

Jagminder Singh and Ors. Vs. State Nct of Delhi and Anr.

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Court : Delhi

Decided On : Jul-21-2015

Judge : Suresh Kait

Appellant : Jagminder Singh and Ors.

Respondent : State Nct of Delhi and Anr.

Judgement :

\$~8 * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:21st July, 2015 + CRL.M.C. No.662/2015 JAGMINDER SINGH & ORS.
Petitioners Represented by: Mr. Rajiv Khosla and Mr. S. C. Phogat, Advocates with Petitioners in person. Versus STATE NCT OF DELHI & ANR.
Respondents Represented by: Mr. Ravi Nayak, Additional Public Prosecutor for the State with SI Mahendra Pratap, PS Narela. Mr. Rajeshwar Singh, Advocate for the Respondents with Respondents No.2 and 3 are in person. CORAM: HONBLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. Vide the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners seek directions thereby quashing of FIR No.281/2003 registered at Police Station Narela for the offences punishable under Sections 332/353/186/506/34 IPC and the consequential proceedings emanating therefrom against the petitioners on the ground that the matter has been amicably settled between the parties.

2. Mr. Rajiv Khosla, learned counsel appearing on behalf of the petitioners submits that the aforesaid case was registered on the complaint made by respondent No.2, Daya Chand due to a scuffle having been taken place between the parties. In the said scuffle, respondent No.3/Head Constable Tilak Raj also received minor injuries. After the investigation, police had filed the chargesheet, charges had been framed against the petitioners and the case is pending for prosecution evidence for the last 12 years, however, till date not even a single prosecution witness has been examined.

3. Learned counsel further submits that the petitioners are the police officials from Haryana Police and the respondents No.2 and 3 are the police officials from Delhi Police. Respondent No.2, Daya Chand, i.e., complainant has been retired. Due to intervention of common friends, the respondents No.2 and 3 and the petitioners have settled their disputes and therefore, respondents No.2 and 3 do not want to pursue the case further against the petitioners.

4. The respondents No.2 and 3 are personally present in Court and submits that due to some misunderstanding an altercation had taken place, however, they have realized the same. They submit that the matter stands settled between the parties, therefore, they want to give quietus to the instant case and have prayed to allow the present petition.

5. Learned Additional Public Prosecutor appearing on behalf of the State submits that in the present case charge under Section 186 Cr.P.C. has also been framed against the petitioners. Though the respondents No.2 and 3, informant and the injured respectively, have settled the matter with the petitioners, however, compromise cannot be allowed for offence punishable under Section 186 IPC.

6. In view of the aforementioned facts, the issue arises for consideration before this Court is whether the offence punishable under Section 186 IPC against the public servant can be allowed to be compounded on the basis of compromise with the public servant?.

7. The extent and sweep of inherent power exercisable by the High Court under Section 482 of the Code of Criminal Procedure for quashing the criminal

proceedings on the basis of compromise between the accused and the victim of crime in cases which are not compoundable under Section 320 or 321 of the Code, has been considered in extenso and answered by the Hon'ble Supreme Court in *Gian Singh Vs. State of Punjab and Another* (2012) 10 SCC303 laying down that the compounding of offence and quashing of criminal proceedings are two separate issues and not interchangeable and that the two powers are distinct and different although ultimate consequence may be the same. It has been authoritatively ruled that where the offender and victim have settled their dispute, the High Court in exercise of its inherent power under Section 482 Cr.P.C., is competent to quash criminal proceedings even relating to the non-compoundable offences though such a power needs to be invoked sparingly and not when the offences are heinous, serious, of mental depravity or like murder, rape, dacoity etc. The pronouncement thus says:" Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although 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. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well- being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. 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 victim and the offender and 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 F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

8. While recognizing the need of amicable resolution of disputes in cases like the instant one, the aforesaid dictum has been affirmed by the Apex Court in a recent judgment in *Narinder Singh & Ors. Vs. State of Punjab & Anr.* 2014 6 SCC466 The pertinent observations of the Apex 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 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 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.

9. Thus, the magnitude of inherent jurisdiction exercisable by the High Court with a view to prevent the abuse of law or to secure the ends of justice, is wide enough to include its power to quash the proceedings in relation to the non-compoundable offences including the ones involved in the present case notwithstanding the bar under Section 320 Cr.P.C. Such a power, in my considered view, can be exercised by this Court in all those circumstances where the conclusion of trial would ultimately result into futility.

10. So far as the case in hand is concerned, FIR in question was registered in the year 2003. Though charges had been framed, however, no prosecution witness has been examined till date. The petitioners have already suffered trial for 12 years. Moreover, in the facts and circumstances of the case, it is established that the dispute was prima facie between the parties in their individual and private capacity. Therefore, even on merits, the present case is a fit case where the ends of justice demand quashing of proceedings as the dispute has been settled amicably and this would bring harmony between the parties.

11. For the reasons stated above and in view of the settled law, as discussed above, the powers of High Court under Section 482 Cr.P.C. are wide enough, though to be exercised sparingly and judiciously, and this Court can quash criminal proceedings in the peculiar facts of the case even where offence is against public servant.

12. Keeping in view the facts and circumstances of this case, statements of the respondents No.2 and 3 that they do not want to pursue the case further against the petitioners, complainant is no longer interested in supporting the prosecution because of which, its chances of success in the matter are now greatly diminished, therefore, I am of the considered opinion that this matter deserves to be given a quietus as continuance of proceedings arising out of the FIR in question would be an exercise in futility.

13. Consequently, FIR No.281/2003 registered at Police Station Narela for the offences punishable under Sections 332/353/186/506/34 IPC and all proceedings emanating therefrom, are hereby quashed.

14. In view of the above, the present petition is allowed.

15. However, I hereby make it clear that the present case will not be construed as a precedent in other cases.

15. A copy of this order be given dasti to the learned counsel for the parties.
SURESH KAIT (JUDGE) JULY21 2015 sb

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