

(2007) 07 DEL CK 0061

In the Delhi High Court

Case No : Criminal M.C. No. 1661 of 2007 and Criminal M. No. 5788 of 2007

Ajay Kumar Gupta

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 03-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(1), 320(2), 320(9), 482

Penal Code, 1860 (IPC) — Section 307, 326, 34, 406, 498A

Citation : (2008) 101 DRJ 265

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : R.N. Mittal, Puneet and Akanksha Verma, for the Appellant; Sunil K. Kapoor, Assistant Public Prosecutor for Respondent No. 1 and Tanveer A. Mir, for the Respondent

Judgement

Reva Khetrapal, J.—By this joint petition u/s 482 Cr.P.C., the petitioner and the respondent No. 2/complainant seek quashing of FIR No. 253/2007 registered at Police Station Anand Vihar u/s 307 IPC (Annexure-A) and all proceedings emanating there from.

2. The allegations as contained in the First Information Report are that on 6th May, 2007 at about 23.30 hours, at a marriage function, when the respondent No. 2-complainant was serving food to the guests, the petitioner who had come to attend the marriage and was holding a revolver in his right hand and firing shots in the air, fired a shot which hit the respondent No. 2-complainant in his left leg above the knee. Resultantly, the respondent No. 2-complainant was admitted to hospital where the Investigating Officer recorded his statement, on the strength of which the First Information Report was registered on the following day, i.e., 07.05.2007. On the very next day, i.e., on 08.05.2007, however, the respondent No. 2-complainant appeared before the Court of the learned Additional Sessions Judge with his counsel and submitted that he did not want to pursue the First Information Report and that an application to this effect

had already been moved by him before the learned ACMM, Karkardooma Courts, Delhi and that the parties would be moving the High Court in due course of time. On his aforesaid statement, an anticipatory bail order was granted to the petitioner (Annexure "B").

3. A bare glance at the application moved by the respondent No. 2 before the ACMM, Karkardooma Courts, Delhi, copy whereof has been placed on record as Annexure-C to the petition, shows that the said application was moved on the very same day that the FIR was registered, that is, on 7th May, 2007. The respondent No. 2 clarified in the said application that though a criminal case had been registered on the PCR call made, he was not interested in the registration of a criminal case against anyone, but being uneducated had been unable to express his wishes. In para 2 of the application, he further stated that he did not want to initiate any kind of criminal proceedings against any person in the above noted matter and that he would also be moving a petition for the quashing of the First Information Report before the Delhi High Court as early as possible.

4. Learned Counsel for the petitioner submits that an accidental injury was suffered by the respondent No. 2. There was neither any motive for the petitioner to fire at the respondent No. 2 nor any previous enmity between the parties nor in fact the petitioner was firing at the respondent No. 2. Further, the injury suffered by the respondent No. 2 was not on a vital part of the body, being on his leg and there was no possibility of causing death or attempting to cause death by the same. In any case, he submitted that the respondent No. 2/ complainant does not desire to continue with the complaint against the petitioner, who was named in the First Information Report out of some confusion.

5. Strong reliance is placed by learned Counsel for the petitioner on several decisions of this Court to contend that where the parties have settled and compromised the matter, even if the offences are non-compoundable the High Court is not powerless in quashing the First Information Report in exercise of its powers u/s 482 of the Code of Criminal Procedure. The following judgments were referred to:

- (i) Daulat Zia Vs. Govt. of N.C.T. of Delhi and Others,
- (ii) Gurcharan Singh Vs. State, and
- (iii) Ajay Kumar and Anr. v. The State (NCT of Delhi) 2006 (3) JCC 1372.

6. Learned Addl. Public Prosecutor, on the other hand, relied upon the judgments in E.K. Jeeva Raj v. State of Kerala 2007 L.J 713 (Kerala) and Bankat and Anr. v. State of Maharashtra 2004 .L.J 646 to contend that in view of the legislative mandate contained in Sub-section 9 of Section 320 of the Cr.P.C., the offences covered by Table-1 or Table-2 alone could be compounded and the rest of the offences punishable under the Penal Code could not be compounded.

