

Kapil Chugh Vs. State and Anr.

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Court : Delhi

Decided On : May-19-2015

Judge : Sunil Gaur

Appellant : Kapil Chugh

Respondent : State and Anr.

Advocate for Pet/Ap. : Mr. S.K.Sharma, Mr. Pawan Sharma, Mr. Deepender Hooda, Mr. Dhruv Chandhru, Mr. Rahul Sharma, Mr. Vinod Diwakar, Mr. Sandeep Kapur, Mr. Psuhpinder Singh

Judgement :

\$~21, 22 & 23 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: May 19, 2015 + CRL.M.C6872014 JAI KISHAN AGGARWAL & ORS. Petitioners Through: Mr. S.K.Sharma, Mr. Pawan Sharma, Mr. Deepender Hooda, Mr. Dhruv Chandhru & Mr. Rahul Sharma, Advocates versus STATE & ORS. Through: + Respondents Mr. Vinod Diwakar, Additional Public Prosecutor for respondentState with Inspector Vivek Maheshwari, EOW Mr. Sandeep Kapur & Ms. Apporva Pandey, Advocates for Yes Bank with Mr. Psuhpinder Singh, AR CRL.M.C47112014 & CRL.M.A.No.16012/2014 R U K ZUBERI & ANR. Through: Petitioners Petitioner No.1-in-person versus THE STATE NCT OF DELHI & ANR. Respondents Through: Mr. Vinod Diwakar, Additional Public Prosecutor for respondentState with Inspector Vivek Maheshwari, EOW Mr. Sandeep Kapur & Ms. Apporva Pandey, Advocates for

Crl.M.C.Nos.687, 4711 of 2014 & 1357/2015 Page 1 Yes Bank with Mr. Psuhpinder Singh, AR + CRL.M.C13572015 & CRL.M.A4981/2015 KAPIL CHUGH Through: Petitioner Mr. S.K.Sharma, Mr. Pawan Sharma, Mr. Deepender Hooda, Mr. Dhruv Chandhru & Mr. Rahul Sharma, Advocates versus STATE & ANR. Through: Respondents Mr. Vinod Diwakar, Additional Public Prosecutor for respondent State with Inspector Vivek Maheshwari, EOW Mr. Sandeep Kapur & Ms. Apporva Pandey, Advocates for Yes Bank with Mr. Psuhpinder Singh, AR CORAM: HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

(ORAL) % In Crl.M.C.No.4711/2014, Mr. R U K Zuberi-petitioner No.1 appears in person and states that he appears on behalf of petitioner No.2 as well. Learned counsel for petitioners submits that although petitioners Crl.M.C.Nos.687, 4711 of 2014 & 1357/2015 Page 2 are not the beneficiary of the loan transaction with respondent No.-2/bank but to buy peace, they have paid the dues as asked for by respondent No.2/bank. It is submitted that even on merits, petitioners have a good case and they relied upon Memorandum of Understanding of 20th November, 2013 Understanding of Memorandum of [Crl.M.C.No.687/2014]., 25th April, 2013 Understanding of Memorandum of [Crl.M.C.No.4711/2014]. 2nd September, & 2013 [Crl.M.C.No.1357/2014]. to seek quashing of FIR in question qua petitioners. Upon notice, Mr. Vinod Diwakar, Additional Public Prosecutor for respondent-State and Mr.Sandeep Kapur, Advocate appearing on behalf of respondent No.2-bank submit that above-mentioned three MoUs have been acted upon by petitioners and so, the proceedings arising out of this FIR No.5/2012 under Section 420/467/468/471/109/120-B IPC registered at Police Station EOW Cell be brought to an end qua petitioners. It is also submitted that in the MoUs, the respondent-bank has undertaken to render complete cooperation in getting the instant FIR quashed. 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 Crl.M.C.Nos.687, 4711 of 2014 & 1357/2015 Page 3 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 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 Crl.M.C.Nos.687, 4711 of 2014 & 1357/2015 Page 4 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 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. 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 chargesheet 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 Crl.M.C.Nos.687, 4711 of 2014 & 1357/2015 Page 6 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.

In the peculiar facts and circumstances of this case and in view of fact that all the MoUs have been acted upon, I find that continuance of proceedings arising out of the FIR in question would be an exercise in futility as the misunderstanding, which led to registration of the FIR, now stands cleared between the parties. Accordingly, the petitions are allowed subject to cost of `25,000/in each petition to be deposited by petitioners with Prime Ministers Relief Fund within two weeks from today. Upon placing on record the receipt of cost, FIR No.5/2012 under Section 420/467/468/471/109/120-B IPC registered at Police Station EOW Cell, Delhi and the proceedings emanating therefrom shall stand quashed qua petitioners only. The petitions are accordingly disposed of. Dasti. (SUNIL GAUR) JUDGE MAY19 2015 vn Crl.M.C.Nos.687, 4711 of 2014 & 1357/2015 Page 7

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