

Vinod Kumar Vs. State (Govt of Nct of Delhi) and Anr

Vinod Kumar Vs. State (Govt of Nct of Delhi) and Anr

SooperKanoon Citation : sooperkanoon.com/1229

Court : Delhi

Decided On : Nov-24-2014

Judge : Sudershan Kumar Misra

Appellant : Vinod Kumar

Respondent : State (Govt of Nct of Delhi) and Anr

Judgement :

\$~9 & 11 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 5076/2014 VINOD KUMAR Through Petitioner Mr. Ashraf Hasnain, Advocate with petitioner. versus STATE (GOVT OF NCT OF DELHI) & ANR. Respondent Through Ms. Nishi Jain, Additional Public Prosecutor. Sub Inspector Vijay Yadav, Sub Inspector Charan Singh and Sub Inspector Paramjit Singh, Spl. Staff. Mr. Rajesh Yadav, Advocate with complainant in person. AND + CRL.M.C. 5067/2014 ABHISHEK AGGARWAL Petitioner Through Mr. Rajesh Yadav, Advocate with petitioner. versus STATE (GOVT OF NCT OF DELHI) & ANR Respondents Through Ms. Nishi Jain, Additional Public Prosecutor. Sub Inspector Vijay Yadav, Sub Inspector Charan Singh and Sub Inspector Paramjit Singh, Spl. Staff. Mr. Ashraf Hasnain, Advocate with Sh. Sudhir Dhingra, Father / Attorney of the complainant Ms. Shivani Dhingra. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % 1. SUDERSHAN KUMAR MISRA, J.(Oral) These two matters have been filed under Section 482 Cr.P.C. seeking quashing of two separate FIRs and consequent proceedings arising therefrom, on the ground that the matter has been settled between the parties concerned.

2. Issue notice. Ms. Nishi Jain, Additional Public Prosecutor for the State, as well as counsel for the second respondent / complainant in both the matters, enter appearance and accept notice.

3. The relevant circumstances, in which this matter came to be filed, are as follows; (i) FIR No.322/2010 came to be registered on 05.12.2010 under Sections 323, 341, 354, 506 IPC at police station Neb Sarai, at the instance of Ms. Shivani Dhingra as a result of some altercation that is stated to have arisen between the parties on the night of 04/05.11.2010 at about 3:00 a.m. in the morning. The second FIR No.246/2011 came to be registered on 08.10.2011 also at police station Neb Sarai under Sections 323, 341, 34 IPC. (ii) It would appear that the parties involved in the matter are Mr. Abhishek Aggarwal; Ms. Shivani Dhingra; and one Mr. Vinod, who is stated to be the Personal Security Officer (PSO) of Ms. Shivani Dhingra, who had been engaged by her father Sh. Sudhir Dhingra. (iii) The charge sheet has been filed in the both matters, and in respect of FIR No.322/2010, the charges have also been framed. It is stated that the parties have since amicably settled the matter and are no longer interested in pursuing the same. It is further stated that only simple injuries were caused.

4. At the same time, in FIR No.322/2010, Ms. Shivani Dhingra is represented by her father Sh. Sudhir Dhingra since she is currently stated to be residing in the U.S.A. after having gotten married. A copy of the Special Power of Attorney dated 22.05.2014 constituting her father Sh. Sudhir Dhingra as her Attorney and authorizing him to enter into a settlement; and to bring to an end all proceedings, including one initiated in terms of the aforesaid FIR No.322/2010, has also been annexed to Crl.M.C. No.5067/2014.

5. Sh. Sudhir Dhingra, father of Ms. Shivani Dhingra, is present in person, and is also identified by the Investigating Officer. He approbates the settlement and states that his daughter Ms. Shivani Dhingra does not wish to proceed with the matter any further; and that he has been duly authorized to seek termination of all proceedings in the matter; and further states that his daughter is happily married in the United States, and it is best if all these proceedings are closed.

6. Counsel for the parties state that although the offences mentioned in the second FIR No.246/2011, which was registered under Sections 323, 341, 34 IPC, is compoundable in terms of the relevant provisions of the Cr.P.C. 1973, but since the same is intimately connected with FIR No.322/2010, it was considered appropriate to seek a simultaneous quashing of that FIR also under Section 482 Cr.P.C. by the High Court, instead.

7. Counsel for the State submits that looking to the overall circumstances, and since the parties have amicably settled the matter amongst themselves, and are no longer interested in supporting the prosecution; no useful purpose will be served in continuing with these proceedings.

8. Consequently, and 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 these matters deserve to be given a quietus at this stage itself since the parties concerned have settled the matter amongst themselves and are no longer inclined to support the prosecution in respect of their respective FIRs, thereby diminishing the chances of its success.

9. Consequently, the petitions are allowed, and the FIR No.322/2010 registered under Sections 323, 341, 354, 506 IPC; and FIR No.246/2011 registered under Sections 323, 341, 34 IPC; both at police station Neb Sarai; and all proceedings emanating therefrom, are hereby quashed.

10. Both the petitions stand disposed off. SUDERSHAN KUMAR MISRA, J
NOVEMBER24 2014/dr

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