

Vicky and Another Vs. State and Another

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Court : Delhi

Decided On : May-09-2012

Judge : M.L. Mehta

Appeal No. : Crl. M.C. No. 3465 of 2011

Appellant : Vicky and Another

Respondent : State and Another

Judgement :

M.L. MEHTA, J.

Oral:

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No. 80/08 registered under Section 323/324/341/307 IPC and Section 25/27/54/59 of the Arms Act at P.S. Vikas Puri.

2. The FIR was lodged at the instance of Anil who was the cousin of respondent no.2 and has passed away during the pendency of the case. It was stated in the FIR that on 22.03.2008 the complainant and respondent no.2 along with their maternal uncle were assaulted with a knife by petitioner no. 1 and 2. It was also submitted that gunshots were also fired by petitioner no. 2 at the complainant and respondent no.2. In the alleged attack, the petitioner no.2 also received bullet injury. The petitioners were arrested by the police and are in judicial custody since

March 2008. After completion of investigation, charge sheet was filed in the trial Court and 12 prosecution witnesses have been examined. The case is now fixed for defense evidence.

3. It has been submitted by the counsel for the petitioners that a settlement has been arrived at between the parties and no purpose would be served in continuing the proceedings and hence the FIR must now be quashed. The counsel for the petitioners has further submitted that the petitioners are peace loving citizens and committed the act in the heat of the moment and deserve lenient treatment from the Court.

4. The compounding of certain offences punishable under Indian Penal Code is governed by Section 320 of Code of Criminal Procedure. Sub-section (1) of Section 320 provides that the offences mentioned in the table provided there under can be compounded by the persons mentioned in column 3 of the said table. Further, sub-section (2) provides that the offences mentioned in the table could be compounded by the victim with the permission of the court. As against this, sub-section (9) specifically provides that “no offence shall be compounded except as provided by this section”. In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 as stated above can be compounded and the rest of the offences punishable under IPC cannot be compounded.

5. Although offences under Section 324 and 307 IPC are non-compoundable but under Section 482 Cr.P.C., in the exercise of its inherent powers, this court is within its power to quash the FIR even in the offences not covered under Section 320 Cr.P.C. .In B.S. Joshi Vs. State of Haryana AIR 2003 SC 1386, it was held by Supreme Court that Section 320 Cr.P.C. does not limit or affect the powers of the High Court to quash the criminal proceedings or FIR or complaint even in non-compoundable offences. In the case of Y.Suresh Babu v. State of A.P. JT(1987) 2 SC 361, the Supreme Court has specifically observed that the said case “shall not be treated as a precedent”. Hence, the power of this Court to allow compounding of offences not covered under Section 320 Cr.P.C. is not disputed, but then such discretion has to be exercised cautiously and after weighing the entire factual

matrix of the case.

6. From the perusal of the facts of the case and the status report filed by the S.H.O. of the concerned area, it is evident that the petitioners were armed with a knife when they launched the attack on the complainant and the respondent no.2 and his cousin. After giving deadly stab injuries to respondent no.2, the petitioners went to their jhuggies and came back with a country made pistol and petitioner no.2 fired at the complainant which instead hit petitioner no.1 himself. The petitioners were not at all repent full or worried about the process of law even after assaulting the complainant and respondent no.2 with a knife, but instead went back to their house and wielded pistols at the opposite party. This conduct of the petitioners demolishes the plea of the counsel for the petitioners that the petitioners are peace loving citizens and committed the act in the heat of the moment.

7. Further, it has nowhere been indicated that the complainant or respondent no.2 were in possession of any kind of weapon whatsoever, which would create an apprehension of their own safety in the minds of the petitioners to prompt them to launch such a deadly attack. A country made pistol recovered from the petitioners as well as four live cartridges have been certified by FSL as fit for firing. The recovery of deadly weapons from the petitioners points towards their involvement in anti social activities and it is not a case of an attack done in self defense or in the heat of the moment. The facts of the case indicate the criminal tendency of the petitioners which is also fortified by the fact that as many as three FIRs are registered against petitioner no.1 which include a charge as grave as Section 302 IPC.

8. It is also a matter of record that the respondent no.2 received a stab injury in his stomach which could have proved fatal, if there was any delay in his treatment. More so, the testimonies of the witnesses incriminating the petitioners recorded in the trial Court, have not been assailed by the defense at any stage of the proceedings and are liable to be admitted against the petitioners.

9. Although, a compromise has been arrived at between the parties, but that itself is not a criterion for overlooking the serious offence committed by the petitioners

with utter disregard to the law of the land. It is generally seen that a compromise is effected by the victims due to pressure from the accused persons or because they are reluctant to be involved in the litigation, stretching over a period of time. Another factor that compels the victims to execute a settlement deed with the accused persons is the fear of retaliation. Also, it is the tendency of people in civilized society to avoid being associated in any litigation or criminal case even if they are the victim of a crime themselves.

10. Keeping in mind the unprovoked attack by the petitioners, the nature of near fatal injuries sustained by the respondent no. 2 and the complainant and the criminal antecedents of the petitioners, I am not inclined to allow the compounding of the offences.

11. Petition is accordingly dismissed.

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