settlement possible, the parties have now agreed to present themselves before the Court of Sh. Naveen Gupta, Civil Judge, Rohini Courts and obtain orders settling the suit in terms of the application moved by them under Order XXIII Rule 3 read with Section 151 CPC.

7. Counsel for the parties further state that in terms of the orders passed by this Court on 25.09.2014, the second respondent/complainant has also had the aforesaid Bank Draft of Rs. 27 Lacs duly revalidated and redeposited in the court

below to await further orders of this Court in that behalf. In addition, both sides state that possession of the premises in question has been duly handed over to the second respondent/complainant, Shri Radhey Shyam. The complainant also affirms this position.

8. He further states that he has no objection now to the release of the aforesaid Bank Draft of Rs. 27 Lacs bearing Nos. 003147 dated 03.11.2014, which is lying in the court below to the first petitioner. At the same time, counsel for the first petitioner states that the aforesaid Civil Suit No.6/13 that had been instituted by his client against the complainant shall be duly withdrawn in terms of the joint application under Order XXIII Rule 3 CPC which is currently pending before that Court. On a query being raised by this Court, the complainant adds that after this, he has no further claims against the petitioners, and that he is no longer interested in pursuing the instant investigation in terms of the impugned FIR.

9. Counsel for the State submits that looking to the overall circumstances, and where the matter also involved a vexed civil dispute which the parties have now amicably settled amongst themselves on terms recorded in a settlement on 21.07.2014, which has also been largely implemented, and the complainant is no longer interested in pursuing the investigation, no useful purpose would be served in continuing with the matter.

10. 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 it is best to give a quietus to the matter at this stage itself where the parties have arrived at an amicable settlement and the complainant is no longer interested in supporting the prosecution thereby greatly diminishing the chances of success of the prosecution, even if the same is launched.

11. Consequently, the petition is allowed and the FIR No.803/2013 registered under Sections 380/451/448/506/120B IPC at Police Station Mangol Puri on 13.12.2013, and the proceedings emanating therefrom, are hereby quashed.

12. In addition, the aforesaid amount of Rs. 27 Lacs which is stated to be lying in the court below in Civil Suit No.6/13 may be released by that court in favour of the first petitioner, after completing the requisite formalities.

13. The petition, along with the accompanying application, stands disposed off accordingly.

14. The next date of 16th December, 2014 stands cancelled.

15. Dasti. SUDERSHAN KUMAR MISRA, J.

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