

Sanjay and Ors Vs. The State and Anr

Sanjay and Ors Vs. The State and Anr

SooperKanoon Citation : sooperkanoon.com/6078

Court : Delhi

Decided On : Nov-24-2014

Judge : Sudershan Kumar Misra

Appellant : Sanjay and Ors

Respondent : The State and Anr

Judgement :

\$~5 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 4352/2014
SANJAY & ORS Through Petitioners Mr. R. P. Bhardwaj, Advocate with
petitioners. versus THE STATE & ANR Respondent Through Ms. Nishi Jain,
Additional Public Prosecutor. A.S.I. A. Kumar. Ms.Bharti Malik, Advocate with
complainant. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA %
SUDERSHAN KUMAR MISRA, J.

(ORAL) CRL.M.C. 4352/2014 & CrI.M.A. No.14934/2014 1. This petition under
Section 482 Cr.P.C. seeks quashing of FIR No.274/2007, registered under Section
498-A/406/34 IPC at police station Adarsh Nagar on 19.05.2007, on the ground
that the matter has been settled between the parties.

2. Issue notice. Ms. Nishi Jain, APP for the State and Ms. Bharti Malik, Advocate
for the second respondent / complainant, enter appearance and accept notice.
The complainant, who is present in person, is also identified by the Investigating
Officer, ASI A. Kumar.

3. It is stated that the aforesaid FIR came to be lodged at the instance of the complainant as a result of certain matrimonial and domestic disputes that had arisen between the parties after her marriage to the first petitioner Sanjay in the year 2005.

4. During the pendency of the proceedings in the court below in connection with the aforesaid FIR, the parties had approached the Matrimonial Court and have also obtained divorce by mutual consent on 08.06.2012 under Section 13 (B) (2) of the Hindu Marriage Act, 1955 in HMA No.658/2012.

5. Thereafter, on a reference of the matter to mediation by the Metropolitan Magistrate, before whom the proceedings were pending, the parties arrived at a settlement on 09.09.2013 in the Delhi Mediation Centre, Rohini District Courts, New Delhi, setting down all the terms and conditions thereof. In terms of the said settlement, the petitioners had agreed to pay a sum of Rs.20,000/- to the complainant in full and final settlement of all her claims. They had also agreed, inter alia, that the custody of the minor child Daksh borne to the complainant and the first petitioner shall remain with the first petitioner Sanjay.

6. Although, it was initially agreed, inter alia, that the custody of the minor child shall remain with the first petitioner, who was to be solely responsible for the child's upkeep and education etc., the parties, after some further discussion amongst themselves, for which the matter was also passed over twice, have agreed that the complainant shall have visitation rights, and that the petitioners shall not cause any unreasonable hindrance, or object to the complainant visiting and meeting her son Daksh whenever she likes. The petitioners have also undertaken accordingly to this Court. Their undertaking is accepted by this Court and they shall remain bound the same. Consequences of violation of this undertaking have been explained to them by their counsel in vernacular.

7. Although the settlement envisaged the payment of Rs.20,000/-, the petitioners have handed over a sum of Rs.30,000/- in cash to the complainant in Court today. It is further stated that in addition to this amount, a sum of Rs.1 lakh has also been paid by the petitioners to the complainant in three instalments during the pendency of the divorce proceedings by mutual consent.

8. The complainant approbates the aforesaid settlement and states that, with the receipt of this amount of Rs.30,000/-, nothing further is due to her from the petitioners; and subject to her visitation rights agreed to by the parties in Court today, she has no objection to the aforesaid FIR being quashed and the proceedings being dropped.

9. Counsel for the State submits that looking to the overall circumstances, where the parties have now settled their disputes on terms, after having obtained a divorce by mutual consent with regard to the matter which had arisen largely out of matrimonial and domestic differences, no useful purpose will be served in continuing with these proceedings where the complainant is no longer interested in supporting the prosecution.

10. Consequently, and looking to the decision of the Supreme Court in *Gian Singh v. State of Punjab*, (2012) 10 SCC303 which has referred to a number of matters for the proposition that even a non-compoundable offence can also be quashed on the basis of a settlement between the offender and the victim, if the circumstances so warrant; by observing as under:

58.However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

And also in *Narinder Singh and Ors. v. State of Punjab and Anr.* 2014(2) Crimes 67 (SC) where the Supreme Court held as follows:

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. 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. 29.4 On the other hand, 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. 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 Indian Penal Code 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 Indian Penal Code 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 Indian Penal Code 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 Indian Penal Code. 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. 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 a conclusion as to whether the offence under Section 307 Indian Penal Code 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 Indian Penal Code 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.

And specifically in respect of matrimonial disputes in *Jitendra Raghuvanshi & Ors. v. Babita Raghuvanshi & Anr.* (2013) 4 SCC58 where the Supreme Court held as follows:

15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed.

I am of the considered opinion that this matter deserves to be given a *quietus* at this stage itself since the parties have settled their disputes on mutually acceptable terms, and the complainant and the first petitioner have also obtained a divorce by

mutual consent, and the complainant is no longer interested in supporting the prosecution, thereby diminishing the chances of its success.

11. Under the circumstances, the petition is allowed and the No.274/2007, registered under Section 498-A/406/34 IPC at police station Adarsh Nagar, and all proceedings emanating therefrom, are hereby quashed.

12. The petition, along with Crl.M.A. No.14934/2014, is disposed off.
SUDERSHAN KUMAR MISRA, J NOVEMBER24 2014 dr

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