

(2017) 09 DEL CK 0353

In the Delhi High Court

Case No : Criminal Writ Petition No. 2012 Of 2017

Ankit Sharma

APPELLANT

Vs

State & Anr

RESPONDENT

Date of Decision : 18-09-2017

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 34, 307, 308, 323, 326, 341

Citation : (2017) 09 DEL CK 0353

Hon'ble Judges : Vinod Goel, J

Bench : Single Bench

Advocate : Ankur Jain, Mehak Jain, Keshav Verma, Yogesh Goel, Narender Kumar Sharma, Sanjay Lao, Aastha Gupta

Final Decision : Disposed Of

Judgement

Vinod Goel, J

1. Pursuant to the order dated 11.09.2017, the petitioner has joined the co-accused Shivalik Vedi @ Prince and Himanshu Garg as Petitioners no. 2

and 3. The petitioner has filed the Amended Memo of Parties along with their affidavits. The same is taken on record.

2. The petitioners have invoked the writ jurisdiction of this court under Article 226 of the Constitution of India read with Section 482 of the Code of

Criminal Procedure, 1973 (in short Cr.PC) for quashing of the FIR bearing No.344/2015, registered on 26.05.2015 against them with Police

Station Keshav Puram, North West District, Delhi, under Sections 323/341/308/34 IPC on the complaint of respondent No.2.

3. Status report has already been filed.

4. Learned ASC submits that a scuffle took place on 20.05.2015 when the complainant Vishal Gupta and his brother Shubham Gupta went to Mastana Park, Keshav Puram to play cricket and at that time all the petitioners had assaulted them. The injuries suffered by the respondent no. 2 and 3 were opined by the Medical Officer as "Simple".

5. Learned ASC through IO submits that the charge sheet has so far not been filed.

6. After the registration of the said FIR, the parties have amicably resolved and settled all their disputes on 02.06.2015.

7. All the petitioners present in court tender their apology. They undertake that they will shall neither indulge themselves in such type of behaviour nor repeat such conduct in future. The undertaking so furnished to the court by them is accepted.

8. It is submitted that the petitioners are students and are in the age group of 18 to 21 years. The petitioners must not be aware of the consequences that may follow of their conduct. The petitioners and the respondent no. 2 and 3 are residing in the same locality in Trinagar, Delhi.

9. On the last date of hearing, the respondent no. 2 was present in court and requested that to dispense with his presence for today. He had stated that he has no objection if the FIR is quashed.

10. The respondent No.3 states that he along with his brother/respondent No.2 had voluntarily settled and resolved all disputes with the petitioners without any force and coercion. He submits that they do not want to pursue the said FIR. He submits that the said FIR may be quashed.

11. Here it is relevant to advert to Section 482 Cr.PC which reads as under:-

"482. Saving of inherent power of High Court." Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

12. A bare reading of Section 482 Cr.PC shows that inherent powers of this Court are not limited or affected by the Cr.PC and there are to be

exercised to (i) give effect to any order under Cr.PC (ii) prevent abuse of the process of any Court or (iii) to secure the ends of justice.

13. The Apex Court in the judgment of *Gian Singh vs. State of Punjab & Anr.*, 2012 (10) SCC 303, while dealing with the scope of power of High

Court under Section 482 Cr.PC observed as under: -

¶61. 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 victim's 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.â??

14. The aforesaid judgment was followed recently by Honâ??ble Supreme Court in â??Yogendra Yadav and Ors. Vs. State of Jharkhand & Anr.â??

AIR 2014 SC 3055, wherein while dealing with the power of the High Court to quash an FIR u/s. 326 and 307 of IPC it was held as under: -

â??4. Now, the question before this Court is whether this Court can compound the offences Under Sections 326 and 307 of the Indian

Penal Code which are non-compoundable? Needless to say that offences which are non-compoundable cannot be compounded by the

court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian

Singh v. State of Punjab (2012) 10 SCC 303). However, in a given case, the High Court can quash a criminal proceeding in exercise of its

power Under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no

objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the

proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder

etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be

restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High

Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it

feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not

hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.â??

15. The petitioners and the respondent no. 2 and 3 are young students. The petitioners must not be aware of the consequences which could follow

because of their action. It was a sudden scuffle which took place in the playground due to misunderstanding which had been resolved and settled. The

petitioners have realized their mistake immediately and settled the disputes with the respondent no. 2 and 3 on 02.06.2015 just after 12 days of the

incident. The petitioners are remorseful of their conduct. The petitioners and the respondent no. 2 and 3 are residents of same locality. In case FIR is

pursued, it would unsettle the compromise and obstruct the restoration of peace and harmony. Therefore, no fruitful purpose would be served in

further pursuing the said FIR. Hence, to have peace and harmony in the society and to secure ends of justice, the FIR bearing No.344/2015, registered

on 26.05.2015 with Police Station Keshav Puram, North West District, Delhi, under Sections 323/341/308/34 IPC and proceedings arising out of the

said FIR are hereby quashed.

16. The petition is disposed of accordingly.

17. DASTI.