
(2014) 08 DEL CK 0103
In the Delhi High Court
Case No : Crl. M.C. 3777/2014

Mohd. Anish

APPELLANT

Vs

State of NCT Delhi

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 307, 34, 406, 498A

Citation : (2014) 08 DEL CK 0103

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Anil Tejan, Advocate for the Appellant; P.K. Mishra, APP, Faizan Ghani, SI and Firoz Ahmad, Advocate for the Respondent

Judgement

Sudershan Kumar Misra, J.

Crl. M.C. No. 3777/2014

1. This petition under Section 482 of the Code of Criminal Procedure, 1973, has been moved by the petitioners seeking quashing of FIR No. 65/2012 under Section 498A/ 406/ 34 IPC and Section 3/ 4 Dowry Protection Act registered at Police Station Welcome Colony, Delhi, and all the proceedings emanating therefrom, on the ground that the matter has been settled between the parties.

2. Issue notice.

3. Counsel for the State as well as counsel for second respondent Nida Naaz, who is complainant, accept notice.

4. It is the case of the parties that the aforesaid FIR came to be registered by the complainant Nida Naaz, who is arrayed as respondent No. 2 to this petition with regard to certain marital disputes and differences.

5. The complainant and the petitioners are present in the Court and are identified

by the Investigating Officer SI Mohd Faizan Ghani, PS Welcome Colony, Delhi.

6. It is stated that the matter arose out of a matrimonial dispute in connection with the marriage between Nida Naaz, i.e. respondent No. 2/complainant with her husband Mohd. Anish, i.e. petitioner No. 1. All the parties have now reconciled their differences and disputes. It is also stated that the complainant and petitioner No. 1 have obtained divorce in accordance with their personal laws and further that all the remaining aspects were compromised before the Delhi Mediation Centre, Karkardooma Courts, Delhi on 22.04.2014. A copy of said compromise has also been annexed to this petition. In terms of said compromise, daughter Mariam shall remain with her mother i.e. Nida Naaz, respondent No. 2/complainant.

7. Further, out of the total amount of Rs. 3,95,000/- (Rupees Three Lac Ninety Five Thousand Only) the entire outstanding sum of Rs. 1,95,000/- has now been handed over to the complainant in the Court today in cash.

8. Counsel for the petitioners as well as the complainant submit that all the terms mentioned in the aforesaid compromise have been carried out and now they do not wish to pursue the matter any further, and that the FIR in question be quashed as prayed.

9. Counsel for the State submits that charge has been framed and evidence is yet to begin. He further states that under the circumstances, and keeping in mind the fact that the matter primarily concerns a family dispute, where the complainant is not interested in supporting the prosecution and which is at the stage of investigation, no useful purpose will be served in continuing with the proceedings.

10. Looking to the decisions of the Supreme Court in *Gian Singh Vs. State of Punjab and Another*, which has referred to a number of matters for the proposition that even a non-compoundable offence can also be quashed on the ground of a settlement agreement between the offender and the victim, if the circumstances so warrant; by observing as under:

"58.However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated."

11. And also in *Narinder Singh and Others Vs. State of Punjab and Another*,

where the Supreme Court held as follows:-

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 Indian Penal Code would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 Indian Penal Code in the FIR or the charge is framed under this provision. It

would be open to the High Court to examine as to whether incorporation of Section 307 Indian Penal Code is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 Indian Penal Code. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 Indian Penal Code is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 Indian Penal Code and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

12. I am also of the opinion that under the circumstances, it is best if a quietus is given to the matter, especially since the matter has arisen primarily out of a domestic dispute, where all the parties concerned have settled their differences amicably.

13. Consequently, the petition is allowed and FIR No. 65/2012 under Section 498A/ 406/ 34 IPC and under Section 3/ 4 of the Dowry Protection Act registered

at Police Station Welcome colony, Delhi, and all the proceedings emanating therefrom, are hereby quashed.

14. The petition stands disposed off accordingly.