
(2014) 08 DEL CK 0012
In the Delhi High Court
Case No : CRL.M.C. 3091/2014

Joginder Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 288, 304A, 307, 34

Citation : (2014) 08 DEL CK 0012

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Harpreet Singh, Advocate and Party-in-Person, Advocate for the Appellant; O.P. Saxena, Additional Public Prosecutor, Deepak, SI, Priyanka Kumari and Party-in-Person, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J.—This petition u/s 482 Cr.P.C. has been filed that FIR No.665/2014 dated 10.07.2014 registered under Sections 304A/288 Indian Penal Code at Police Station Shalimar Bagh, and all other proceedings emanating therefrom, be quashed pursuant to a settlement arrived at between the parties.

2. Issue notice.

3. Mr. O. P. Saxena, Additional Public Prosecutor for the State, and Ms. Priyanka Kumari, who is widow of deceased Suresh Kumar enter appearance and accept notice.

4. It is alleged that the aforesaid FIR came to be lodged on 10.07.2014 against the petitioner, who is the proprietor of BS Engineering Works and having office at A-33, Line no.2, Kundan Nagar, near PNB Bank, Delhi-110092. The petitioner is engaged in the work of central air conditioning/fabrication and installation of refrigeration line. The petitioner is retained as a sub contractor by the main contractor for carrying out such works.

The petitioner had been awarded the work of carrying out central air conditioning at Ambience Tower, Club Road, Shalimar Bagh. On 10.07.2014, while work was being carried out, a regular employee of the petitioner namely Suresh Kumar fell down from a folding which is used to hold labourers and succumbed to injuries while being taken to the hospital and died due to injuries received. This led to the institution of the aforesaid FIR.

It is submitted that the matter is stated to have been compromised between Ms. Priyanka Kumari, widow and Mr. Rajendra Ray, father of the deceased Suresh Kumar and the petitioner. It is also stated that as agreed, a sum of Rs.30,000/- was paid earlier in cash to Mr. Rajendra Ray, father of the deceased. Further, a sum of Rs.10,000/- has been handed over to Ms. Priyanka Kumari, widow of the deceased in the Court today. Further, along with that, a sum of Rs.2,00,000/- by way of two demand drafts, i.e. one bearing No.354307 dated 16.07.2014 for Rs.1,00,000/- and other bearing No.354428 dated 21.08.2014 for Rs.1,00,000/-, both drawn on State Bank of Patiala, Laxmi Nagar, New Delhi have been handed over to Ms. Priyanka Kumari, widow of the deceased in the Court today. Another a demand draft No.354308 dated 16.07.2014 for Rs.1,10,000/- drawn on State Bank of Patiala, Laxmi Nagar, New Delhi has also been handed over to Rajendra Ray in the Court today.

The petitioner as well as second respondent/widow and father of the deceased are present and they are identified by the Investigating Officer SI Deepak PS Shalimar Bagh. The second respondent/widow and father of the deceased state that they are satisfied with the compromise and join the petitioner in the prayer that the FIR be quashed.

Counsel for the State submits that the matter is at the stage of investigation, and since the parties have entered into an amicable settlement, no useful purpose will be served in continuing with these proceedings. He further submits that there are peculiar features in this matter that would necessitate the prosecution not to proceed any further.

Looking to the decisions of the Supreme Court in Gian Singh Vs. State of Punjab and Another, , which has referred to a number of matters for the proposition that even a non-compoundable offence can also be quashed on the ground of a settlement agreement between the offender and the victim, if the circumstances so warrant; and also Narinder Singh and Others Vs. State of Punjab and Another, where the Supreme Court held as follows:-

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power u/s 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1 Power conferred u/s 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences u/s 320 of the Code. No doubt,

u/s 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2 When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3 Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4 On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5 While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6 Offences u/s 307 Indian Penal Code would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 Indian Penal Code in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 Indian Penal Code is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge u/s 307 Indian Penal Code. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the

former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7 While deciding whether to exercise its power u/s 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power u/s 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence u/s 307 Indian Penal Code is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved u/s 307 Indian Penal Code and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime. "

And the judgment of this Court in *Basara and Ors. v. State and Anr.* in CrI. M.C. No. 6621-24/2006 decided on 3rd September, 2007, wherein it was, inter alia, held as under:-

"14.Peace has been brought in the locality with the intervention of the well wishers of the locality. When there is peace in locality, there will be peace in the town. When there is peace in town, there will be peace in city. When there is peace in city, there will be peace in State. When there is peace in State, there will be peace in country.....

15. The petition is according allowed. FIR No.4/2005 registered against the petitioners u/s 307 read with Section 34 IPC with Police station Samay Pur Badli is quashed and all consequent proceedings pursuant thereto are also ordered to be dropped. "

In view of above observations, I am of the opinion that it is best if a quietus is given to the matter since the same has been settled by payment of

compensation to Ms. Priyanka Kumari, widow and Mr. Rajendra Ray, father of the deceased Suresh Kumar, none of whom are now interested in supporting the prosecution any further.

Consequently, the petition is allowed and FIR No.665/2014 dated 10.07.2014 registered under Sections 304A/288 IPC at police station Shalimar Bagh, and all proceedings emanating therefrom, are quashed.

The petition is disposed off.