

Harish Malik Vs. State and ors

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Court : Delhi

Decided On : Nov-28-2014

Judge : Sudershan Kumar Misra

Appellant : Harish Malik

Respondent : State and ors

Advocate for Def. : Ms. Nishi Jain

Advocate for Pet/Ap. : Mr. Sunil Kumar Bhatt

Judgement :

\$~20 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3701/2014
HARISH MALIK Through: Petitioner Mr. Sunil Kumar Bhatt, Advocate versus
STATE & ORS Through: Respondents Ms. Nishi Jain, APP for State with SI
Bhoop Singh, PS CR Park R-2 in person CORAM: HON'BLE MR. JUSTICE
SUDERSHAN KUMAR MISRA

ORDER

% 28.11.2014 1. This petition seeks quashing of FIR No.153/2013 registered under Sections 392/397 IPC at Police Station CR Park on 06.06.2013 on the ground that the matter has been settled between the parties.

2. Notice in the matter was issued on 22.08.2014. Counsel for the State, as well as for counsel for the second respondent, had entered appearance and accepted the

notice. Today, the complainant/respondent No.2 is present in person.

3. It is stated that the aforesaid FIR came to be lodged at the instance of the complainant under Section 392/397 IPC as a result of an incident that is stated to have occurred at around 11 p.m. on 06.06.2013 when the petitioner is stated to have demanded some money from the complainant which resulted in heated arguments and ultimately, the petitioner is stated to have hit the complainant with a beer bottle. After the registration of the FIR, the petitioner was apprehended by the Delhi Police and has also remained in custody for about five days. Thereafter, he was enlarged on bail.

4. He states that since the parties are known to each other, they have resolved their disputes and the complainant does not wish to proceed with the matter any further. An affidavit of the complainant, Hemant Gupta, stating that he has no further grievances against the petitioner has also been annexed to the petition. In addition, the petitioners have also tendered a sum of Rs. 25,000/- to the complainant towards compensation in cash in Court and further undertake to pay a further sum of Rs. 10,000/- towards costs to the Indigent and Disabled Lawyers Fund of the Bar Council of Delhi today, in full and final settlement of all his claims with regard to this incident from the petitioner. The complainant states that he is no longer interested in pursuing the matter any further.

5. Counsel for the State submits that looking to the overall circumstances, where the altercation that has led to the incident appears to have happened on the spur of the moment between the complainant and the petitioner, all of whom are also known to each other and the matter has been amicably resolved with the payment of compensation to the complainant who is now no longer interested in supporting the prosecution, no useful purpose would be served in continuing with the proceedings.

6. 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; 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 CrI. 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 the matter deserves to be given a quietus at this stage itself, where the complainant and the accused have resolved their differences and the complainant has also received compensation from the accused and does not now wish to support the prosecution thereby diminishing its chances of success.

7. Consequently, the petition is allowed and the FIR No.153/2013 registered under Sections 392/397 IPC at Police Station CR Park, and all the proceedings emanating therefrom, are hereby quashed, subject, of course, to payment of a further sum of Rs. 10,000/- towards costs to the Indigent and Disabled Lawyers Fund of the Bar Council of Delhi by the petitioner within one week from today.

Proof of deposit of costs shall be filed in this Court within one week thereafter with a copy to the Investigating Officer.

8. The petition stands disposed off. SUDERSHAN KUMAR MISRA, J.

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