
(2012) 03 DEL CK 0170

In the Delhi High Court

Case No : Criminal M.C. No. 1052 of 2012

Anil Kumar and Others

APPELLANT

Vs

The State NCT of Delhi and Another

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 34, 448, 468, 471, 506

Citation : (2012) 03 DEL CK 0170

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Puran Sharma and Mr. Sunil Kumar, for the Appellant; Navin Sharma, APP for State, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—Notice issued. Ld. APP accepts notice on behalf of the State/R1.

2. With the consent of the parties, instant petition is taken for final disposal.

3. Ld. Counsel for the petitioner submits that vide FIR No. 424 dated 25.09.2006, case u/s 448/468/471/506/34 Indian Penal Code, 1860 was registered against the petitioners on the complaint of respondent No. 2 at PS-Mansarovar Park.

4. Ld. Counsel further submits that thereafter vide settlement dated 24.11.2011, respondent No. 2 has settled all the issues qua the aforesaid FIR against the petitioners. Therefore, she is no more interested to pursue the case further. Thus, the instant petition may be allowed.

5. Respondent No. 2 is personally present in the court and submits that she has settled all the disputes and she is no more interested to pursue the case further against the petitioners. If the FIR mentioned above and emanating proceedings thereto are quashed, she has no objection. Inspector S.K. Sharma, IO of the Case is personally present in the court who has identified her as respondent No.

2.

6. Ld. APP on the other hand submits that after filing the charge-sheet, charge has been framed against the petitioners and the case is pending for prosecution evidence.

7. Ld. Counsel further submits that offence punishable u/s 471 is non-compoundable, therefore, instant petition may not be allowed.

8. Ld. Counsel has referred the decision of Hon'ble Supreme Court in Gian Singh v. State of Punjab & Anr. in SLP (Crl.) No.8989/2010 wherein the Division Bench of the Supreme Court has referred three earlier decisions viz, B.S. Joshi and Others Vs. State of Haryana and Another, , Nikhil Merchant Vs. Central Bureau of Investigation and Another, & Manoj Sharma v. State & Ors. (2008) 16 SCC 1 to the larger Bench for re-consideration whether the abovesaid three decisions were decided correctly or not. Therefore, he has prayed that till the matter is decided by the larger Bench of the Apex Court, instant petition may be adjourned sine-die. Alternatively, he 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.

9. The Division Bench of Mumbai High Court in Nari Motiram Hira v. Avinash Balkrishnan & 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).

10. 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.

11. In addition, the Supreme Court in Shiji @ Pappu & Ors. v. Radhika & Anr in Crl.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.

12. Keeping in view statement of respondent No.2 as she is no more interested to pursue the case, I quash FIR No.424/2006 registered at P.S. Mansarovar Park, Delhi with emanating proceedings thereto.

13. However, I find force in the submission of Id. APP on costs. Ld. Counsel for petitioners on instruction submits that petitioner No. 1 is willing to contribute Rs. 50,000/- for some welfare purposed. I appreciate this gesture.

14. Therefore, I direct petitioner No. 1 to deposit the aforesaid amount in favour of "Welfare Fund for Child and Destitute Women, Nirmal Chhaya, Jail Road, New Delhi" within two weeks from today with intimation to SHO concerned. Proof of the same shall be placed on record.

15. Further, Superintendent, Nirmal Chhaya is directed to keep this amount in the form FDR initially for a period of 2 years. To be renewed periodically. Interest accrued thereon, shall be utilized for the well being of the needy children and destitute women. Crl. M.C. 1052/2012 is allowed on the above terms.