

(2011) 09 DEL CK 0217
In the Delhi High Court
Case No : Criminal M.C. No. 3108 of 2011

Md. Riyazuddin

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 149, 307, 308, 309

Citation : (2011) 4 JCC 2676

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Anurag Ahluwalia and Mr. Subhash Tanwar, for the Appellant; Rajdipa Behura, APP. for the State/Resp. 1 and Mr. Anand Verdhan, Advocate for the Resp. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.

CrI. M.A. No. 11018 & 11040/2011(exemption)

Exemptions are allowed subject to just exceptions.

Criminal M.As. stand disposed of.

CRL.M.C. 3108/2011

1. Issue notice. Ms. Rajdipa Behura, learned APP for State/Respondent No. 1 and Mr. Anand Verdhan, Adv for respondent No. 2 accepts notice.

2. Learned counsel for petitioner submits that vide FIR No. 158/2010 dated 22.07.2010 a case u/s 307 Indian Penal Code, 1860 was registered at police station Jaitpur on the complaint of respondent No. 2, against the petitioner. Petitioner in custody since then.

3. Learned counsel for petitioner further submits that respondent No. 2 Smt.

Salma, w/o Mohammad Asim, is personally present in the Court today with learned counsel Mr. Anand Verdhan who has duly identified her. Additionally, photograph of respondent No. 2 has been placed at page No. 41 and the photocopy of her identity card issued by the Election Commission of India stands in her name bearing No. FYW1024496 is on the record.

4. Respondent No. 2 submitted that she has settled all the disputes with the petitioner qua the present FIR and she does not wish to pursue present case against the petitioner. She further submits that petitioner is also residing in the same locality where she is residing and both are immediate neighbours. Petitioner is stated to be a bangle seller and having five daughters and one son. In view of compassion and just to give quiet to this case, present case FIR should be quashed and the feeling of enmity between the parties should be ended. She further stated that all the expenses for her treatment were borne by the petitioner himself and according to her, petitioner is not a man of well-means, therefore, she does not wish to claim any amount in lieu of compensation from him.

5. Ms. Rajdipa Behura, learned APP for State submits that present case is u/s 307 Indian Penal Code, 1860 which is "non-compoundable" and the injury is inflicted on the vital part of the body i.e. upper portion of the neck. The doctor on the MLC has opined the injuries as dangerous.

6. She further submits that offence in the present case is punishable upto life imprisonment as provided in the statute and relied upon the decision of the Supreme Court in Gian Singh Vs. State of Punjab & Anr. in SLP (Crl.) No. 8989/2010.

7. Learned counsel for petitioner has relied upon the decision of this Court in Gurcharan Singh Vs. State, wherein it is held as under :--

The petitioner hired a farm house of one Arjun Sayal, the Complainant for two days for holding a wedding reception of his son. It was agreed that the petitioner would pay a consolidated amount of Rs. 2,50,000/- for holding the reception. The amount was inclusive of the food provided at the wedding reception on the 25th and 26th of November, 1997. The complainant who is respondent No. 2 in this petition admittedly received Rs. 1,10,000/- in advance. The balance amount of Rs. 1,40,000/- was to be paid after the wedding reception and according to their understanding. When the reception was about to finish, at that point of time around 2:00 a.m. the complainant demanded the balance amount from the petitioner. The petitioner did not like the complainant's demanding the amount because at that time he was enjoying the wedding reception with his friends. The petitioner nodded his head and mentioned that the balance amount will be paid after the reception. The complainant again demanded the amount after an hour at 3:00 a.m., when practically the reception was over and only 4 to 5 persons were left. The petitioner got enraged and started abusing the complainant and said "I will pay your amount just now and he asked one person who was standing

nearby to pay the amount. Incidentally, at that time the petitioner was holding a 12 bore gun in his hand. On repeated demands of the remaining outstanding amount, the petitioner got infuriated and to frighten the complainant, the petitioner fired a shot in the air and again he gave the impression as if he was loading the second cartridge to hit the complainant. The complainant felt that probably the petitioner was loading the same with a view to fire at "the complainant. The complainant ran from the scene. However, the petitioner did not fire the second cartridge.

