

Devender Dahiya and Ors. Vs. State and Ors.

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Court : Delhi

Decided On : Feb-05-2015

Judge : Sunil Gaur

Appellant : Devender Dahiya and Ors.

Respondent : State and Ors.

Advocate for Def. : Mr. Navin Sharma

Advocate for Pet/Ap. : Mr. S.P.Kaushal, Mr. Rohit Kumar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: February 05, 2015 + CRL.M.C. 3431/2013 DEVENDER DAHIYA &ORS. Petitioners Through: Mr. S.P.Kaushal & Mr. Rohit Kumar, Advocates versus STATE & ORS. Through: Respondents Mr. Navin Sharma, Additional Public Prosecutor for respondent No.1-State with ASI Nihal Singh CORAM: HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL) % Quashing of FIR No.105/2010, under Sections 307/323/34 of the IPC and Sections 25/27/54/59 of The Arms Act, registered at police station Chhawla, Delhi is sought on the basis of Settlement Deed/ Compromise of 7th February, 2012, with respondents No.2 & 3 i.e. the complainant party. At the time of filing of this petition, charge-sheet was filed in this FIR case and during pendency of this

petition, deposition of six witnesses has been already recorded by the trial court. Copy of deposition of these six witnesses is appended to the status report filed by respondent-State wherein previous involvements of petitioners are disclosed. During the course of arguments, learned counsel for petitioners relied upon parameters laid down by the Apex Court in its recent decision *Narinder Singh v. State of Punjab* (2014) 6 SCC466 which are as Crl.M.C.No.3431/2013 Page 1 under:

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 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. Crl.M.C.No.3431/2013 Page 2 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 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. Crl.M.C.No.3431/2013 Page 3 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 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.

Crl.M.C.No.3431/2013 Page 4 Upon hearing and on perusal of the copy of charge-sheet, copies of deposition of witnesses already recorded and the material on record, I find that the chief examination of the complainant-party i.e. respondents No.2 & 3 has been already recorded by the trial court. The complainant party i.e. respondents No.2 & 3 appear to have supported prosecution case in their chief examination and they have not filed their affidavits in support of this petition. In any case, non-filing of the affidavits by respondents No.2 & 3 is immaterial in view of the fact that the trial of this case has substantially progressed and the complainant party has supported the prosecution case. The stage at which a petition for quashing of the FIR is to be entertained is crucial. At the initial stage, it can be entertained and only in exceptional circumstances, it can be entertained amidst trial. There are no exceptional circumstances justifying entertaining of this petition during the trial. Applying the dictum of dictum of Narinder Singh (Supra) to the facts of this case, and in view of the antecedents of petitioners and the fact that much of the prosecution evidence has been already recorded, I find that it is not a fit case to quash the FIR of this case at the advanced stage of trial. This petition is accordingly dismissed while refraining to comment on the merits lest it may prejudice either side before the trial court. (SUNIL GAUR) JUDGE FEBRUARY05

