

Sumita Verma and Anr Vs. the State and Anr

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Court : Delhi

Decided On : Nov-18-2014

Judge : Sudershan Kumar Misra

Appellant : Sumita Verma and Anr

Respondent : The State and Anr

Advocate for Def. : Mr. P.K. Mishra

Advocate for Pet/Ap. : Mr. O.P. Bharti

Judgement :

\$~32 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 5207/2014
SUMITA VERMA & ANR Through: Petitioners Mr. O.P. Bharti, Advocate with
petitioners in person versus THE STATE & ANR Through: Respondents Mr.
P.K. Mishra, APP for State with SI Anil Kumar, PS Dwarka South R-2 in person
along with her mother CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR
MISRA % SUDERSHAN KUMAR MISRA, J.

(Oral) CRL.M.A. No.17819/2014 Exemption, as prayed for, is allowed, subject to
all just exceptions. The application stands disposed off. CRL.M.C. 5207/2014 1.
This petition under Section 482 Cr.P.C. seeks quashing of FIR No.60/2012
registered under Section 374/34 IPC and read with Section 23 of the Juvenile
Justice Act, at Police Station Dwarka South, 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 enters appearance and accepts notice. The second respondent/complainant, namely, Gangotri Kumari, along with her mother, Saniyaro Devi, are present in person. The Investigating Officer, Sub-Inspector Anil Kumar, Police Station Dwarka South, also identifies the complainants.

4. It is stated that the aforesaid FIR came to be lodged at the instance of the complainant and her mother under Sections 23/26 of the Juvenile Justice Act along with Section 14 of the Child Labour Prohibition Act, read with Sections 323/342/374/34 IPC, on the ground that the petitioners had engaged the services of a minor as a domestic servant and had thereafter also illtreated her. After investigation, the chargesheet was filed in the court below. During the course of the trial, the matter was referred to mediation by the court below, and ultimately, on 09.10.2014, the matter was settled between the parties before the Mediation Centre, Dwarka, New Delhi. A copy of the settlement arrived at between the parties has also been annexed to the petition. In terms of the settlement, the mother and natural guardian of the complainant agreed to settle the entire dispute for a sum of Rs. 3 Lacs which amount also stands paid to the complainant and her mother on 09.10.2014.

5. Counsel for the petitioner has also drawn my attention to paragraph 5 to 11 of the aforesaid settlement before the mediation centre on 09.10.2014 to demonstrate that the settlement is a comprehensive one that has been arrived at between the complainant and all the accused persons; including one Shri Mukesh Mahto and Shri Mahadev, and the complainants have undertaken to withdraw the matter against these two persons also after having concluded an overall settlement with all of them. He submits that under the circumstances, even though Shri Mukesh Mahto and Shri Mahadev, are not present before this Court today, this is a fit case where the said FIR ought to be quashed at least qua the petitioners since only the petitioners have approached this Court thus far.

6. At the same time, offences under Section 323/343/34 IPC and Section 23 of the Juvenile Justice Act, which were compoundable stand duly compounded before

the court below.

7. The complainant and her mother, Saniyaro Devi, also specifically approbate the aforesaid settlement and acknowledge the receipt of the amount of Rs. 3Lacs in the full and final settlement of their claims against the petitioners. They further state that they do not wish to proceed further in the matter and the same be closed.

8. Counsel for the State submits that looking to the overall circumstances, and the peculiar facts of this case, and since the matter has been settled on terms between the complainant and the petitioners, as well as other accused, no useful purpose would be served in continuing with the proceedings since the complainant is no longer interested in supporting the prosecution.

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 of the considered opinion that since the complainant has settled the matter on terms with the petitioners before the Mediation Centre, Dwarka Courts, New Delhi, on 09.10.2014, and also received adequate compensation from the petitioners, and where the complainant is no longer interested in supporting the prosecution thereby diminishing its chances of success, no useful purpose would be served in continuing with the proceedings against the petitioners.

10. Consequently, the petition is allowed, and FIR No.60/2012 registered under Section 374/34 IPC and read with Section 23 of the Juvenile Justice Act, at Police Station Dwarka South, and all proceedings emanating therefrom, are hereby quashed.

11. The petition stands disposed off. SUDERSHAN KUMAR MISRA, J.

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