

Mohd. Moln Vs. the State

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Court : Delhi

Decided On : Mar-15-2013

Judge : G.P. Mittal

Appellant : Mohd. Moin

Respondent : The State

Advocate for Def. : Ms. Jasbir Kaur

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

15. h March, 2013 + CRL.A. 248/2012 MOHD. MOIN Appellant Through: Mr.Sunil Tiwari, Advocate versus THE STATE Through: Respondent Ms. Jasbir Kaur, APP for the State CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

(ORAL) 1. This Appeal is directed against a judgment dated 21.01.2012 and an order on sentence dated 25.01.2012 passed by the learned Additional Sessions Judge (ASJ) in Sessions Case No.83/2009 FIR No.378/2007 registered at Police Station Chandni Mahal whereby the Appellant was held guilty for the offences punishable under Sections 307/34 IPC. He was sentenced to undergo Rigorous Imprisonment (RI) for a period of five years and to pay a fine of `1000/- or in default of payment of fine to undergo Simple Imprisonment (SI) for a period of three months for the offence punishable under Section 307/34 IPC.

2. At the time of hearing of the Appeal, an application being CrI.M.A. No._____/2013(to be registered) under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was moved by the two injured, that is, Asim and Asif stating that with the intervention of respectable persons of the locality and friends there was an amicable settlement between the parties. In view of the settlement, the Complainants/injured wanted to forgive and forget the offence committed by the Appellant and have cordial relations with the Appellant. It was stated that both the Appellants may be released on the basis of the sentence already undergone by them. Both the victims also filed Affidavits in support of the application moved by them.

3. I have also questioned both the victims. They stated that they have voluntarily compromised the matter with the Appellant and they have also been paid a sum of `20,000/- towards treatment received by them in respect of the injuries.

4. In fact, by a judgment dated 21.01.2012, which is under challenge in the instant Appeal, co-accused Shahzad was also convicted for an offence punishable under Section 307/34 IPC. In view of moving of an Application by the victims for taking a lenient view, this Court passed an order dated 22.02.2013 to release the Appellant who had undergone a sentence of about 18 months inclusive of the period of remission subject to deposit of the fine amount.

5. Paras 4 to 7 of the judgment in Shahzad v. State, CrI.A.358/2012, decided on 22.02.2013 are extracted hereunder:4. The offence punishable under Section 307 IPC in case hurt is caused to any person is punishable with imprisonment for life or imprisonment which may extend to ten years and fine. The Appellant has been sentenced to undergo RI for a period of five years and to pay fine of `1,000/- or in default to undergo SI for three months. As per the nominal roll received on 15.04.2012 the Appellant had already served imprisonment for five months and 22 days and had earned remission of one month and ten days. The period of another ten months has passed. Thus, inclusive of remission, the Appellant has been in custody for a period of about 17-18 months.

5. In Gian Singh v State of Punjab & Anr. 2012 (9) SCALE 257 the three Judges Bench of the Supreme Court dealt with the issue of quashing of FIR in non

compoundable offences. The Supreme Court ruled that the proceedings for non compoundable offences can be quashed in appropriate cases except in heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Para 57 of the report is extracted hereunder:57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victims family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete

settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

6. In *Ishwarsingh v. State of Madhya Pradesh* (2008) 15 SCC 667, the question of compounding of offence under Section 307 IPC fell for consideration before the Supreme Court after the conviction of the accused by the Trial Court. The Supreme Court laid down that although the offence punishable under Section 307 IPC is non compoundable but, at the same time, the fact may be taken into consideration for the purpose of reduction of sentence. Paras 12, 13 and 16 of the report are extracted hereunder: 12. Now, it cannot be gainsaid that an offence punishable under Section 307 IPC is not a compoundable offence. Section 320 of the Code of Criminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence.

13. In *Jetha Ram v. State of Rajasthan* (2006) 9 SCC 255, *Murugesan v. Ganapathy Velar* (2001) 10 SCC 50, and *Ishwarlal v. State of M.P.* (2008) 15 SCC 67, this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in *Mahesh Chand v. State of Rajasthan* 1990 Supp SCC 68, such offence was ordered to be compounded. x x x x x x x x x 16. For the foregoing reasons, the appeal deserves to be partly allowed and is accordingly allowed by maintaining the conviction recorded by the trial court and confirmed by the appellate court but by reducing the sentence already undergone by the appellant. The sentence of payment of fine is not disturbed. If the appellant has not paid the amount of fine,

he will pay such amount within four weeks from today.

7. Thus, relying on three Judge Bench decision in Gian Singh and the report in Ishwarsingh, I alter the sentence imposed upon the Appellant to the period already undergone by him. The fine imposed, if not, deposited shall be done so within two weeks.

6. In the instant Appeal also, I alter the sentence imposed upon the Appellant to the period already undergone by him. The fine imposed, if not, deposited shall be done so within two weeks.

7. Appeal is disposed of in above terms.

8. Pending Applications also stand disposed of.

9. The Appellant be released forthwith, if not, required in any other case.

10. Copy of the order be sent to the Superintendent Jail for compliance and necessary action. G.P. MITTAL, J.

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