

(2015) 11 DEL CK 0196

In the Delhi High Court

Case No : W.P. (Crl). 2711/2015 and Crl. M.A. 17216/2015

Pankaj Sharma

APPELLANT

Vs

State (N.C.T. of Delhi) and Others

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 307, 420

Citation : (2015) 11 DEL CK 0196

Hon'ble Judges : Ashutosh Kumar, J.

Bench : Single Bench

Advocate : Jaspreet S. Rai, Advocate, for the Appellant; Sanjay Lao, ASC and Siddharth Sindhu, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Ashutosh Kumar, J.—The petitioner seeks quashing of FIR No. 749/2015 (PS Tilak Nagar) instituted for offence under section 420 of the IPC on the strength of a settlement having been arrived at with the complainant/informant (respondent No. 2).

2. The petitioner, a builder/developer by profession, had approached the respondent no.2 for sale of Upper Ground Floor (without roof rights) in property, bearing no. 25 (old) in Block No. D, new number WZ-111-D, Shyama Prasad Mukherjee Park, New Delhi - 110018 (hereinafter referred to as "the property"). It is submitted that the owner of the said property was one Smt. Niharika, who had executed a collaboration agreement with the petitioner for its redevelopment. It is on the basis of this collaboration agreement, that the petitioner claimed, inter alia, to be the absolute owner of the Upper Ground Floor of said property.

3. It is submitted that the respondent no.2 agreed to purchase the Upper Ground Floor of the said property for a sale consideration of Rs. 35 Lakhs and pursuant thereto an agreement to sell was executed between the parties. The respondent

no.2 paid the entire sum of Rs. 35 Lakhs to the petitioner, but the petitioner failed to deliver the said property and thus the sale of the property could not be completed. It is submitted that the same could not be completed because of disputes with the original owner, which circumstances were beyond the control of the Petitioner.

4. Owing to the failure of the petitioner to complete the sale of the said property, respondent no.2 filed a complaint, pursuant to which the present FIR (FIR No. 749/2015), for offences under sections 420 of the IPC, came to be registered.

5. Be that as it may, it is submitted, by the counsels for the parties, that the matter has been settled before the Delhi Mediation Centre, Tis Hazari Courts in terms of which the petitioner has agreed to pay Rs. 35 Lakhs to respondent no.2 towards full and final settlement of all his claims. In terms of the order dated 14.08.2013, it was agreed that Rs. 10 Lakhs would be paid by way of DD/cash on 25.08.2015 and 07.09.2015 and Rs. 15 Lakhs would be paid at the time of quashing of the present FIR.

6. The parties are present in court.

7. The investigation in the matter is still continuing.

8. The learned counsel for the petitioner submits that the entire agreed amount has now been paid by the petitioner to respondent no.2.

9. Considering the foregoing circumstances, this Court is of the opinion that the nature of the disputes between the parties being completely interpersonal, have been completely redressed and that no fruitful purpose would be served in further prosecution. In view of the aforementioned observations this Court is inclined to quash the present FIR.

10. In *Gian Singh Vs. State of Punjab and Another*, , the Supreme Court has held that cases which are not compoundable under Section 320 of the Cr.P.C. could also be quashed, when continuation of any criminal proceeding would be an exercise in futility and where justice demands that the dispute between the parties should be put to an end and peace is restored. But ending of such criminal proceedings could only be ordered for securing the ends of justice

11. The Supreme Court has further observed in *Gian Singh (Supra)* :

"58..... No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in

that capacity, the settlement between the offender and the victim can have no legal sanction at all. 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. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed." [Refer to 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 and Others, .]

12. In Narinder Singh and Others Vs. State of Punjab and Another, , the pertinent observations of the Apex Court are as under:-

"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 the 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 IPC would fall in the category of heinous and serious offences and therefore are 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 IPC 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 IPC 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 IPC. 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 latter 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 chargesheet 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 to a conclusion as to whether the offence under Section 307 IPC 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 IPC 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."

13. Thus, the inherent powers of the High Court, having a wide plenitude could be used for quashing the FIR for securing the ends of justice and to prevent the abuse of the process of the court.

14. The subject FIR No. 749/2015 (PS Tilak Nagar) and the emanating proceedings thereof are, for the reasons aforesaid, quashed.

15. The petition is disposed of in terms of the aforesaid.

Crl.M.A.17216/2015

Application is disposed of as having become infructuous .