In the present case, no injury was caused, however the FIR was allowed to be quashed by this court on a petition filed u/s 482 Cr.P.C.

8. Learned counsel for petitioner has further relied upon another decision of this Court in Mahinder Pal Singh and Others Vs. State and Another in para No. 2 is held as under :-

When the complainant and his family members were sleeping, the accused persons pounced upon them and started beating them. Somehow, the complainant got rid of petitioner No. 1 and his father, who were allegedly trying to strangulate the complainant and he rushed to the police station after which the accused persons were taken to the police station."

In the present case also, the FIR u/s 147/149/452/323/506 Indian Penal Code, 1860 was allowed to be quashed on a petition u/s 482 Cr.P.C

9. Further he relied upon the decision of this case in Karan Gandhi Vs. The State, NCT of Delhi and Another, wherein FIR was also quashed by this Court and it is held as under :--

.... some discussion on the telephone took place and from where they took an auto for a park in Dwarka. In the park, having come to the conclusion that they did not have a future together, they formed a part for dying together. Karan produced a gun which he had brought with him and Preeti shot herself with the gun on her forehead and handed over the gun to Karan. The latter then shot himself on the head and thereafter shot Preeti on her head. Three pellets were recovered, one from the head of the petitioner Karan Gandhi and two from the head of Preeti Goyal. Preeti was rendered unconscious and when she came to her senses, she found herself in a nursing home. On her statement made to Sub-Inspector Sunil Kumar, First Information Report No. 518/2006 was registered against the petitioner and her under Sections 307/309/34 Indian Penal Code, 1860 at police station Dwarka.

10. Learned counsel for petitioner further submits that during trial respondent No. 2 appeared as PW2 before the learned Trial Court and has deposed on 04.02.2011 that the accused is her neighbour and she wanted to live peacefully. The accused is having small kids and she has pardoned him and do not want to pursue this case against him further. Respondent No. 2 has also filed her affidavit to this effect which is annexure "D" at page No. 36 of the petition.

11. On earlier occasion, this Court has quashed the FIRs u/s 307/308 Indian Penal Code, 1860 considering the view taken by the Division Bench decision of the Bombay High Court in Nari Motiram Hira Vs. Avinash Balkrishnan & Anr. in Crl. W.P. No. 995 of 2010 decided on 03.02.2011.

12. I note that in Gian Singh (supra) 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, and Manoj Sharma Vs. State & Ors. (2008) 16 SCC 1 to the larger Bench for re-consideration whether the above said three decisions were decided correctly or not.

13. I further note that as on date, since B.S. Joshi (supra); Nikhil Merchant (supra) and Manoj Sharma (supra) have not been altered or reviewed by the larger Bench of the Supreme Court, hence all three dictums still hold the field and are law of the land. Therefore, I deem it proper to quash the FIR in the instant petition.

14. In view of the above discussion, as the respondent No. 2 is not interested in prosecution of the case against the petitioner, FIR No. 158/2010 u/s 307 Indian Penal Code, 1860 registered at police station Jaitpur against the petitioner and the proceedings arising out thereto are hereby quashed.

15. Though, the respondent has come forward to help the petitioner, however, for the substantial justice to the respondent No. 2, I direct the petitioner to atleast pay some compensation to respondent No. 2. Accordingly, I direct the petitioner to pay an amount of Rs. 50,000/-by way of pay order to respondent No. 2 within a period of two months from the date of his release.

16. Consequently, the Jail authorities are directed to release the petitioner forthwith as the present case FIR has been quashed. Copy of the order be also sent to the Jail authorities for compliance.

17. Accordingly, Criminal M.C. No. 3108/2011 is allowed in above terms.

18. Copy of order be given dasti under signature of the Court Master to learned counsel for petitioner.