
(2012) 03 DEL CK 0115
In the Delhi High Court
Case No : Criminal M.C. No. 987 of 2012

Kamdev and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 141, 147, 148, 149, 308

Citation : (2012) 03 DEL CK 0115

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Deepak Arora, for the Appellant; Rajdipa Behura, APP for the State, for the Respondent

Judgement

Suresh Kait, J.—Notice issued. Learned APP Ms. Rajdipa Behura accepts notice on behalf of respondent/State.

2. With the consent of learned counsel appearing on behalf of the parties, the instant petition is taken up for final disposal.

3. Vide the instant petition, the petitioner has sought to quash the FIR No. 6/2006 registered at P.S. Anand Vihar for the offences punishable under Sections 341/323/308/34 I.P.C. against the petitioners No. 2 to 10 on the complaint of petitioner No. 1. During investigation, Sections 147/148/149 I.P.C. were added and accordingly charge sheet was filed by the State for the offence punishable under Sections 147/148/149 I.P.C. and Section 341 I.P.C. read with Section 141 I.P.C. and charges u/s 325/308 I.P.C. were framed.

4. Learned counsel further submits that the petitioners have now amicably settled the issues qua the aforesaid FIR and petitioner No. 1 complainant is no more interested to pursue the case against petitioners No. 2 to 10, therefore, instant petition may be allowed.

5. Petitioner No. 1/complainant is personally present in the Court.

6. Learned counsel for the petitioner identify petitioner No. 1 as Kamdev s/o Shri Jugal Paswan.

7. Learned APP, on the other hand, submits that Sections 308/147/148/149 I.P.C. are non-compoundable.

8. 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.

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 decisions 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 the above discussion, statement of petitioner No. 1/ complainant into view and in the interest of justice, I quash FIR No. 6/2006 registered at P.S. Anand Vihar, Delhi and all the proceedings emanating therefrom.

13. Though I find force in the submissions of Id. APP on costs, but keeping the financial position of petitioners No. 2 to 10/accused into view, I refrain imposing

cost on them.

14. Criminal M.C. 987/2012 is disposed of.

Crl. M.A. 3480/2012 (stay)

Dismissed as infructuous.