7. In Daulat Zia's case (supra), a Division Bench of this Court, relying upon the two decisions of the Hon'ble Supreme Court in Y. Suresh Babu Vs. State of A.P.

and Another, and AIR 1988 2111 (SC) granted permission for the quashing of the First Information Report u/s 307 of the Penal Code on the ground that the parties who were Afghan nationals had settled their differences and wanted to live in peace without any ill-will or bad blood.

8. In Gurcharan Singh's case (supra), where the petitioner had sought quashing of proceedings under Sections 307/34 IPC, a Single Bench of this Court, after referring to the entire gamut of case law, observed that:

28. There seems to be conflict of opinion, as far as inherent powers of the High Court in the matter of exercise of its jurisdiction for compounding a non-compoundable offence is concerned. This High Court has consistently taken the view that Court has inherent powers to compound a non-compoundable offence.

29. In the instant case, the only prayer is for quashing the proceedings, Therefore, the question of compounding of non-compoundable offences need not be determined in this case.

9. In Ajay Kumar's case (supra), relied upon by the petitioner's counsel, on the basis of a settlement arrived at between the parties, the quashing of the FIR registered u/s 326 IPC was permitted by another learned Single Judge of this Court in exercise of his inherent powers u/s 482 Cr.P.C. The question as to whether a non-compoundable offence could be compounded, on the basis of a settlement arrived at between the parties, was not gone into.

10. A three-Judge Bench of the Supreme Court in the case of Surendra Nath Mohanty and Anr Vs. State of Orissa, , however, observed that the course adopted in Mahesh Chand's case (supra) and in an even earlier decision in Ram Pujan and Others Vs. State of Uttar Pradesh, was not in accordance with the law. In paragraph-5 of the Report, the court observed as follows: (SCC, Page-240)

In our view, the submission of the learned Counsel for the respondent requires to be accepted. For compounding of the offences punishable under the Indian Penal Code, a complete scheme is provided u/s 320 of the Code of Criminal Procedure, 1973. Sub-section 1 of Section 320 provides that the offence mentioned in the table provided there under can be compounded by the persons mentioned in column No. 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 the Indian Penal Code could not be compounded.

In paragraph-8 of its decision in the aforementioned case, however, the Supreme Court held that:

...Considering the fact that the parties have settled their disputes outside the court and the fact that ten years have elapsed from the date of the incident and

the further fact that the appellants have already undergone 3 months' imprisonment as per the sentence imposed on them, we think that ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs. 5,000/- on each of the accused u/s 326 read with Section 34 IPC.

11. The above judgment of the Apex Court in *Surender Nath Mohanty* (supra) was considered at some length by the Supreme Court in its subsequent decision in *B.S. Joshi and Ors. v. State of Haryana* and distinguished on the ground that the same pertained to compounding of offences whereas in *B.S. Joshi's* case a writ for quashing of the FIR was sought for by the petitioner for offences under Sections 406 and 498-A IPC. The Supreme Court observed that no doubt compounding of non-compoundable offences was not permissible as held in *Surender Nath Mohanty's* case (supra), but Section 320 Cr.P.C. could not operate as a bar to the grant of a writ for quashing of the First Information Report pertaining to non-compoundable offences. Paragraph-8 of the said judgment is relevant and reads as follows:

It is thus clear that the case of *Madhu Limaya* does not lay down any general proposition limiting power of quashing of criminal proceedings of FIR or complaint as vested in Section 482 of the Code or extra-ordinary power under Article 226 of the Constitution of India. We are, Therefore, of the view that if for the purposes of securing the ends of justice, quashing of FIR becomes necessary, Section 320 of the Code would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of the each case whether to exercise or not such a power.

12. In a subsequent decision rendered by the Supreme Court in *Bankat and Anr. v. State of Maharashtra* 2004 .L.J. 646 , relying upon *Surender Nath Mohanty* (supra) and an earlier decision in *Ram Lal and Another Vs. State of Jammu and Kashmir* , the Supreme Court in paragraph-11 reiterated that in view of the legislative mandate contained in Section 320(9), only the offences which are covered by Table-1 or Table-2, as stated above, could be compounded and the rest of the offences punishable under the Penal Code could not be compounded.

