

Naveen Mathur Vs. State and anr

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Court : Delhi

Decided On : Jan-17-2012

Appellant : Naveen Mathur

Respondent : State and anr

Judgement :

§~25 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. No.3414/2011 % Judgment delivered on: 17th January, 2012 NAVEEN MATHUR Petitioner Through : Mr.Rajiv Kanwar, Adv. versus STATE and ANR Respondent Through : Ms.Rajdipa Behura, APP for State/R-1. Respondent No.2 in person with his father Mr.Kuldeep. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J. (Oral).

1. Notice issued. Ld. APP accepts notice on behalf of Respondent No.1/State..
2. Learned counsel for petitioner submits that vide FIR No.165/2009 dated 19.09.2009 case under Section 307 IPC read with Section 27 Arms Act, 1959 was registered against the petitioner on the complaint of respondent No.2 at police station Kanjhawla..
3. Learned counsel further submits that respondent No.2 is a minor, therefore, father of respondent No.2 has filed affidavit and stated that he has amicably settled all the issues qua the aforesaid FIR due to the Crl.M.C.3414/2011 *Page 1 of 4* intervention of the neighbours and common friends since they know to each

other since long, in order to maintain cordial relations, they have settled the instant matter inter se amongst themselves..

4. Respondent No.2 present with his father Shri Kuldeep. The father of the respondent No.2 has not rebutted as to what has been stated by learned counsel for petitioner and further submits that if the aforesaid FIR is quashed, he has no objection..

5. Ms.Rajdipa Behura, learned APP on the other hand submits that on completion of investigation, matter is pending before learned Trial Court and as the case is under Section 307 IPC which is of non- compoundable category, quashing of the FIR is not permissible..

6. In support of her contention, she 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 abovesaid three decisions were decided correctly or not. Therefore, she has prayed that till the matter is decided by the larger Bench of the Apex Court, instant petition may be adjourned sine-die. Alternatively, she prayed that in the event, the FIR is quashed, heavy costs should be imposed upon the petitioners, as the government machinery has been used and precious time of the Court has been consumed. Crl.M.C.3414/2011 Page 2 of 4.

7. 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)..

8. 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..

9. Recently, 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 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. Crl.M.C.3414/2011
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10. Keeping the above settled law position and the facts and circumstances of instant case into view, FIR No.165/2009 registered against the petitioner at police station Kanjhawla and the proceedings emanating thereto are hereby quashed..

11. Mr. Rajiv Kanwar, learned counsel for petitioner, on instructions submits that petitioner is ready to contribute a ` 25,000/- for some welfare purposes. The gesture, advanced by petitioner is appreciable..

12. Accordingly, petitioner is directed to deposit the said amount of ` 25,000/- in favour of Delhi Police Welfare Fund, PHQ, I.P.Estate, New Delhi within two weeks from today. Proof thereof shall be placed on record by petitioner..

13. Accordingly, Crl.M.A.No.12124/2011(Stay) does not require further adjudication and accordingly stands disposed of as such..

14. Consequently, Criminal M.C.No.3414/2011 is allowed and stands disposed in above terms..

15. Dasti. SURESH KAIT, J JANUARY 17, 2012 Mk Crl.M.C.3414/2011 Page 4 of 4