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

Vineesh Kumar and Another Vs. The State (Govt. of NCT of Delhi) and Another

Vineesh Kumar and Another Vs. The State (Govt. of NCT of Delhi) and Another

SooperKanoon Citation : sooperkanoon.com/1178277

Court : Delhi

Decided On : Nov-20-2015

Judge : Suresh Kait

Appeal No. : CRL.M.C. 4708 of 2015

Appellant : Vineesh Kumar and Another

Respondent : The State (Govt. of NCT of Delhi) and Another

Judgement :

Suresh Kait, J. (Oral)

Crl. M.A.No.16905/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. 4708/2015

1. By way of the present petition, filed under Section 482 Cr.P.C. petitioners seek quashing of FIR No.357/2014 registered at Police Station Mandir Marg, New Delhi for the offences punishable under Sections 498A/406/34 IPC against them.

2. Learned counsel appearing on behalf of the petitioners submits that the aforesaid case was registered on the complaint of respondent No.2, namely, Ms. Radhika due to the matrimonial disputes. Thereafter, the parties have entered into a settlement before the Delhi Mediation Centre, Tis Hazari Courts, Delhi on 19.05.2015. As per the settlement, petitioners agreed to pay an amount of Rs.3,75,000/- to the respondent no. 2 as full and final settlement. Out of which Rs.1,25,000/- has already been paid at the time of recording of first motion on 14.07.2015 and thereafter, respondent no. 2 has withdrawn the proceedings under Section 12 of Domestic Violence Act against the petitioners. Out of the balance amount of Rs. 2,50,000/-, Rs.1,25,000 has been paid today in the Court by way of Demand Draft being no. 893097 dated 29.10.2015 drawn on Punjab National Bank, Trilok Puri Branch, Delhi and the remaining amount of Rs.1,25,000/- shall be paid at the time of recording of the second motion. Thus, respondent no. 2 does not want to pursue the case further against the petitioners.

3. Respondent No.2 is personally present in the Court with her Counsel. She has been duly identified by SI Santosh Mahajan, Investigating Officer of the case. Ld. Counsel on instructions submits that matter has been settled between the parties and respondent no. 2 has no complaint whatsoever against the petitioners and if the present petition is allowed, she has no objection.

4. Learned APP appearing on behalf of the State submits that the case is at the initial state of investigation. She further submits that since the matter has been settled between the parties and respondent no. 2 has come forwarded to quash the FIR mentioned above, no purpose would be served if the petitioners are directed to face trial. Therefore, the State has no objection, if the present petition is allowed.

5. Under the circumstances and looking to the decision of the Supreme Court in the case of **Gian Singh Vs. State of Punjab and Another (2012) 10 SCC 303,** wherein the Apex Court has referred to a number of matters for the proposition that even a non-compoundable offence can also be quashed on the ground of a settlement agreement 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. ?

6. While recognizing the need of amicable resolution of disputes in cases like the instant one, the aforesaid dictum has been affirmed by the Apex Court in a recent judgment 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 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 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. ?

7. In the case of **Jitendra Raghuvanshi and Ors. Vs. Babita Raghuvanshi and Anr. (2013) 4 SCC 58**, wherein the Supreme Court in respect of the matrimonial disputes has specifically 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. They 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 . ?

8. Both the parties are present in the Court today, approbate to the aforesaid settlement dated 19.05.2015 and undertake to remain bound by the same.

9. Since the subject matter of this FIR is essentially matrimonial, which now stands mutually and amicably settled between the parties and the complainant is no longer interested in supporting the prosecution because of which, its chances of success in the matter are now greatly diminished. Therefore, in view of the law discussed above and in the facts and circumstances as noted above, I am of the considered opinion that this matter deserves to be given a quietus as continuance of proceedings arising out of the FIR in question would be an exercise in futility.

10. Consequently, FIR No.357/2014 registered at Police Station Mandir Marg, New Delhi for the offences punishable under Sections 498A/406/34 IPC and all proceedings emanating therefrom are hereby quashed against the petitioners.

11. In view of the above, the present petition is allowed.

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