13. Accordingly, in *Bankat's* case (supra) while refusing to grant permission to compound the offence punishable u/s 326 IPC, the fact of compromise was taken into account in determining the quantum of sentence which was reduced to the period already undergone besides imposition of fine.

14. In a subsequent decision rendered in *Badrilal v. State of M.P.* (2005) 7 SCC 55, the Supreme Court made the following apposite observations:

A joint petition of compromise has been filed on behalf of the parties in which prayer has been made for recording the compromise. The offence u/s 307 IPC is not a compoundable one, Therefore, compromise cannot be recorded, but at the same time it is well settled that while awarding sentence the effect of compromise can be taken into consideration. It has been stated that the

appellant has remained in custody for a period of about 14 months and there is no allegation that he assaulted the deceased. In the facts and circumstances of the case, we are of the view that ends of justice should be met in case the sentence of imprisonment awarded against the appellant by the trial court and reduced by the High Court is further reduced to the period already undergone.

15. Again reiterating the above position of law in *Dhananjay @ Dhananjay Kumar Singh 2007 II AD (S.C) 505* and taking note of its earlier decisions in *Bankat Kumar and Badri Lal (supra)*, the Supreme Court held that there was absolutely no reason as to why the settlement arrived at between the parties could not be accepted when the same did not come within the purview of Sub-section (9) of Section 320 of the Code, but in the peculiar circumstances of the said case did not go into the contentious issue relating to the maintainability of a petition for settlement of non-compoundable offences.

16. The question whether mere amicable settlement was no ground for compounding of a non-compoundable offence was referred to a Full Bench of this Court in *Ramesh Kumar Vs. State, .* The Full Bench in view of the decision of the Apex Court in *B.S. Joshi's* case and after overruling the decision in *Gurcharan Singh (supra)*, answered the reference by holding that the High Court in exercise of its inherent powers can quash criminal proceedings of FIR or complaint and Section 320 of the Code does not limit or affect the powers u/s 482 of the Code.

17. From the above discussion, it is apparent that in cases arising out of non-compoundable offences, the Court though cannot grant permission to compound the same in view of embargo laid down in Section 320 Cr.P.C., is not powerless to quash the proceedings in exercise of its inherent powers u/s 482 of the Code.

18. In the above context, it would be apposite to refer to the decision of the Apex Court in *State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, ,* where the extent of the inherent powers of the Court and the principles for the exercise thereof have been delineated as follows:

8. Exercise of power u/s 482 of the Code in a case of this nature is an exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, Therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any

express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle *quando lex aliquid alicui concedit, conceder videtur id sine quo rest ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist....

19. The only question left to be addressed in the instant case, Therefore, is whether the quashing would secure the ends of justice and prevent abuse of the process of the Court. In the light of the fact that the firing in the instant case was accidental in nature and, as such, the complainant categorically stated that he did not wish to pursue the criminal complaint, the continuation of criminal proceedings indubitably can only lead to enmity between the parties where none exists. The complainant is an uneducated person and his unequivocal statement that the registration of the criminal case was the result of a misunderstanding on his part and on account of the fact that he was not able to express his wishes, deserves to be accepted. This is all the more so as the aforesaid stand was taken by him at the very inception of the proceedings, i.e., on the day after the registration of the FIR, as a result of which anticipatory bail was granted to the petitioner. A clearer case than this justifying exercise of inherent jurisdiction to quash the criminal proceedings to prevent abuse of the process of the Court is not conceivable. Accordingly, the prayer made by the petitioner in the preset petition for quashing of FIR No. 253/2007, u/s 307 IPC, registered at Police Station Anand Vihar and all proceedings emanating there from is allowed.

20. Crl. M.C. No. 1661/2007 and Crl. M. No. 5788/2007 stand disposed of accordingly.

Copy of this order be given dusty to counsel for the petitioner as prayed.