

Subhash and Ors Vs. the State Govt of Nct Delhi and Anr

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Court : Delhi

Decided On : Nov-18-2014

Judge : Sudershan Kumar Misra

Appellant : Subhash and Ors

Respondent : The State Govt of Nct Delhi and Anr

Advocate for Def. : Ms. Nishi Jain

Advocate for Pet/Ap. : Ms. Preeti Srivastava

Judgement :

\$~41 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 5155/2014
SUBHASH & ORS Through: Petitioners Ms. Preeti Srivastava, Advocate with
petitioners in person. versus THE STATE GOVT OF NCT DELHI & ANR
Respondents Through: Ms. Nishi Jain, APP for the State with SI Yograj PS
Mahindera Park. R-2 in person. CORAM: HON'BLE MR. JUSTICE SUDERSHAN
KUMAR MISRA % SUDERSHAN KUMAR MISRA, J (ORAL) CrI. M.A. Nos.
17680/2014 (for exemption) Exemption, as prayed for, is allowed, subject to all just
exceptions. The application stands disposed off. CRL.M.C. 5155/2014 and CrI.
M.A. 17679/2014 (for stay) 1. This petition under Section 482 Cr.P.C. has been
moved seeking quashing of FIR No.172/2010 registered under Sections 498A/406
IPC at Police Station Mahendra Park on 23rd July, 2010 on the ground that the
matter has been 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-Poonam are present in person and are identified by the Investigating Officer/ SI Yograj, Police Station Mahindera Park.
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-Subhash on 15th August, 2006. At the same time, complainant had also instituted proceedings under Section 125 Cr.P.C. against petitioner No.1.
5. During the course of proceedings under Section 125 Cr.P.C. a joint statement of the parties was recorded settling the matter on terms. A copy of the said statement has also been annexed to this petition. In terms of the said settlement petitioner No.1 has agreed to pay a total sum of Rs.2,00,000/- towards full and final settlement of all the claims of the complainant. In addition, it was also agreed that the custody of the minor child of the parties, namely, master Himanshu @ Lakshay shall remain with the complainant and that petitioner No.1 shall have visiting rights qua the child. It was also agreed that the parties shall obtain divorce by mutual consent.
6. Pursuant to the settlement the complainant and petitioner No.1 had moved a joint petition under Section 13(B)(2) of the Hindu Marriage Act seeking dissolution of their marriage by decree of divorce by mutual consent and the same was granted by the court below on 6th January, 2014 in HMA No.652/2013. A copy of the decree sheet has also been annexed with the petition. In addition, proceedings under Section 125 Cr.P.C. were also withdrawn by the complainant on 29th April, 2013. Thereafter, the instant petition seeking quashing of FIR was moved before this Court.
7. The present petition was earlier taken up for hearing before this Court on 17th November, 2014 and was adjourned for today to enable the parties to re-negotiate the terms with regard to the custody of the minor child. Today, counsel for the

petitioner has handed over affidavits of petitioner No.1 and complainant-respondent No.2 stating therein that henceforth the custody of the minor child shall be with petitioner No.1-Subhash and the complainant shall have visitation rights. The said affidavits are taken on record. Out of the total amount of settlement a balance of Rs.1,00,000/-has been handed over to the complainant in cash in the Court today.

8. The complainant approbates the aforesaid settlement and affirms her signatures on the affidavit which is taken on record today. She states that she has no further grievance in the matter and with the aforesaid payment nothing further remains due to her from the petitioners. She states that she does not wish to pursue the matter any further and prays that the same be closed.

9. 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.

10. 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.

And specifically in respect of matrimonial disputes in *Jitendra Raghuvarshi & Ors. v. Babita Raghuvarshi & Anr.* (2013) 4 SCC58 where the Supreme Court 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. The 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.

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.

11. Consequently, FIR No.172/2010 under Sections 498A/406 IPC registered at Police Station Mahendra Park on 23rd July, 2010 and all proceedings emanating therefrom, are hereby quashed.

12. The petition stands disposed off. SUDERSHAN KUMAR MISRA JUDGE
NOVEMBER18 2014 AK

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