

Charan Dass Kanwal and Others Vs. State and Another

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Court : Delhi

Decided On : Feb-28-2012

Judge : Suresh Kait

Appeal No. : CRL.M.C. 754 of 2012

Appellant : Charan Dass Kanwal and Others

Respondent : State and Another

Judgement :

SURESH KAIT, J. (Oral)

1. Notice issued.
2. Ld. APP accepts notice on behalf of State / R1.
3. Mr. Vinod Kumar, Adv. accepts notice on behalf of respondent no.2.
4. Ld. Counsel for the petitioners submits that vide FIR no.201 dated 09.08.2011, case under Section 448/467/471/34 Indian Penal Code, 1860 was registered against the petitioners on the complaint of respondent no.2/ attorney at PS-Bindapur.
5. Ld. Counsel further submits that respondent no.2 has compromised all the issues qua the aforesaid FIR against all the petitioners, therefore, he is no more

interested to pursue the case further, therefore, the instant petition may be allowed.

6. Respondent no. 2 is present in person with his Counsel Sh.Vinod Kumar, Adv. SI Jitender Kumar, IO of the case is also present in the court and has identified respondent no. 2 / attorney.

7. Ld. Counsel for respondent no. 2 on instruction has submitted that respondent no. 2 has settled all the issues qua the aforesaid FIR, and he is no more interested to pursue the case further against the petitioners and has no objection, if the FIR mentioned above, is quashed.

8. Ld. APP on the other hand submits that case is pending for investigation. He further submits that Section 467/471 Indian Penal Code, 1860 is non-compoundable and has referred the decision of Hon'ble 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, he has prayed that till the matter is decided by the larger Bench of the 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 petitioners, as the government machinery has been pressed into and precious public time has been consumed.

9. 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)**.

10. 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.

11. 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 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.?**

12. Keeping the settlement between the parties, statement of respondent no.2, who is no more interested to pursue the case further and in the interest of justice, I hereby quash the FIR no. 201 dated 09.08.2011 registered at PS-Bindapur.

13. Though I find force in the submission of Id. APP, however keeping in view the financial position of the petitioners, I refrain in imposing costs on them.

14. Accordingly, Crl. M.C. 754/2012 is allowed.

15. Dasti.