

Vicky Choudhary Vs. State and anr

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Court : Delhi

Decided On : Jan-31-2012

Appellant : Vicky Choudhary

Respondent : State and anr

Judgement :

\$~1 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. No.153/2012
% Judgment delivered on: 31st January, 2012 VICKY CHOUDHARY Petitioner
Through: Mr.Rajat Wadhwa and Mr.Nikhil Mehta, Advs. versus STATE and ANR
..... Respondents Through: Mr.Naveen Sharma, APP for State. Mr.Ankur Sharma,
Adv for R-2 with respondent in person. CORAM: HON'BLE MR. JUSTICE
SURESH KAIT SURESH KAIT, J. (Oral).

1. Vide instant petition, the petitioner has prayed to quash the FIR No.114/2010 dated 13.05.2010 registered under Section 341/307/323/ 427/34 Indian Penal Code, 1860 read with Section 27/25/59 Arms Act at police station Krishna Nagar, Delhi on complaint of respondent No.2..

2. Learned counsel for petitioner further submits that qua co- accused namely Mannu @ Mohit Sharma, the matter has already been settled on the statement of the complainant vide order dated Crl.M.C.No.153/2012 *Page 1 of 5* 29.01.2011 passed by learned Juvenile Justice Board-II, 1, Firozshah Kotla Ground, Delhi Gate, Delhi..

3. He further submitted that respondent No.2 / complainant has also settled the dispute qua the aforementioned FIR with the petitioner and he is no more interested to pursue his case against petitioner also..

4. Respondent No.2 present in the Court with his learned counsel Mr.Ankur Sharma, who has duly identified him..

5. On instructions, learned counsel for respondent No.2 submitted that he is no more interested in pursuing his case against petitioner and if the FIR is quashed, he has no objection..

6. Mr. Navin Sharma, learned APP on the other hand submits that the FIR in present case, is under Section 307 Indian Penal Code, 1860 which is heinous one and falls under the category of non- compoundable offences as per Section 320 Cr. P.C. Therefore, instant petition may not be allowed..

7. To buttress his contention, he referred the decision of Honble Supreme Court in Gian Singh v. State of Punjab and Anr. in SLP (Crl.) No.8989/2010 wherein the Division Bench of the Supreme Court has referred three earlier decisions viz, B.S. Joshi v. State of Haryana (2003) 4 SCC 675, Nikhil Merchant v. Central Bureau of Investigation and Anr. (2008) 9 SCC 677 and Manoj Sharma v. State and Ors. (2008) 16 SCC 1 to the larger Bench for re-consideration whether the above said three decisions were decided correctly or not. Therefore, he has prayed that till the matter is decided by the larger Bench of the Crl.M.C.No.153/2012 *Page 2 of 5* Apex Court, instant petition may be adjourned sine-die. Alternatively, he prayed that in the event, the FIR is quashed, heavy costs should be imposed upon the petitioner, as the government machinery has been pressed into and precious public time has been consumed..

8. The Division Bench of Mumbai High Court in Nari Motiram Hira v. Avinash Balkrishnan and Anr. in Crl.W.P.No.995/2010 decided on 03.02.2011 has permitted for compounding of the offences of non- compoundable category as per Section 320 Cr. P.C. even after discussing Gian Singh (supra)..

9. Therefore, I feel that unless and until, the decisions which have been referred above, are set aside or altered, by the larger Bench of the Supreme Court, all the above three decision hold the field and are the binding precedents..

10. In addition, the Supreme Court in *Shiji @ Pappu and Ors. v. Radhika and Anr* in Crl.Appeal No.2064/2011 decided on 14.11.2011 that the cases of non-compoundable nature can be compounded, certainly not after the conviction observing as under:- That being so, continuance of the prosecution where the complainant is not ready to support the allegations which are now described by her as arising out of some "misunderstanding and misconception"; will be a futile exercise that will serve no purpose. It is noteworthy that the two alleged eye witnesses, who are closely related to the complainant, are also no longer supportive of the prosecution version. The continuance of the proceedings is thus nothing but an empty Crl.M.C.No.153/2012 *Page 3 of 5* formality. Section 482 Cr.P.C. could, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the Courts below..

11. Keeping the settlement arrived at between the parties and the settled law into view, in the interest of justice, FIR No.114/2010 registered at police station Krishna Nagar, Delhi on the complaint of respondent No.2 and proceedings emanating thereto are hereby quashed against the petitioner only..

12. I find force in the submission of learned APP regarding putting some costs upon petitioner..

13. Learned counsel appearing on behalf of the petitioner, on instructions has come forward and submit that the petitioner is a trained physical instructor, who wishes to contribute some amount / articles to under-privileged children..

14. This gesture of the petitioner is appreciable. Therefore, I direct the petitioner to provide the following playing/entertaining items of branded company to the "School and Home for Mentally retarded Children, Avantika, Sector I, Rohini, Delhi" within two weeks from today:- S.No. Nomenclature Quantity.

1. Volley ball with net 02 CrI.M.C.No.153/2012 Page 4 of 5.

2. Football 02.

3. Badminton Racket (set) with net 06.

4. Badminton Cock (packets) 10.

5. Ludo Board 08.

6. Carom Board 06.

7. Colouring books 30.

8. Colours (Packet / kit) 30.

14. The Principal / Incharge of said School is directed to ensure the quality and quantity of above items and issue receipt thereof to the petitioner, which shall be placed on record by petitioner..

15. The Principal is further directed to provide above items to the children of school on random basis so that children of the school may involve in the activities, which will be helpful to their mental development..

16. Consequently, Criminal M.C.No.153/2012 is allowed and stands disposed of in above terms..

17. Dasti. SURESH KAIT, J JANUARY 31, 2012 Mk CrI.M.C.No.153/2012 Page 5 of 5

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