

Nitin Kumar Upadhyay and Ors. Vs. The State and Anr.

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Court : Delhi

Decided On : Mar-13-2015

Judge : Sunil Gaur

Appellant : Nitin Kumar Upadhyay and Ors.

Respondent : The State and Anr.

Advocate for Def. : Mr. Vinod Diwakar, Mr. Vikram Kumar

Advocate for Pet/Ap. : Mr. Binod Kumar Jha

Judgement :

~32 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: March 13, 2015 + CRL.M.C. 1002/2015 & CrI. M.A.Nos.3743-44/2015 NITIN KUMAR UPADHYAY & ORS. Petitioners Through: Mr. Binod Kumar Jha, Advocate versus THE STATE & ANR. Through: Respondents Mr. Vinod Diwakar, Additional Public Prosecutor for respondent No.1-State with SI Ajay Kumar Mr. Vikram Kumar, Advocate with respondent No.2 in person CORAM: HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL) % Quashing of FIR No.274/2014, under Sections 498-A/406/34 of the IPC, registered at police station Dabri, Delhi is sought on the basis of mediated settlement of 8th August, 2014 (Annexure-P-2), arrived at the Mediation Centre, Dwarka Courts, Delhi. Notice. Mr. Vinod Diwakar, learned Additional Public

Prosecutor for respondent-State accepts notice and Mr. Vikram Kumar, Advocate, accepts notice on behalf of respondent No.2. Learned Additional Public Prosecutor for respondent -State submits that respondent No.2, present in the Court, is complainant/first- Crl.M.C.No.1002/2015 Page 1 informant of the FIR in question and she has been identified to be so by her counsel as well as by SI Ajay Kumar on the basis of identity proof produced by her. Learned Additional Public Prosecutor for State submits on instructions that the trial of this FIR case has not yet begun. Respondent No.2, present in the Court, submits that the dispute between the parties has been amicably resolved vide aforesaid settlement and terms thereof have been fully acted upon as today, she has received the balance settled amount of `2,00,000/- by way of demand draft bearing No.614111 dated 2nd March, 2015, drawn on State Bank of India, Branch Dwarka, New Delhi and that divorce by mutual consent has been already granted by the family court on 23rd February, 2015. Respondent No.2 affirms the contents of aforesaid settlement supporting this petition and submits that now no dispute with petitioners survives and so, the proceedings arising out of the FIR in question be brought to an end. In Gian Singh Vs State of Punjab (2012) 10 SCC303 Apex Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:

Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender Crl.M.C.No.1002/2015 Page 2 and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.

The aforesaid dictum stands reiterated by the Apex Court in a recent judgment in Narinder Singh v. State of Punjab (2014) 6 SCC466 The pertinent observations of

the Apex Court in Narinder Singh (supra) are as 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. Crl.M.C.No.1002/2015 Page 3 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. 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 Crl.M.C.No.1002/2015 Page 4 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. At this stage, the Court can also be swayed by the fact that the Crl.M.C.No.1002/2015 Page 5 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 CrI.M.C.No.1002/2015 Page 6 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.

Since the subject matter of this FIR is essentially matrimonial, which now stands mutually and amicably settled between parties, therefore, continuance of proceedings arising out of the FIR in question would be an exercise in futility. Accordingly, this petition is allowed and FIR No.274/2014, under Sections 498-A/406/34 of the IPC, registered at police station Dabri, Delhi and the proceedings emanating therefrom are quashed qua petitioners. This petition is accordingly disposed of. (SUNIL GAUR) JUDGE MARCH13 2015 r CrI.M.C.No.1002/2015 Page 7

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