

Bhagwan Dass and Others Vs. State and Others

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Court : Delhi

Decided On : Mar-02-2012

Judge : Suresh Kait

Appeal No. : CRL.M.C. No.774 of 2012

Appellant : Bhagwan Dass and Others

Respondent : State and Others

Judgement :

Suresh Kait, J.

Oral:

Crl.M.A.No.2724/2012(exemption)

Exemption is allowed subject to just exceptions.

Criminal M.A. stands disposed of.

CRL.M.C. No.774/2012

1. Issue notice.
2. Ms. Rajdipa Behura, learned APP accepts notice on behalf of the State.
3. Mr.K.K. Sharma, Advocate accepts notice on behalf of respondent No.2.

4. Vide the instant petition, the petitioner has sought quashing of the FIR No. 344/2005 dated 01.09.2005 under Sections 308/323/34 of the Indian Penal Code, 1860 registered at P.S. Mandir Marg, New Delhi against the petitioners, on the complaint of respondent No.2.

5. Learned counsel for the petitioners further submits that the respondent No.2 as well as the petitioners are known to each other since long and on some petty issue some altercation took place between them due to which respondent No.2 received injuries. In the MLC of respondent No.2, the doctor has opined the injury to be „simple in nature caused with blunt weapon?.

6. It is further submitted that since they are living in the same locality and they belong from the lower strata of the society, with the intervention of the locality people, they have amicably settled all the issues qua the aforesaid FIR. He further submitted that the respondent No.2/complainant is no more interested to pursue the case further, therefore, the instant petition may be allowed.

7. Respondent No.2/complainant is personally present in the Court with his counsel Mr. K.K. Sharma.

8. ASI Charan Dass, IO of the case, is present in the Court and identified the respondent No.2.

9. Ld. Counsel for the respondent No.2, on instructions, submitted that respondent No.2 has settled all the issues qua the aforesaid FIR, therefore, he is no more interested to pursue the case further, and has no objection if the aforesaid FIR is quashed.

10. Learned APP, on the other hand, submitted that in the present case the petitioners inflicted injuries on the person of respondent No.2 which were though simple in nature but were caused by a blunt object. Therefore, a case under Sections 308/323/34 of the Indian Penal Code, 1860 had been registered against the petitioners, which is non-compoundable in nature.

11. Learned APP has referred the decisions of the 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, 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.

12. The Division Bench of Mumbai High Court in Nari Motiram Hira v. Avinash Balkrishnan and Anr. in CrI.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).13. 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.

14. In addition, the Supreme Court in Shiji @ Pappu and Ors. v. Radhika and Anr in CrI.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.”

15. Learned APP further submits that if this court is inclined to quash the FIR in the present case, then heavy costs be imposed upon the petitioners as in the

process, Government Machinery has been pressed into and precious time of the court has been consumed.

16. However, keeping in view the fact that the petitioners and the respondent No.2 live in jhuggi cluster and they are very poor people belonging from the very lower strata of the society, they have amicably settled all the issues qua the aforesaid FIR, and also keeping in view the statement of respondent No.2 into view; and in the interest of justice, I quash FIR No. 344/2005 dated 01.09.2005 registered at P.S. Mandir Marg, New Delhi and all the proceedings emanating therefrom.

17. Though, I find force in the submission of learned APP regarding imposing costs on the petitioners, however, keeping in view the financial position of the petitioner No.1, who is working on a meagre salary of Rs.6,000/- p.m., and other petitioners are his relatives, I refrain from imposing costs upon them.

18. Consequently, Criminal M.C.No.774/2012 is allowed and stands disposed of in above terms.

19. Dasti.

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