

Kamal Bajaj Vs. The State and Another

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Court : Delhi

Decided On : Nov-27-2015

Judge : Ashutosh Kumar

Appeal No. : W.P.(Crl.)No. 2716 of 2015 & Crl.M.A.Nos. 17237, 17238 of 2015

Appellant : Kamal Bajaj

Respondent : The State and Another

Judgement :

Oral:

1. The petitioner seeks quashing of FIR No. 301/2014 (PS Patel Nagar) instituted for offence under section 420 of the IPC on the strength of a settlement having been arrived at with the complainant/informant (respondent No.2).

2. As per the FIR, the petitioner had approached the respondent no.2 for purchase of the Ground Floor of property bearing no. M-118, Vikas Puri, New Delhi (hereinafter referred to as 'the property'). The petitioner is said to have represented himself to respondent no.2, as the owner of the aforesaid property and that the said property was free from all encumbrances, lien, decree etc.

3. It is submitted, that on such representation the respondent no.2 agreed to purchase the said property and entered into an agreement to sale with the petitioner. The total sale consideration was agreed at Rs. 1.25 Crore, out of which

a sum of Rs. 20 Lakhs was paid by the respondent no.2. It was agreed that the balance amount would be paid at the time of execution of the sale deed in favour of the respondent no.2.

4. It is alleged that the respondent no.2 subsequently came to know that the said property was already mortgaged with a bank and moreover, the petitioner had also entered into another agreement to sale, with another individual, in which the petitioner had even received earnest monies. The aforementioned facts and circumstances compelled respondent no.2 to approach the police authorities which led to the registration of the present FIR.

5. The respondent no.2 has also filed a civil suit before this court, bearing C.S.(OS) No. 987/2012 praying for, inter alia, the specific performance of the aforementioned agreement to sell. During the subsistence of the investigation in the subject FIR (FIR No. 301/2014) the dispute between the petitioner and respondent no.2 was settled in the civil suit and it was decided that the petitioner would pay to the respondent no.2 an amount of Rs. 28,60,000/- (Rupees Twenty Eight Lakhs Sixty Thousand Only) towards full and final settlement of all her claims. It is submitted that an amount of Rs. 10 Lakhs has already been paid by the petitioner to the respondent no.2 in proceedings pending before the learned Single Judge and the balance amount of Rs. 18,60,000/- (Rupees Eighteen Lakhs Sixty Thousand Only) has been brought today.

6. The parties are present in court.

7. The investigation in the matter is still continuing.

8. A cheque of Rs. 10 Lakhs and a demand draft of Rs. 8.60 Lakhs, dated 23.11.2015, has been handed over to respondent no.2 who accepts the same without any caveat and has agreed to compound the offence.

9. Considering the fact that the grievance of the respondent No.2 has been completely redressed, this Court is inclined to quash the FIR but subject to certain conditions.

10. Let it be known that this Court does not take transactions of such nature lightly. This court is conscious of the fact that any act of misleading individuals, in order to fleece them of their hard earned money, should be adequately punished. Thus, simply quashing the subject FIR on the basis of the settlement would not adequately serve the ends of justice. However, this Court also notes that the wrongdoing is not of such a nature as to disturb the even tempo of society as it is private in nature and arises out of a purely commercial transaction. It is also pertinent to mention that the case is still at the nascent stage of investigation and even the charge-sheet has not been filed.

11. Be that as it may, since the parties have decided to compound the offence, this Court is inclined to quash the FIR, but only on the condition that the petitioner deposits Rs.50,000/- (Rupees Fifty Thousand Only), to the Delhi High Court Legal Services Committee. The amount shall be deposited with the Secretary of the Delhi High Court Legal Services Committee within a period of two weeks from today, for which a receipt would be given to the petitioner.

12. On payment of such amount and after obtaining the receipt, intimation shall be given to the SHO/IO of the concerned Police Station. A copy of such receipt would be filed in the Registry for future reference.

13. In *Gian Singh vs. State of Punjab and Another*, (2012) 10 SCC 303, the Supreme Court has held that cases which are not compoundable under Section 320 of the Cr.P.C. could also be quashed, when continuation of any criminal proceeding would be an exercise in futility and where justice demands that the dispute between the parties should be put to an end and peace is restored. But ending of such criminal proceedings could only be ordered for securing the ends of justice

14. The Supreme Court has further observed in *Gian Singh vs. State of Punjab and Another* (Supra):

58..... No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and

the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. 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. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed. [Refer to B.S. Joshi, (2003) 4 SCC 675; Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1.]

15. In *Narinder Singh and Ors. Vs. State of Punjab and Anr.* 2014 6 SCC 466, the pertinent observations of the Apex Court are as under:-

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 the 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 predominantly 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 IPC would fall in the category of heinous and serious offences and therefore are 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 IPC 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 IPC 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 IPC. 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 latter 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 chargesheet 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 to a conclusion as to whether the offence under Section 307 IPC 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 IPC 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. ?

16. Thus, the inherent powers of the High Court, having a wide plenitude could be used for quashing the FIR for securing the ends of justice and to prevent the abuse of the process of the court.

17. The payment of the compensation amount by the would serve the interest of justice as it would make him wary of adopting any illegal means in the future.

18. The subject FIR (FIR No. 301/2014, PS Patel Nagar) and the emanating proceedings thereof are, for the reasons aforestated, quashed.

19. The petition is disposed of in terms of the aforesaid. All the pending applications are accordingly disposed of as having become infructuous.

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