

Bira Thoibi and Anr Vs. State (the Nct of Delhi) and Anr

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SooperKanoon Citation : sooperkanoon.com/38645

Court : Delhi

Decided On : Feb-04-2015

Judge : Manmohan Singh

Appellant : Bira Thoibi and Anr

Respondent : State (the Nct of Delhi) and Anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Order delivered on:

4. h February, 2015 % + CRL.M.C. 427/2015 BIRA THOIBI & ANR Through Petitioners Mr.K.K.Manan, Adv. with Mr.Nipun Bhardwaj & Mr.Ankush Narang, Advs. versus STATE (THE NCT OF DELHI) & ANR Respondents Through Mr.M.P.Singh, APP for the State along with SI Arun Kumar, PS F.P. Beri, in person. Respondent No.2 in person along with her mother. CORAM: HON'BLE MR.JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

(Oral) Crl. M.A. No.1680/2015 (exemption) Exemption allowed, subject to just exceptions. The application is disposed of. Crl. M.C. No.427/2015 & Crl. M.A. No.1681/2015 1. The present petition has been filed by the petitioners under Section 482 Cr.P.C. for quashing of FIR No.388/2013, under Sections 370(4) (7)/ 323/307/344 IPC read with Section 23/26 of Juvenile Justice Act, Section 14 of Child Labour Act and Section 3/16 of Bonded Labour Act, registered at P.S. Sarojini Nagar, New Delhi, on the complaint of respondent No.2.

2. Brief facts of the case are that the aforesaid FIR was registered on 28th October, 2013 on the basis of the complaint made by one Ms. Machundoliu D/o Pousilungliu wherein it has been stated that the complainant had been working as a maid for Ms.Bira Thoibi (petitioner No.1 herein) for the past two years. Her duties allegedly involved cooking, sweeping, washing, doing the laundry and looking after the dog of Ms.Thoibi who is employed as an Air Hostess. It is further alleged that she does the work like massaging, thereafter looking after the household chores. It is also one of the allegations that petitioner No.1 being under an invertebrate state physically abuses the complainant. She had hit the complainant with a steel glass which resulted in injuries to her. The complainants mother is not aware of her whereabouts and she is without any contact with them. It is also alleged that the complainant is not paid duly for her services and her mother was made aware of her being in Delhi, only after she reached Delhi. It is further alleged that on the adverse, it is the accusation of the petitioner No.1 that the complainant was indulged in stealing. She also locks her in when she goes out of the house. The complainant escaped from the house and contacted the police at Netaji Nagar Market while her landlady was on a trip to Australia.

3. It is stated in the petition that the mother of the complainant, i.e. Smt. Pousilungliu and the petitioners are distant relatives (as mothers of the petitioners and complainant are cousin sisters).

4. Subsequently, both the petitioners were granted bail by the Court. The Investigating Agency filed the charge-sheet before the Court against the present petitioners.

5. During the pendency of the proceedings, the petitioners have compromised the matter with the complainant through her mother (being her natural guardian), i.e. respondent No.2. Both the petitioners and the mother of the complainant have also entered into a MOU dated 31st January, 2015 to this effect. The mother of the complainant has also given an affidavit, giving her no objection if the present FIR registered against the petitioners is quashed. The terms and conditions of the settlement are as under:

A. THAT it is further agreed by the Second Party that the Second Party shall, on behalf of the complainant Ms. Manchudoliu being her mother/natural guardian, appear before the Honble High Court of Delhi for Quashing of the FIR bearing No.388/2013, U/s. 370(4) (7)/ 323/307/344 IPC R/w 23/26 J.J.

Act R/w 14 Child Labour Act R/w 3/16 Bonded Labour Act, P.S. Sarojini Nagar and the proceedings emanating there from which shall be filed by the First Party and Second party shall co-operate and shall give a statement on behalf of the complainant before the Honble Court stating that the Second Party (on behalf of the complainant) has no objection if the aforesaid FIR and the proceedings against the First Party are Quashed by the Honble Court. B. THAT the parties to the Understanding have thus settled all their misunderstandings against each other and now all misunderstandings, differences etc. against each other shall stand settled and no disputes of any sort exists between the parties and claim of all the parties against each other stand fully satisfied in all respect. C. THAT the parties to the present Agreement/ Understanding undertake to be bound by the terms of the present Agreement/Understanding and to give full effect to the terms thereof. The parties hereby give a solemn undertaking that they shall strictly abide by and comply with the terms of the present Agreement. D. THAT parties agree and undertake that there is no force, fraud, coercion or undue influence on each other at the time of entering into the present settlement or at the time of execution of the present agreement/ Understanding and the same is of their own free will and volition. E. THAT the parties and undertake that there is no collusion between the parties. F. THAT the contents of the present understanding have been explained to both the parties in the same vernacular language and both the parties have understood the same and admit them as correct.

6. Both the petitioners, respondent No.2 who is minor and her mother Smt.Pousilungliu are present before Court when the matter is taken up. The petitioners are duly identified by their counsel. The complainant is being represented through her mother who has also brought one Interpreter before Court, as respondent No.2 and her mother does not know Hindi and English languages. Respondent No.2/complainant and her mother have confirmed about the settlement arrived at between the parties and the terms mentioned in MOU

dated 31st January, 2015. The mother has also informed the Court that it happened due to misunderstanding against each other, otherwise there is no dispute of any nature between the parties who are related to each other. It is informed by her that in fact, the parents of the petitioners are helping the complainant as well as her mother. She has also confirmed that there is no force, undue influence of any nature in entering into the compromise between the parties, rather she has confirmed that the petitioners and their family members have been helping her as well as her daughter, i.e. the complainant.

7. Mr. Manan, learned counsel for the petitioners has referred the recent decision of the Supreme Court in the case of *Narinder Singh & Ors. v. State of Punjab & Anr.*, reported in 2014(2) Crimes 67 (SC), wherein the Supreme Court has laid down the principles in para 31 of the judgment which read as under:

31. 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: (I) 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. (II) 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. (III) 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. (IV) On the other, 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. (V) 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. (VI) Offences under Section 307 IPC 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 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 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. (VII) 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 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.

8. In the present case, in view of the complaint filed by respondent No.2, I would have taken a different view. However, in view of the judgment of the Supreme Court coupled with the fact that the complainant and her mother have confirmed before the Court that the petitioners and their family members are financially helping them, considering the peculiar facts and circumstances of the present case, the prayer of this petition is allowed. Accordingly, the FIR No.388/2013, under Sections 370(4) (7)/ 323/307/344 IPC read with Section 23/26 of Juvenile Justice Act, Section 14 of Child Labour Act and Section 3/16 of Bonded Labour Act, registered at P.S. Sarojini Nagar, New Delhi and proceedings pursuant thereto are hereby quashed qua the petitioners.

9. The petition is accordingly disposed of. Pending application also stands disposed of.

10. Dasti to parties under the signatures of Court Master. (MANMOHAN SINGH)
JUDGE FEBRUARY04 2015

