

IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl. M.C. No. 3614/2009

Judgment delivered on: November 10,2009

Mohd.Azhar and Other

.....Petitioner.

Through: Mr. Zafar Sadique, Advocate
Mr. Rajesh Arora, Advocate

versus

State

..... Respondents

Through: Ms. Sanjay Lao, for the State.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

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This order shall dispose of two separate petitions filed under Section 482 Cr.P.C. seeking quashing of FIR Nos. 8/2006

and 334/2006 respectively.

Criminal M.C. No. 3614/2009 has been filed by four petitioners , namely, Mohd. Azhar, Liyaqat Choudhary @ Guddu Tyagi, Shakeel Ahmad and Mr. Farhat Ali Khan for quashing FIR No. 8/2006 registered under Sections 307/120-B/34 IPC. This FIR has been lodged at the instance of complainant Abhay Singh, who is one of the accused in other FIR.

Criminal M.C. No. 3613/2009 has been filed by Abhay Singh, Surender and Satpal for quashing of FIR No. 334/2006 registered under Section 307/34 IPC at P.S. New Friends Colony. This FIR has been registered at the instance of complainant Mohd. Azhar who is one of the accused in FIR No. 8/2006.

Mohd Azhar and Abhay Singh have approached the court seeking quashing of the said FIR's registered by them against each other on the basis of the compromise.

Both the parties are present in court along with their respective advocates. IO is also present in court.

Both the counsel submit that parties have entered into a compromise vide compromise deed executed in the month of August, 2009. Counsel for the parties submit that due to the

intervention of respectable persons of the locality and common friends from both the sides, parties have resolved all their disputes and based on the said compromise both the parties have agreed to seek quashing of the said FIRs registered by them against each other.

Counsel for the petitioners in CrI. M.C. No. 3614/2009 submits that earlier also vide orders dated 07.12.2007, this court had quashed the FIR No. 178/1997 based on the compromise which involved one of the accused persons, namely, Mohd. Azhar in the present petition. The contention of the counsel for the petitioner is that in the said order passed by this court, the court had taken into consideration the involvement of the petitioner in some criminal cases which relate to the period when he was a student. Counsel for the petitioner has also placed reliance on the judgment of the Supreme Court reported in **AIR 2003 SC 1386 B.S. Joshi and others Vs. State of Haryana and Another** and judgments in **2005 (2) JCC 599 Navrang Pal & Ors. Vs. State** and **2003 (69) DRJ 416 (FB) Ramesh Kumar Vs. State, W.P. (CrI.) No. 659/2003 Jaffar & Others Vs. State , 85 (200) DLT 350 Saleemuddin & Ors. Vs. State & ors.** and **2007 (98) DRJ**

381 Basara & Ors. Vs. State & Anr., decided by this court.

Counsel for the petitioners also submits that the prosecution has not been able to collect any evidence to implicate the petitioners in the said offence as the weapon of offence was not recovered from him. Counsel also submits that no injury was sustained by the complainant or any other person in the alleged incident in question. Counsel further submits that there are only two cases i.e. FIR No. 319/2002 U/s 420/468/47/34 IPC and FIR No. 187/2004 U/s 341/323/354/380/452/506/34 IPC which are still pending against the petitioners and in rest of the 13 cases either the petitioners have been acquitted, discharged or the FIR has been quashed.

So far as CrI. M.C. No. 3613/2009 is concerned, the counsel for the petitioners submits that the petitioners were falsely implicated in the said case. Counsel further submits that in fact the FIR was registered by the complainant to falsely implicate the petitioners because of the earlier FIR registered against him at the instance of the petitioners. Counsel further submits that in fact the complainant Mohd. Azhar got himself admitted in the hospital of his own choice without even informing the police.

Counsel further submits that no bullet was recovered from the body of the complainant and even the medical board of the hospital opined that the injury was self-inflicted. Counsel thus submits that in any event of the matter with a view to maintain cordiality and peace the parties have entered into a compromise and seek quashing of FIR No. 334/2006.

Mr. Sanjay Lao, Additional Public Prosecutor has strongly opposed so far quashing of FIR No. 8/2006 is concerned. He submits that the petitioners are habitual criminals and they were found involved in number of heinous crimes and other offences registered against them. Counsel further submits that except the complainant there is another independent witness Mr. Sachin who had witnessed the incident in question. Counsel also submits that the bullet leads and the broken pieces of glass were seized and sent to FSL for the Expert opinion and the report received from FSL clearly opined that the spent bullet comes within the definition of Arms Act. Counsel thus submits that based on the statement of the independent witnesses and the circumstantial evidence collected during the investigation, there are fair chances of the petitioners to be ultimately convicted.

