
(2012) 04 DEL CK 0458
In the Delhi High Court
Case No : Criminal M.C. 1161 of 2012

Kala @ Mukesh Kumar and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 323, 34, 354

Citation : (2012) 04 DEL CK 0458

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : A.K. Mishra, for the Appellant; Rajdipa Behura, APP for State, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.

CRL. M.A. 4102/2012 (Exemption)

Allowed subject to all just exceptions.

CRL. M.C. 1161/2012

1. Notice issued. Ld. APP accepts notice on behalf of State.
2. Respondents No. 2 and 3 are present in the court today.
3. With the consent of the learned counsels for the parties, the instant petition is taken up for final disposal.
4. Vide the instant petition, the petitioners have sought to quash FIR No. 80/2011 registered, for the offences punishable under Sections 354/323/ 34 Indian Penal Code, 1860 at P.S. Baba Haridass, on complaint of respondent No. 2 against petitioners.

5. Further submits that, the matter has been amicably settled between the parties with the intervention of family members and respectable members of society, since both the parties reside in the same locality.

6. Respondent No. 2 and 3 are personally present in the court today. They have been duly identified by IO/SI Nar Singh.

7. Respondents No. 2 and 3 submit that the matter has been settled, therefore, they do not want to pursue the matter further and have no objection if the FIR mentioned above, is quashed.

8. Ld. APP for State submits that though the investigation has been completed in the matter but the charge-sheet has not been filed in the trial court.

9. Ld. APP further submits that the offences committed u/s 354 of Indian Penal Code, 1860 are non-compoundable in nature as per the new amendment in Law. Therefore, the instant petition may not be allowed.

10. Learned APP 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, she has prayed that till the matter is decided by the larger Bench of the Apex Court, instant petition may be adjourned sine-die. Alternatively, she 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.

11. 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).

12. 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 have the binding precedents.

13. 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.

14. Though, I find force in the submissions made by Ld. APP for State regarding imposition of costs upon the petitioners, but keeping in view their financial position, I refrain imposing costs upon them.

15. Keeping in view the above discussion and statements of respondents No. 2 and 3 and in the interest of justice, I quash FIR No. 80/2011 registered at P.S. Baba Haridass.

16. Accordingly, the instant petition is allowed. Dasti.