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Rajbir Vs. The State and Anr.

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Court : Delhi

Decided On : Apr-29-2015

Judge : Sunil Gaur

Appellant : Rajbir

Respondent : The State and Anr.

Advocate for Def. : Mr. Piyush Agarwal

Advocate for Pet/Ap. : Ms. Renu Bala Arora

Judgement :

$~37 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: April 29, 2015 + CRL.M.C. 1781/2015 RAJBIR Through: ..... Petitioner Ms. Renu Bala Arora, Advocate versus THE STATE & ANR Through: .....Respondents Mr.Karan Singh, Additional Public Prosecutor for respondent-State with SI Jagdeep Mr. Piyush Agarwal, Advocate with Respondent No.2-in-person CORAM: HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL) % Crl.M.A.No.6414/2015 This application is for condonation of delay in re-filing the accompanying petition. For the reasons stated in the application, the application is allowed and delay is condoned. Crl.M.C.No.1781/2015 Quashing of FIR No.491/2007 under Sections 498-A/406/34 of IPC registered at Police Station Sri Niwas Puri, Delhi is sought on the basis of joint statement made before the

Family Court on 5th July, 2013. Crl.M.C.No.1781/2015 Page 1 Notice. Mr.Karan Singh, learned Additional Public Prosecutor for respondent-State accepts notice and Mr. Piyush Agarwal, 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-informant of the FIR in question and she has been identified to be so by her counsel as well as by SI Jagdeep on the basis of identity proof produced by her. Respondent No.2, present in the Court, submits that the dispute between the parties has been amicably resolved and all terms of the joint statement made have been fully acted upon and that divorce by mutual consent has been already granted by the family court on 5th July, 2013. Respondent No.2 affirms the contents of aforesaid joint statement and of her affidavit of 12th November, 2014 supporting this petition and submits that now no dispute with petitioner 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:

61.In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction Crl.M.C.No.1781/2015 Page 2 to quash the criminal proceedings.

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. 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. Crl.M.C.No.1781/2015 Page 3 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 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 Crl.M.C.No.1781/2015 Page 4 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 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 Crl.M.C.No.1781/2015 Page 5 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.491/2007 under Sections 498-A/406/34 of IPC registered at Police Station Sri Niwas Puri, Delhi and the proceedings emanating therefrom are quashed qua petitioner. This petition is accordingly disposed of. (SUNIL GAUR) JUDGE APRIL29 2015 vn Crl.M.C.No.1781/2015 Page 6

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