

**Ravinder 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. 735 of 2012

**Appellant :** Ravinder and Others

**Respondent :** State and Another

**Judgement :**

**SURESH KAIT, J. (Oral)**

**Cri. M.A. 2604/2012 (exemption)**

Exemption is allowed subject to just exceptions.

Criminal M.A. stands disposed of.

**Cri. M.C. 735/2012**

1. Notice issued.
2. Ld. APP accepts notice on behalf of State / respondent no. 1.
3. Respondent no. 2 is present in person.

4. Ld. Counsel for the petitioner submits that vide FIR no. 551 dated 20.12.2009 case under Section 324/34 Indian Penal Code, 1860 was registered against the petitioners on the complaint of respondent no. 2 at PS-New Ashok Nagar. **Cri.M.C.No.735/2012** Page 2 of 4

5. It is further submitted that during investigation, Section 326 of Indian Penal Code, 1860 also added.

6. Ld. Counsel further submits, thereafter, vide settlement dated 10.07.2011 arrived at between the parties by which petitioners and respondent no. 2 have compromised all the issues qua the aforesaid FIR. Therefore, respondent no. 2 is no more interested to pursue the case further.

7. Respondent no. 2 is personally present in the court. IO of the case HC Lakhami Singh has identified him.

8. Respondent no. 2 submits that he has settled all the issues qua the aforesaid FIR against the petitioners, therefore, he is no more interested to pursue the case further and has no objection, if the FIR referred above is quashed.

9. Ld. APP on the other hand submits that initially FIR mentioned above was registered under Section 324/34 Indian Penal Code, 1860. However, during investigation, on considering the MLC, as the injuries were grievous in nature, Section 326 of Indian Penal Code, 1860 was further added. She further submits that charge-sheet has not been filed because of the fact respondent no.2/complainant has settled all the issues with the petitioners.

10. Ld. APP further submits that Section 326 is non compoundable and has referred the decision of Hon'ble Supreme Court in **Gian Singh v. State of Punjab and Anr.** in **SLP (Cri.) 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, 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 pressed into and precious public time has been consumed.

11. 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)**.

12. 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.

13. 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** 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.?**

14. Keeping the settlement dated 10.07.2011, statement of respondent no. 2 that he is no more interested to pursue the case and in the interest of justice, FIR no.551 dated 20.12.2009 registered at PS-New Ashok Nagar, is hereby quashed.

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

16. Accordingly, Crl. M.C. 735/2012 is allowed on the above terms.

17. Dasti.

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