

Subhash Sharma and Ors. Vs. State of Nct of Delhi and Anr.

Subhash Sharma and Ors. Vs. State of Nct of Delhi and Anr.

SooperKanoon Citation : sooperkanoon.com/50870

Court : Delhi

Decided On : Apr-28-2015

Judge : Sunil Gaur

Appellant : Subhash Sharma and Ors.

Respondent : State of Nct of Delhi and Anr.

Advocate for Pet/Ap. : Mr. Nitin Tewari, Mr. Praveen Bhati, Mr. Sandeep Vishnu, Ms. Mahak Gupta

Judgement :

\$~30 & 32 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: April 28, 2015 + (i) CRL.M.C. 1746/2015 & Crl.M.A.6279/2015 SUBHASH SHARMA & ORS Petitioners Through: Mr. Nitin Tewari, Advocate versus STATE OF NCT OF DELHI & ANRRespondents Through: Mr. Praveen Bhati, Additional Public Prosecutor for respondentState with SI Vikas Mudgal & SI Daljeet Singh Mr. Sandeep Vishnu and Ms. Mahak Gupta, Advocates with respondent No.2 in person + (ii) CRL.M.C. 1749/2015 & Crl.M.A.6287/2015 SUBHASH SHARMA & ORSPetitioners Through: Mr. Nitin Tewari, Advocate versus STATE OF NCT OF DELHI & ANRRespondents Through: Mr. Praveen Bhati, Additional Public Prosecutor for respondentState with SI Vikas Mudgal & SI Daljeet Singh Mr. Sandeep Vishnu and Ms. Mahak Gupta, Advocates with respondent No.2 in person CRL.M.Cs. 1746 & 1749 of 2015 Page 1 CORAM: HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL) % In the above captioned first petition, quashing of FIR No.254/2013, under Section 498-A of IPC registered at police station Moti Nagar, Delhi where in the above captioned second petition, quashing of quashing of FIR No.24/2014, under Sections 498-A/406/34 of IPC registered at police station Crime (Women) Cell, Nanakpura, New Delhi is sought on the basis of Memorandum of Understanding of 28th March, 2014 (Annexure P-4). Since the aforesaid quashing is sought on common grounds as also the parties are same, therefore, with the consent of both the sides, these two petitions were heard together and by this common judgment, they are being disposed of. Notice. Mr. Parveen Bhati, learned Additional Public Prosecutor for respondent-State accepts notice and Mr. Sandeep Vishnu, Advocate, accepts notice on behalf of respondent No.2-Smt. Nisha. Learned Additional Public Prosecutor for respondent-State submits that respondent No.2, present in the Court, has been identified to be complainant/first-informant of the FIRs in question by her counsel as well as by SI Vikas Mudgal and SI Daljeet Singh on the basis of identity proof produced by her. Respondent No.2, present in the Court, submits that the dispute between the parties in these petitions has been amicably resolved vide aforesaid Memorandum of Understanding and terms thereof have been CRL.M.Cs. 1746 & 1749 of 2015 Page 2 fully acted upon as today, she has received the balance settled amount of `1 lac by way of demand draft/PO bearing No.228218 of 27th February, 2015 and that divorce by mutual consent has been already granted by the family court on 17th November, 2014. Respondent No.2 affirms the contents of aforesaid Memorandum of Understanding and of her affidavits filed in support of these two petitions 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:

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 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 CRL.M.Cs. 1746 & 1749 of 2015 Page 3 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. 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 CRL.M.Cs. 1746 & 1749 of 2015 Page 4 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. 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. CRL.M.Cs. 1746 & 1749 of 2015 Page 5 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.

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 CRL.M.Cs. 1746 & 1749 of 2015 Page 6 would be an exercise in futility. Accordingly, these petitions are allowed and FIR No.254/2013, under Section 498-A of IPC registered at police station Moti Nagar, Delhi [in CRL.M.C. 1746/2015]. and FIR No.24/2014, under Sections 498A/406/34 of IPC registered at police station Crime (Women) Cell, Nanakpura, New Delhi [in CRL.M.C. 1749/2015]. and the proceedings emanating therefrom are quashed qua petitioners. The above captioned two petitions and the applications are accordingly disposed of. (SUNIL GAUR) JUDGE APRIL28 2015 s CRL.M.Cs. 1746 & 1749 of 2015 Page 7

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com