

Deepak Kumar Vs. the State (Nct of Delhi) and Ors

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Court : Delhi

Decided On : Nov-28-2014

Judge : Sudershan Kumar Misra

Appellant : Deepak Kumar

Respondent : The State (Nct of Delhi) and Ors

Judgement :

\$~41 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 5411/2014 DEEPAK KUMAR Through Petitioner MR. Sunil K. Kalra, Advocate with petitioner. versus THE STATE (NCT OF DELHI) & ORS Respondents Through Mr. P.K. Mishra, Additional Public Prosecutor. Ms. Pooja Goel, Advocate with R2to 5. Sub Inspector Jay Deep Malik, P.S. Geeta Colony. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(Oral) Crl.M.A. No.18445/2014 Exemption, as prayed for, is allowed, subject to all just exceptions. This application is disposed off. Crl.M.C. No.5411/2014 1. This petition under Section 482 Cr.P.C. seeks quashing of FIR No.188/2013, registered under Sections 279/337 IPC on 09.05.2013 at police station Geeta Colony, on the ground that the matter has been amicably settled between the parties.

2. Issue notice.

3. Mr. P.K. Mishra, Additional Public Prosecutor for the State, and Ms. Pooja Goel, Advocate for respondents 2 to 5, enter appearance and accept notice. Respondents 2 to 5, who are present in person, are also identified by the Investigating Officer Sub Inspector, Jay Deep Malik.

4. It is stated that the aforesaid FIR came to be lodged as a result of an accident that had occurred in a car which was being driven by the petitioner on 09.05.2012, in which respondents 4 and 5, i.e., Gaurav and Rohit, along with the deceased Ashu Anand, were also travelling. The car is stated to have struck a road divider, thereby injuring all the occupants, including the petitioner himself. Ultimately, Ashu Anand succumbed to his injuries.

5. In the proceedings instituted before the Motor Accidents Claims Tribunal (MACT), in Suit No.269FB/13, an Award came to be passed on 23.09.2013, by the Tribunal, whereby the fourth respondent-Gaurav, along with his father Sh. Darshan Sahni, agreed to settle the matter with the petitioner without claiming any compensation. Statement of both the parties to that effect were duly recorded and the matter was closed. Thereafter, on the same date, i.e. 23.09.2013, similarly a second Award was also passed in Suit No.269FC/13 where it was noted that respondent No.5 Rohit had also agreed to settle the matter with the petitioner without any compensation. His statement was also recorded and the matter was brought to an end in that behalf.

6. Thereafter, in a Suit No.210/13, which was filed by the second and third respondents, the Tribunal recorded the statements of the second respondent Amrit Sagar Anand, i.e, the father of the deceased Ashu Anand, to the effect that they have settled the matter with the petitioner for Rs.3,50,000/- in all, and that they did not wish to proceed with the matter any further, including the criminal proceedings that had been consequently initiated. Consequently, an Award of Rs.3.5 lakhs was passed by the Presiding Officer, MACT, on 28.10.2013. Copies of the relevant Awards/ orders passed in this connection on 23.09.2013 in Suit No.269FB/13 and Suit No.269FC/13, and on 28.10.2013 in Suit No.210/13 have been annexed to this petition.

7. Counsel for the petitioner submits that the matter concerns an unfortunate accident that had occurred whilst four friends were in the same car which struck a road divider; and the legal representatives of the deceased Ashu Anand have also been duly compensated and have settled with the petitioner, and are now left with no grievance. The father and brother of the deceased, Sh. Amrit Sagar Anand and Sh. Tarun Anand, respectively, affirm the aforesaid facts, and further state that they are no longer interested in pursuing the matter; and that they have now no grievance with the petitioner, and therefore also pray that the matter be closed.

8. Counsel for the State submits that looking to the circumstances which involved an unfortunate accident, and where the parties, including the legal representatives of the deceased, have settled with each other, and the injured, as well as the legal representatives of the deceased Ashu Anand, are no longer interested in supporting the prosecution; no useful purpose would be served in continuing with the matter.

9. 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 also of the considered opinion that looking to the overall circumstances, it is best if a quietus is given to the matter at this stage since the petitioner has settled the same with the complainants, including the legal representatives of the deceased, Ashu Anand; and where even the injured and the legal representatives of the deceased are no longer interested in supporting the prosecution, thereby diminishing its chances of success.

10. Consequently, the petition is allowed, and FIR No.188/2013, registered under Sections 279/337 IPC on 09.05.2013 at police station Geeta Colony, and all proceedings emanating therefrom, are hereby quashed.

11. The petition is disposed off. SUDERSHAN KUMAR MISRA, J NOVEMBER28 2014 dr

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