

(2009) 11 DEL CK 0138

In the Delhi High Court

Case No : Criminal M.C. No. 3755 of 2009

Kailash Chand

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 304A

Citation : (2010) 166 DLT 129

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Rakesh Malhotra, for the Appellant; R.N. Vats, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—This is a petition u/s 482 of the Code of Criminal Procedure for quashing FIR No. 817/2009 registered at police station Sultan Puri u/s 304A of Indian Penal Code. It has been stated in the petition that the matter has been compromised between the petitioner and respondent No. 2 and it has been agreed that the petitioner would pay a sum of Rs. 3.5 lakhs to respondent No. 2 against all her claims. Out of that amount, a sum of Rs. 2.5 lakhs has already been paid to respondent No. 2 and the remaining amount is to be paid after quashing of FIR.

2. The FIR in this case was lodged by one Purshotam, alleging therein that deceased Rajnish was working in a factory situated at C-15, Sharma Colony, Budh Vihar where clutch-brakes and allied products are manufactured with a machine run on electricity. The machine was not repaired despite several complaints. In the intervening night of 28th / 29th May, 2005, current flow from the machine hurt his brother, deceased Rajnish Pati Ram, who was declared dead, when taken to hospital.

3. In para 3 of the petition, the petitioner has, inter alia, stated as under:

D. It has been further alleged that the husband of the respondent No. 2 deceased Rajnish under the instructions of the petitioner was operating and working on his defective and fault BATAI KI MACHINE and the husband of the respondent No. 2 told the petitioner several times to get it repaired, but the petitioner did not care for the repeated requests of the deceased workman Sh. Rajnish. Even the husband of the respondent No. 2 several times told the petitioner that there is a great danger as the high voltage electric current may spread in the machine which may cause the death to the workman Sh. Rajnish, but the petitioner did not care at all the repeated requests of the husband of the respondent No. 2 and on this the petitioner threatened to the husband of the respondent No. 2 that if he will not operate the faulty and defective machine, then his services would be terminated illegally, unlawfully and forcibly.

E. It has been further alleged that on unfortunate day on 27.05.2005 the petitioner ordered workman Rajnish to operate the defective and faulty Machine and the petitioner forced the husband of the respondent No. 2 to operate the faulty and defective machine and as soon as workman Sh. Rajnish started working and operating the said defective and faulty machine under the threatening order of the petitioner, then immediately high voltage electric current was spread in the said defective and faulty machine and the husband of the respondent No. 2 Rajnish was caught by the High Voltage electric current and the husband of the respondent No. 2 Sh. Rajnish died on the spot while he was working under the orders, control, supervision and employment of the petitioner the petitioner killed the husband/workman Rajnish of the respondent No. 2.

4. In Criminal Case No. 3447/09, 3712/09 and WP(Crl.) 858/09, all decided on November 5, 2009, this Court examined the proposition of law in respect of quashing of FIR and criminal proceedings pursuant to compromise and after considering various decisions of the Hon"ble Supreme Court as well as of this Court, summarised the legal position as under:

The proposition of law which emerges from these cases is that (i) the embargo placed by Section 320 of the Code of Criminal Procedure against compounding of certain offences does not come in the way of the court quashing an FIR or a criminal complaint and the proceedings arising therefrom, in exercise of its inherent powers u/s 482 of the Code of Criminal Procedure. Vesting of such a power in the High Court cannot be denied in view of use of the expression nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court, the only other requirement being that the power should be exercised to give effect to any order made under the Code of Criminal Procedure or to prevent abuse of the process of a court or otherwise to secure the ends of justice; (ii) an FIR or a criminal complaint and the proceedings arising therefrom can be quashed on the basis of a compromise if, taking into consideration the nature of the offence alleged to have been committed, the circumstances in which the offence was committed and the overall facts of the case, the court is of

the view that quashing of the criminal proceedings would meet the ends of justice or is otherwise necessary to prevent an abuse of the process of the court.

5. It was also held by this Court that every case has to be decided on its own facts and no hard and fast rule can be laid down as regards the cases which deserve quashing by the High Court in exercise of powers u/s 482 of the Code of Criminal Procedure or Article Under 226/227 of the Constitution. It was further held that the court has to apply its mind to the facts and circumstances of each case that comes up before it for quashing, note the special features, if any justifying quashing of the prosecution and then come to an appropriate conclusion.

6. In the context of compromise by the parents or other family members of a deceased woman with her husband and/or in-laws, it was noted that it would neither be in consonance with public policy nor in the interest of the society at large to allow the family members of a deceased woman to enter into a compromise with her husband and/or in-laws and then come to the court seeking quashing of the criminal proceedings pursuant to such a compromise. This Court, inter alia, observed as under:

In fact, quashing criminal proceedings in such cases, after death of victim of the crime may in some cases, encourage the accused persons to win over the family members of the deceased for considerations which may not necessarily be brought on record. To put it rather bluntly, this may encourage the accused of such offences to offer lucrative amounts in the form of compensation or otherwise to the family members of the deceased, particularly if they happen to come from rather poor strata of the society. Having already lost their daughter/sister, they may not always find any incentive to continue the criminal proceedings, if they are compensated in monetary terms or are otherwise persuaded to enter in to a settlement. Therefore, in my view, it would be contrary to public interest if the criminal proceedings are quashed pursuant to a compromise between the accused persons on one hand and family members of the deceased on the other hand.

7. The view taken by this Court as regards compromise by the family members of a deceased woman equally applies in case of compromise by the family members of a person who has died on account of criminal negligence on the part of an accused. Having lost the bread- earner of the family, they may not anymore be interested in bringing the accused to justice, if they are otherwise suitably compensated in monetary terms. This is more likely, if they come from an economically weaker section of the society. If such petitions are allowed, that would only encourage such accused to buy liberty on the strength of money power by offering monetary compensation to the family of the victim. Compromise by the victim himself cannot in any manner be treated at par with compromise by the family members of the victim of the crime. If the person, who has suffered at the hands of the accused, himself settles with him and comes forward to forgive him, the court may be favourably inclined to accede to the

request made by him for quashing the criminal proceedings initiated by him. But, the same considerations are not available when the victim has died and such a request is made by his family members.

8. In *Kulwinder Singh and Others Vs. State of Punjab and Another*, a Five Judges Bench of Punjab & Haryana High Court examined the scope of the power of the High Court u/s 482 of the Code of Criminal Procedure to quash the proceedings in non-compoundable offences. Sh. R.S. Cheema, Sr. Advocate, who assisted the Bench as Amicus Curiae, placed certain guidelines before the High Court for consideration. These guidelines, inter alia, recommended as under:

The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted.

9. The learned Counsel for the petitioner has referred to the order of a learned single Judge of this Court in *Lalit Gupta v. State* 2009 (2) JCC 890 where an FIR u/s 304A of IPC was quashed pursuant to a compromise between the accused and the widow of the deceased. As noted earlier, every case has to be decided on its own facts and circumstances and merely because the FIR registered under the same provision of Indian Penal Code has been quashed in a particular case does not by itself warrant quashing of the FIR in every other case registered under the same provision of Indian Penal Code.

10. For the reasons given in the preceding paragraphs, I am of considered view that it would not be in the interest of justice to quash the criminal proceedings pursuant to compromise between the petitioner and respondent No. 2. The petition is, therefore, dismissed.