

Lalit Kumar and Ors. Vs. The State Nct of Delhi and Ors.

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Court : Delhi

Decided On : Jan-19-2015

Judge : Sunil Gaur

Appellant : Lalit Kumar and Ors.

Respondent : The State Nct of Delhi and Ors.

Advocate for Pet/Ap. : Mr. Nitin Rai Sharma, Mr. Navin Sharma, Mr. Manish Kumar, Mr. Ujjwal Kumar

Judgement :

\$~72 & 73 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

19. h January, 2014 + CRL.M.C. 1160/2014 & CrI.M.A.No.3905/2014 LALIT KUMAR & ORS Petitioners Through: Mr. Nitin Rai Sharma, Advocate alongwith Petitioners-in-person versus THE STATE NCT OF DELHI & ORS Respondents Through: Mr. Navin Sharma, Additional Public Prosecutor for State + CRL.M.C. 1556/2014 & CrI.M.A.No.5288/2014 RAJA RAM INDORIA & ORS Petitioners Through: Mr. Manish Kumar & Mr. Ujjwal Kumar, Advocates alongwith Petitioners-in-person versus LALIT KUMAR & ORS Through: Respondents Mr. Navin Sharma, Additional Public Prosecutor for State CORAM: HON'BLE MR. JUSTICE SUNIL GAUR %

JUDGMENT

(ORAL) With the consent of both the parties, these two petitions are taken up for hearing together and are being disposed of by this common order as the parties are same and both the petitions pertain CrI.M.C.No.1160 & 1556 of 2014 Page 1 to one incident. Subject matter of above-captioned two petitions is the incident of 6th September, 2009 pertaining to a dispute between the parties which took place on a trivial issue i.e. children urinating in the nalli (open drain) and the incident took an ugly turn leading into filing of a complaint (filed by respondents of CrI.M.C.No.1556/2014) under Section 307 IPC/323/341/506/34 / 120B IPC and the cross version on which FIR No.166/2009 under Section 308/452/323/34 IPC was registered at Police Station Jaipur, Delhi against petitioners in CrI.M.C.No.1160/2014. Quashing of aforesaid FIR case and complaint case is sought on the basis of a Memorandum of Understanding (MoU) dated 7th February, 2014. Lalit Kumar, Ravinder and Deepak, present in Court, are the complainant-party of the complaint case and are duly represented by their counsel. In above-captioned first petition, complainant-party/respondents No.2 to 5 i.e. Raja Ram Indoria, Yasoda, Ajit and Ajay are present in person and identified to be so by Head Constable Rajnish, on the basis of identity proofs shown by them. Complainant-party of the aforesaid FIR case and the complaint case, present in the Court submit that incident in question happened due to misunderstanding between the parties, which now stands cleared and both the sides affirm the contents of aforesaid Memorandum of Understanding and their respective affidavits and submit that to restore cordiality among the parties the proceedings arising out of FIR and complaint case be brought to an end. CrI.M.C.No.1160 & 1556 of 2014 Page 2 Learned Additional Public Prosecutor points out that complainant-Lalit Kumar, present in the Court, had suffered simple injury on his head which was given by a danda blow and so cognizance of complaint case under Section 307/34 IPC was taken. Learned counsel for complainant has placed reliance upon Apex Court decision in Narinder Singh & Ors. v. State of Punjab & Anr. (2014) 6 SCC466 to highlight the parameters, which govern quashing of FIR under Section 307/34 IPC, which are as under: 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: Crl.M.C.No.1160 & 1556 of 2014 Page 3 (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 the 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 predominantly 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 IPC would fall in the category of heinous and serious offences and therefore Crl.M.C.No.1160 & 1556 of 2014 Page 4 are 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 IPC 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 IPC 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 IPC. 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 latter 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 CrI.M.C.No.1160 & 1556 of 2014 Page 5 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 to a conclusion as to whether the offence under Section 307 IPC 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 IPC 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. Applying the afore-noted dictum of the Apex Court to the facts of the instant case, I find that the injuries suffered by complainant-Lalit Kumar does not come in the ambit of Section 307 IPC as there was no intention to inflict injury and the injured was discharged from the hospital on the same day. Since the Crl.M.C.No.1160 & 1556 of 2014 Page 6 incident in question had taken place on a trivial issue and the misunderstanding between the parties stand cleared, therefore, to restore cordiality amongst the parties, who are neighbours, the proceedings against them ought to be brought to an end. Consequentially, both the petitions are allowed and proceedings emanating from the complaint case as well as FIR No.166/2009 under Section 308/452/323/34 IPC registered at Police Station Jaipur, Delhi shall stand quashed subject to deposit of cost of `20,000/- by petitioners in petition No.Crl.M.C.No.1556/2014 and `10,000/- by petitioners in petition No.Crl.M.C.No.1160/2014 in Prime Minister Relief Fund within two weeks from today and upon placing the receipts on record. Both the petitions and application are accordingly disposed of. (SUNIL GAUR) Judge JANUARY19 2015
vn Crl.M.C.No.1160 & 1556 of 2014 Page 7

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