

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

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Court : Delhi

Decided On : Dec-16-2014

Judge : Sudershan Kumar Misra

Appellant : Dinesh Kumar and Ors.

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

Judgement :

\$~7 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 4675/2014
DINESH KUMAR & ORS. Through Petitioner Mr. R.P.S. Bhatti, Mr. V. S. Panwar and Mr. Uma Shankar, Advocates with the petitioners. versus STATE (GOVT. OF NCT OF DELHI) & ANR. Respondents Through Ms. Nishi Jain, Additional Public Prosecutor, Sub Inspector Mahmood Hasan, P.S. Mayur Vihar. Mr. Ashok Kumar, Advocate with R2and 3. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(ORAL) 1. This petition under Section 482 Cr.P.C. seeks quashing of FIR No.249/2013, registered under Sections 308, 323, 34 IPC at police station Mayur Vihar, on 15.07.2013, on the ground that the matter has been settled between the parties.

2. Issue notice.

3. Ms. Nishi Jain, Additional Public Prosecutor for the State, and Mr. Ashok Kumar, Advocate for respondent No.2, who is the complainant, and respondent

No.3, the injured, enter appearance and accept notice. Respondents 2 and 3, who are present in person, are also identified by the Investigating Officer, Sub Inspector Mahmood Hasan.

4. It is stated that the aforesaid FIR came to be lodged at the instance of the complainant as a result of an altercation that had taken place between him and the petitioners, as well as the injured, outside a marriage pandal, which escalated. The charge sheet in the matter is stated to have been filed after investigation against the petitioners.

5. Ultimately, the petitioners and respondents 2 and 3 are stated to have entered into a compromise in terms of a Compromise Deed executed on 20.09.2014.

6. In addition, counsel for the petitioners, on instructions from the petitioner, states that the petitioners are also willing to compensate the second and third respondent by payment of total sum of Rs.30,000/- to each of the respondents, i.e., respondent Nos.2 and 3.

7. Respondents 2 and 3 approbate the aforesaid settlement and state that the aforesaid amount offered is acceptable to them in full and final settlement of all their claims and dues in this regard from the petitioners.

8. Consequently, the said amount has been handed over to respondents 2 and 3 in cash today. They further state that they are no longer interested in pursuing the matter, and that the same be closed as prayed.

9. Counsel for the State submits that looking to the overall circumstances in the matter, which appear to have arisen out of a minor altercation between the parties, which thereafter escalated, and where the parties have now settled on terms; and the complainant as well as the injured are no longer interested in supporting the prosecution; no useful purpose will be served in continuing with these proceedings.

10. Under the circumstances, 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 noncompoundable offence can also be

quashed on the basis of a settlement between the offender and the victim, if the circumstances so warrant; and also *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 the judgment of this Court in *Basara and Ors. v. State and Anr.* in CrI. M.C. No.6621-24/2006 decided on 3rd September, 2007, wherein it

14.Peace has been brought in the locality with the intervention of the well wishers of the locality. When there is peace in locality, there will be peace in the town. When there is peace in town, there will be peace in city. When there is peace in city, there will be peace in State. When there is peace in State, there will be peace in country.....

15. The petition is according allowed. FIR No.4/2005 registered against the petitioners under Section 307 read with Section 34 IPC with Police station Samay Pur Badli is quashed and all consequent proceedings pursuant thereto are also ordered to be dropped.

I am of the considered opinion that the matter deserves to be given a *quietus* at this stage itself since the complainant and the injured have settled the matter on terms with the petitioners; and have also received compensation and are now no longer interested in supporting the prosecution, thereby diminishing the chances of its success.

11. Consequently, the petition is allowed, and FIR No.249/2013, registered under Sections 308, 323, 34 IPC at police station Mayur Vihar, on 15.07.2013, and all proceedings emanating therefrom, are hereby quashed.

12. The petition is disposed off. SUDERSHAN KUMAR MISRA Judge
DECEMBER16 2014 dr

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