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Arjun Madan and Anr. Vs. State and Anr.

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Court : Delhi

Decided On : Nov-28-2014

Judge : Sudershan Kumar Misra

Appellant : Arjun Madan and Anr.

Respondent : State and Anr.

Judgement :

$~56 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 5439/2014 ARJUN MADAN & ANR. Through ..... Petitioners Mr. P. Roy Choudhary, Advocate with Petitioners. versus STATE & ANR. ..... Respondents Through Mr. P.K. Mishra, Additional Public Prosecutor. Mr. Prannoy Dey, Advocate with Complainant. Sub Inspector Rajesh Kumar, PS. B.K. Road. CORAM: HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA % SUDERSHAN KUMAR MISRA, J.

(Oral) 1. This petition under Section 482 Cr.P.C. for quashing of FIR No.1162/2012 registered under Section 406, 498-A IPC on 27.12.2012 at police station Barakhamba Road, on the ground that the matter has been settled between the parties.

2. Issue notice. Mr. P.K. Mishra, Additional Public Prosecutor for the State, and Mr. Prannoy Dey, Advocate for respondents No.2, enter appearance and accept notice. The complainant is also identified by the Investigating Officer, Sub Inspector Rajesh Kumar, Barakhamba Road.

3. It is stated that the aforesaid FIR came to be lodged at the instance of the second respondent / complainant as a result of matrimonial and domestic disputes that had arisen between the parties consequent upon her marriage to the first petitioner Arjun Madan on 14.12.2012.

4. In addition, the complainant had also instituted proceedings under Section 12 of the Domestic Violence Act.

5. On the other hand, the petitioners had impugned the aforesaid FIR in Writ Petition (Crl.) No.893/2013 and Writ Petition (Crl.) No.209/2013. During the course of hearing in Writ Petition (Crl.) No.893/2013 instituted by the first petitioner, the matter was referred to mediation on 14.05.2013 by this Court. Ultimately, the parties arrived at a mutual acceptable settlement on 08.08.2013 before the Delhi High Court Mediation and Conciliation Centre. A copy of the Settlement Agreement has also been annexed to this petition setting down all the terms and conditions thereof.

6. It is stated that thereafter the complainant and the first petitioner, Arjun Madan, moved a petition under the Hindu Marriage Act, 1955 seeking a decree of divorce by mutual consent, and the marriage between the parties was dissolved by the Matrimonial Court by a decree of divorce by mutual consent under Section 13-B (2) of the Hindu Marriage Act on 06.09.2014 in HMA No.626/2014. Copies of the said judgment as well as the decree sheet have been annexed to this petition.

7. It is further stated that under the aforesaid settlement, the first petitioner had agreed to pay a total sum of Rs.15 lakhs, in all, to the complainant in full and final settlement of all her claims and dues. Out of the said amount, a sum of Rs.10 lakhs has already been paid; and the remaining amount of Rs.5 lakhs has been handed over to the complainant by way of a Demand Draft bearing No.381403, dated 20.11.2014, drawn on State Bank of Patiala, in Court today.

8. Counsel for the petitioners states that what now remains is for the complainant to withdraw the aforesaid proceedings instituted by her under the Domestic Violence Act before the concerned court.

9. The complainant approbates the aforesaid settlement and states that after the receipt of Rs.15 lakhs as envisaged in the settlement, nothing further is due to her from the petitioners; and no grievance is left.

10. The complainant also undertakes to this Court to withdraw the proceedings instituted by her under the Domestic Violence Act before the concerned court, Patiala House Courts, New Delhi, stated to be the Com.Case No.1/4/13, titled as Neha Arora v. Arjun Madan & Ors., within three weeks from today against all the respondents named in that matter, thereby bringing those proceedings to an end in their entirety. This undertaking of the complainant is accepted by this Court and she will remain bound by the same. Consequences of breach of this undertaking have been explained to her.

11. The complainant further states that she is no longer interested in pursuing this matter, and that she has no objection to the FIR in question being quashed.

12. Counsel for the State submits that looking to the overall circumstances, and where the parties have resolved all their differences, which arose largely out of matrimonial and domestic disputes, on terms; and the complainant has also agreed to withdraw the aforesaid proceedings pending under the Domestic Violence Act before the concerned court, Patiala House, New Delhi, and she is also no longer interested in pursuing the present proceedings; no useful purpose will be served in continuing with the same.

13. 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 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 307Indian 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. They 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 where the parties have settled their disputes, which were matrimonial and domestic in nature, on terms; and the complainant has also undertaken to this Court to withdraw the aforesaid proceedings instituted by her under the Domestic Violence Act, and she is no longer interested in supporting the prosecution, thereby diminishing the chances of its success.

14. Consequently, the petition is allowed, and FIR No.1162/2012 registered under Section 406, 498-A IPC on 27.12.2012 at police station Barakhamba Road, and all proceedings emanating therefrom, are hereby quashed.

15. The petition is disposed off.

16. A copy of this order be given dasti under the signatures of the Court Master. Crl.M.A.No.18553/2014 Issue notice. Mr. P.K. Mishra, Additional Public Prosecutor for the State, and Mr. Prannoy Dey, Advocate for respondents No.2, enter appearance and accept notice. This application has been moved by the petitioner seeking release of Fixed Deposit Receipts, which are stated to have been deposited by the second petitioner in terms of the directions issued by this Court on 14.08.2013 in a common order passed in Writ Petition (Crl.) Nos.893/2013 and 209/2013; the particulars of the Fixed Deposit Receipts, which are stated to have been deposited with the Registrar of this Court on 14.08.2013, are mentioned in paragraph 4 of this application. After the aforesaid deposit, the parties have resolved all their disputes on terms, and by a separate order passed today, the aforesaid FIR No.1162/2012, in connection with which the said Fixed Deposit Receipts came to be deposited in this Court, has also been quashed. Counsel for the State as well as counsel for the second respondent state, on instructions, that

they have no objection if the said Fixed Deposit Receipts are released by this Court to the second petitioner. Consequently, the application is allowed and the Registry is directed to return the aforesaid Fixed Deposit Receipts to the second petitioner after complying with the necessary formalities. The application stands disposed off. SUDERSHAN KUMAR MISRA, J NOVEMBER28 2014 dr

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