

(2006) 11 DEL CK 0047

In the Delhi High Court

Case No : Writ Petition (Criminal) 1668-71 of 2006

Vicky Malhotra and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 09-11-2006

Acts Referred:

Arms Act, 1959 — Section 25, 27
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 307

Citation : (2007) 2 DMC 830 : (2009) 93 DRJ 22

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : V.K. Shali, for the Appellant; Rajdipa Behura and K.B. Rohagti, Aparna Rohagti and Mahesh Kasana, for the Respondent

Judgement

S.N. Aggarwal, J.—Status report filed. Copy given.

2. The petitioners have filed this writ petition seeking quashing of FIR No. 485/2004 registered against them u/s 307 IPC and Section 3 and 4 of Dowry Prohibition Act read with Section 25/27 of the Arms Act with Police Station Mukherjee Nagar.

3. Briefly stated, the facts of this case are that the FIR in question was registered against the petitioners on 18.11.2004 on the statement of respondent No. 2. As per the contents of the FIR, the matrimonial alliance for marriage of respondent No. 2 with petitioner No. 1 was fixed on 30.4.2004 and the marriage was fixed for 22.11.2004 and as such her parents started preparation for the marriage. However, later on, her mother-in-law, Raj Rani Malhotra, her finance Vicky Malhotra, his uncle (Mausa) Hardeep Sodhi and Vicky's elder sister Bittoo started making demands of a flat, one Santro car and Rs. 5 lacs in cash failing which her parents were threatened that the marriage would not be performed. Upon this, the parents of respondent No. 2 refused to perform the marriage. The

respondent No. 2 has further alleged in the FIR that the petitioner No. 1 Vicky Malhotra got annoyed with her and that day at about 6.20 PM while she was at the house of her friend Gurpreet Kaur @ Ritu, she saw Vicky roaming in the area in his car bearing registration No. DL 8 CJ 1770 make Santro and thereafter she asked her friend Ritu to drop her at her house and while she was climbing the stairs of her house, suddenly petitioner No. 1 Vicky Malhotra came behind her and in order to kill her, fired upon her and the bullet touching her arm pierced into the wall.

4. The status report reveals that after registration of the FIR, investigation was taken up and during the course of investigation, statements of witnesses were recorded, evidence was collected, accused Hardeep Sodhi and Vicky Malhotra were arrested, the fire arm was recovered from petitioner No. 1 Vicky Malhotra and after completion of the investigation, charge-sheet was prepared and it is stated that the same would be filed shortly before the concerned Court.

5. The parties have amicably compromised the subject matter of the FIR in question amongst themselves and Therefore both the parties present in Court have requested that the aforementioned FIR registered against the petitioners on the complaint of respondent No. 2 be quashed by this Court.

6. Respondent No. 2 identified by her counsel Mr. K.B. Rohagti, Advocate confirms the compromise and says that she does not want to continue with the aforementioned criminal case got registered against the petitioners. The learned Counsel appearing on behalf of the State has opposed the quashing of the FIR in question inter-alia on the ground that accusations against the petitioners are serious as they had made demand of dowry from respondent No. 2 prior to her proposed marriage with petitioner No. 1. The learned Counsel has further submitted that the offence u/s 307 IPC for which FIR in question is registered is non-compoundable and Therefore she has prayed that the request of the petitioners for quashing of FIR be not accepted. The petitioners' learned Counsel has relied upon three judgments viz. (i) Daulat Zia Vs. Govt. of N.C.T. of Delhi and Others, ; (ii) AIR 1988 2111 (SC) and (iii) B.S. Joshi and Others Vs. State of Haryana and Another, On the strength of these three judgments, he has contended that the power of this Court to quash the FIR is not limited by Section 320 of the Code of Criminal Procedure, 1973. In Daulat Zia's case (Supra) a Division Bench of this Court had allowed the quashing of case u/s 307 IPC after filing of the charge-sheet as parties in that case had amicably settled their differences. In Mahesh Chand's case (Supra) the Hon'ble Apex Court had directed for quashing of case u/s 307 IPC against the accused persons after their conviction by the High Court. In B.S. Joshi's case (Supra) it was held by the Hon'ble Apex Court that Section 320 of the Code of Criminal Procedure, 1973 does not limit or affect the Powers of the High Court to quash the criminal proceedings or FIR or complaint even in non-compoundable offences. Para 8 of the said judgment is relevant and is reproduced here-in-below:

It is thus clear that Madhu Limaye's case does not lay down any general

proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, Therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.

7. It is apparent from the above judgments referred and relied upon by the counsel for the petitioners that this Court is not powerless to quash the criminal proceedings in cases arising out of non-compoundable offences. What this Court has to look for is whether the quashing would secure the ends of justice or not? In the present case, petitioner No. 1 and respondent No. 2 are both in their youth and as they have amicably compromised the subject matter of the FIR in question amongst themselves, no useful purpose is likely to be served by continuing with the aforementioned criminal case got registered against the petitioners on the complaint of respondent No. 2. The continuation of criminal proceedings against the petitioners would cause embitterment and would unnecessarily spoil the youth of the parties. Since the parties have amicably compromised the subject matter of the FIR in question amongst themselves, even if the criminal proceedings in question are continued, in all probabilities respondent No. 2 being the complainant is not likely to support the prosecution case and under such circumstances recording the evidence before the court below would be a sheer wastage of court's time. I, Therefore, accept the request of the parties for quashing of the aforementioned FIR registered against the petitioners on the complaint of respondent No. 2.

8. In view of the above this writ petition is allowed. FIR No. 485/2004 registered against the petitioners u/s 307 IPC and Section 3 and 4 of Dowry Prohibition Act read with Section 25/27 of the Arms Act with Police Station Mukherjee Nagar is quashed and all consequent proceedings pursuant thereto are also ordered to be dropped.