

(2011) 12 DEL CK 0332

In the Delhi High Court

Case No : Criminal M.C. 3887 of 2011 and Criminal M.A. 18344 of 2011

Mahender Koli @ Chiddi and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320
Penal Code, 1860 (IPC) — Section 308, 323, 34, 427, 452

Citation : (2012) 1 AD 399 : (2012) 2 JCC 932

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Pradeep Kr. Arya, Mr. Narinder Chaudhary, Mr. Anuj Tomar, Mr. Rana Kunal, Mr. Shobhit Mittal and Mr. Ashish Sharma, for the Appellant; Navin Sharma, APP, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—Learned counsel for the petitioner submits that vide FIR No.554/2007, a case u/s 452/308/323/506/427/34 Indian Penal Code, 1860 was registered against the petitioner Nos.1 to 5 on the complaint of petitioner No.6, Chander Bhan at PS Keshav Puram.

2. Learned counsel further submits that in said scuffle, apart from petitioner No.6, petitioner Nos.7 to 13 also received injuries. He further submits that petitioner Nos.6 to 13 have amicably settled all the issues qua the aforesaid FIR against petitioner Nos.1 to 5. Therefore, the petitioner Nos. 6 to 13 do not want to pursue the case any further and have no objection, if the same be quashed.

3. Petitioner Nos.6 to 13 are present in person. S.I. Sonuram who is also present, identifies all the petitioner Nos.6 to 13. They submit that, since all the petitioners live in the same community, and have amicably settled the present due to the intervention of the neighbours and friends case and they do not want to pursue the case any further and have no objection if the present FIR is quashed.

4. Learned APP on the other hand has strongly opposed the quashing of the present FIR as Section 308 Indian Penal Code, 1860 is a "non-compoundable" offence as prescribed in Cr.PC. He 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, he has prayed that till the outcome of the larger Bench of the Apex Court, present petition may be adjourned sine-die. Alternatively, he prayed that in the event, the FIR is quashed, heavy costs should be imposed upon the petitioners, as the government machinery has been used and precious time of the Court has been consumed.

5. 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).

6. 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 binding precedents.

7. It is noted that petitioner No.6/complainant got his leg fractured, petitioner Nos.8 Nitin, 10 Basant, 11 Babbiram and 13 Karan Singh received injuries on their persons. The substantial justice would be if cost be imposed on the petitioners Nos.1 to 5.

8. Keeping in view the fact that all the petitioners stay in the same locality to maintain peace and harmony in the society and to put an end to their enmity, I deem it proper to quash the present FIR. Ordered accordingly.

9. While quashing the FIR, I direct petitioner Nos.1 to 5 to pay a sum of Rs.50,000/- each i.e. totalling a sum of Rs.2.5 lac; out of which Rs.1 lac be paid to Petitioner who received grievous injuries i.e. Rs.60,000/- in favour of petitioner No.6 and Rs.10,000/- each to petitioner Nos. 8, 10, 11 and 13.

10. The balance amount of Rs.1.5 lac shall be paid in favour of

Ashiana Children Home for Boys-II, Alipur, Delhi.

11. It is directed that the petitioner Nos. 1 to 5 shall deposit the said amount within two weeks from today and the proof of the same shall also be placed on record. It is further directed, the Incharge of said "Home" shall keep this amount in form of FDR initially for 3 years, to be renewed periodically. The interest accrued thereon shall be utilised for the well being of needy children of the Home.

12. The petition is allowed.

13. In view of above, Criminal M.A.18344/2011 renders infructuous and accordingly stands disposed of.

14. Order dasti.