

Abhinav Seth and Ors Vs. State and Anr

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Court : Delhi

Decided On : Nov-24-2014

Judge : Sudershan Kumar Misra

Appellant : Abhinav Seth and Ors

Respondent : State and Anr

Advocate for Def. : Ms. Nishi Jain, Mr. Raman Sahway

Advocate for Pet/Ap. : Mr. R.K. Anand

Judgement :

§~4 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 4035/2014
ABHINAV SETH & ORS Through: Petitioners Mr. R.K. Anand, Advocate with
petitioners in person. versus STATE & ANR Through: Respondents Ms. Nishi
Jain, APP for the State with SI Manohar Lal, PS Rajouri Garden. Mr. Raman
Sahway, Advocate for R2 with R-2 in person. CORAM: HON'BLE MR. JUSTICE
SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(ORAL) 1. This petition has been filed under Section 482 Cr.P.C. seeking
quashing of FIR No.12/2013 registered under Sections 498A/406/34 IPC at Police
Station Rajouri Garden on 5th January, 2013 on the ground that the matter has
been amicably settled between the parties.

2. Issue notice. Ms. Nishi Jain, Additional Public Prosecutor enters appearance and accepts notice on behalf of the State/respondent No.1.

3. Petitioners as well as complainant/respondent No.2-Charika Seth are present in person and are identified by the Investigating Officer SI Manohar Lal, Police Station Rajouri Garden.

4. The aforesaid FIR is stated to have been lodged by respondent No.2/complainant consequent upon certain matrimonial and domestic disputes that arose between the parties pursuant to her marriage with petitioner No.1-Abhinav Yadav on 4th December, 2011.

5. It is stated that in an application seeking anticipatory bail moved by petitioner No.1 before the Court of learned Additional Sessions Judge, Tis Hazari Courts, the matter was referred in Mediation and on 18th March, 2013 both the parties arrived at an amicable settlement. In terms thereof, petitioner No.1 had agreed to pay a total sum of Rs.27,00,000/- in full and final settlement to the complainant against all her claims and dues. At the same time parties have also obtained decree of divorce by way of mutual consent under Section 13B(2) of the Hindu Marriage Act, 1955. A copy of the decree sheet dated 28th March, 2014 granting divorce to the complainant and petitioner No.1 in HMA petition No.961B/2014 has also been annexed with this petition. In terms of the aforesaid settlement arrived at before the Mediation Centre on 18th March, 2013, petitioner has undertaken to pay a sum of Rs.27,00,000/- in full and final settlement of all the dues of the complainant. Apart from this, petitioners have already handed over the istridhan articles enumerated in the said settlement deed to the complainant. Out of the aforesaid amount of Rs.27,00,000/-, Rs.22,00,000/- already stands paid to the complainant. Balance amount of Rs.5,00,000/- is paid to the complainant in the Court today by way of a demand draft bearing No.336992 dated 20th November, 2014 drawn on Axis Bank, Nehru Place, Delhi. Further the petitioner has also today handed over two sets of diamond earrings (four in number) to the complainant in Court. Counsel for the petitioner further states on instructions from the petitioner, all of whom are present in Court, that petitioners are also willing to pay any costs that may be imposed by this Court.

6. The statements of petitioner Nos. 1 and 2 are recorded separately wherein they have undertaken to ensure that there will be no untoward incident between the families of petitioners and respondent No.2 in future. The said undertaking is accepted by this Court and petitioners are directed to remain bound by the same.

7. The complainant approbates the aforesaid settlement and states that with the receipt of the aforesaid amount and two sets of diamond earrings she has no further grievance in the matter. She states that she does not wish to pursue the matter any further and prays that the same be closed.

8. Additional Public Prosecutor appearing for the State submits that looking to the overall circumstances and since the matter pertains to domestic and matrimonial dispute; where the parties have amicably settled the matter and have obtained divorce by mutual consent; and the complainant is no longer interested in supporting the prosecution, no useful purpose will be served in continuing the proceedings and the FIR be quashed, however, subject to payment of some costs in view of the fact that State machinery was involved in the investigation and prosecution.

9. Under the circumstances and looking to the decision of the Supreme Court in the case of 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 opinion that this matter deserves to be given a quietus, since the parties have resolved their differences and have obtained divorce by mutual consent; and since the complainant is no longer interested in supporting the prosecution, because of which, its chances of success in the matter are now greatly diminished.

10. Consequently, FIR No.12/2013 registered under Sections 498A/406/34 IPC at Police Station Rajouri Garden on 5th January, 2013 and all proceedings emanating therefrom, are hereby quashed, subject however, to payment of Rs.1,00,000/- as costs to the Indigent and Disabled Lawyers Fund of the Bar Council of Delhi within fifteen days from today. Proof of deposit of costs be filed within one week thereafter with the Registry with another copy to the Investigating Officer.

11. The petition stands disposed off.

12. A copy of this judgment be given dasti. SUDERSHAN KUMAR MISRA JUDGE NOVEMBER24 2014 AK Item No.4 CrI. M.C. 4035/2014 Statement of Mr. Vinod Seth, S/o Late Om Parkash Seth, aged about 63 years, R/o A-2/55 Rajouri Garden, Delhi. On S.A. I am petitioner No.2 in this matter and I am also the father of petitioner No.1-Abhinav Seth in the present petition which has been filed for quashing of FIR No.12/2013 under Sections 498-A/406/34 IPC registered at Police Station Rajouri Garden, lodged against me and the petitioners at the instance of

Respondent No.2/complainant. The entire dispute which was domestic in nature has been settled between my son-petitioner No.1 and the complainant in Mediation on 18th March, 2013 on terms. I further state that petitioner No.1 and respondent No.2 have obtained divorce by mutual consent. After the aforesaid settlement and grant of divorce, both the families have nothing to do with each other. Hence, I assure this Court that I shall not either directly or indirectly approach respondent No.2 or her family members so as to give rise to any cause for complaint. I pray that this undertaking of mine be accepted by this Court and the aforesaid FIR be quashed. RO & AC SUDERSHAN KUMAR MISRA, J NOVEMBER24 2014 Item No.4 CrI. M.C. 4035/2014 Statement of Mr. Abhinav Seth, S/o Mr. Vinod Seth, aged about 30 years R/o A-2/55 Rajouri Garden, Delhi. On S.A. I am the first petitioner in this matter. I am working for the company called Systra Private Limited as a Manager (Business Development). I was married to the complainant/respondent No.2 Charika and our marriage has been dissolved by a decree of divorce by mutual consent on 28.3.2014. I have since settled all my disputes and differences in Mediation on 18.3.2013 and in terms thereof I have also today paid a sum of Rs.5 lakhs being the final instalment of the agreed amount of Rs.27 lakhs to the complainant. Besides this, I have also handed over two sets of gold and diamond earrings as a part of the aforesaid settlement dated 28.3.2014. After the settlement, we now have nothing to do with each other and I assure this court that I shall not try to interact or get in touch with the complainant or her family members, either directly or indirectly in future, and I assure the court that there will be no complaint in this behalf in future. I pray that the aforesaid FIR No.12/2013 under Sections 498-A/406/34 IPC registered at Police Station Rajouri Garden at the instance of the complainant be quashed. RO & AC SUDERSHAN KUMAR MISRA, J NOVEMBER24 2014

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