Counsel placed reliance on the judgment of the Apex Court in **Manoj Sharma Vs. State & others 2008 (4) Crimes 359 (SC)**

I have heard counsel for the parties at considerable length and gone through the record.

It is a settled legal position that power under Section 482 Cr.P.C. has to be exercised with great circumspection and in rare cases. The ultimate objective to be achieved is to serve the ends of the justice. It would be appropriate to reproduce Section 482 Cr.P.C. :-

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

As would be evident the expression used in the said section "*Nothing in this Code*" is a non obstante clause, and gives it overriding effect over other provisions in the Cr.P.C. The words "or otherwise to secure the ends of justice" in Section 482 are of very wide amplitude and no fetters can come in the way of the court while exercising powers under S. 482 Cr.P.C. to pass any order to secure the ends of justice. In the case of **Manoj Sharma Vs. State** after placing reliance on the earlier decisions of the

Apex Court in **B.S. Joshi Vs. State of Haryana 2003 (4) SCC 675** and the decision in **Nikhil Merchant Vs. Central Bureau of Investigation & Another JT 2008 (9) SC 192** the Hon'ble Division Bench comprising of Hon'ble Mr. Justice Altmas Kabir and Hon'ble Mr. Justice Mr. Markandey Katju directed quashing of the criminal proceedings arising out of the FIR registered under section 420/468/471/34/120 B of IPC after allowing the appeal and setting aside the order of the High Court. While agreeing with the conclusion of Hon'ble Justice Altamas Kabir, Hon'ble Justice Markandey Katju penned down a separate judgment. In his judgment Hon'ble Mr. Justice Katju felt that the question as to whether quashing can be directed even in non-compoundable cases or not based on the compromise requires consideration by the larger Bench. At the same time in para 23 the Hon'ble Judge observed that the proceedings in non-compoundable cases cannot be quashed by the High Court in exercise of its power under Section 482 Cr.P.C. or in writ jurisdiction on the basis of compromise. The said observations of Hon'ble Justice Katju with great respect are contrary to the various decisions by the Apex Court in the case of **B.S. Joshi Vs. State of Haryana 2003 (4)**

**SCC 675 and Nikhil Merchant Vs. CBI & Anr., JT 2008 (9)
SC 192**

Coming back to the facts of the present two FIRs, so far as FIR No. 334/06 is concerned, there is no difficulty in quashing the same in view of the stand taken by the State in the Status report. In the status report the State has mentioned that the medico legal opinion has been taken from the Medical Board of Holy Family Hospital where the complainant Mohd. Azhar got admitted without any prior intimation to the police and during treatment no bullet was recovered from his body. As per the Status report, Medical Board also opined that the bullet injury could be self-inflicted. The status report further states that petitioner Abhay Singh has no previous criminal record except the said case in question.

Taking into consideration the aforesaid stand of the State in the FIR No. 334/2006, I am of the view that no useful purpose would be served in keeping the said FIR and the proceedings arising therefrom unnecessarily alive any further against the petitioners. The compromise in a modern society is a sine qua non of harmony and orderly behavior. The power under

section 482 is exercised to do Ex Debitia Justitia to prevent the abuse of law and process of court.

In the recent decision of the Apex Court in the case of **CBI Vs. A. Ravishankar Prasad & Ors., JT 2009(6) SC 589**, while analyzing all the prior judgments on the point have said that the exercise of inherent powers would entirely depend on the circumstances of each case. The object incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice.

The facts of the present case reveal personal enmity and rivalry and hence the exercise of powers under Section 482 Cr.P.C., keeping in mind the facts of the case at hand would be wholly to secure the ends of justice. Hon'ble Judge Krishna Iyer summed up the essence of compromise in the following words:-

“the finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion.”

Consequently, in view of the compromise, the FIR No. 334/2006 under Section 307/34 IPC registered at P.S. New Friends Colony and the criminal proceedings arising therefrom

are hereby quashed.

With regard to the FIR No. 8/2006 quashing is sought based on the same compromise. Since this court has taken a view to quash the FIR No. 334/2006 where Mohd. Azhar happens to be the complainant therefore it will be in the fitness of things not to allow any kind of animosity between the two parties once they have settled all their disputes based on the compromise. At the same time one cannot be oblivious of fact that petitioner Mohd. Azhar has been involved in as many as 16 cases and the entire track record of the petitioner shows that his antecedents are not clean and are of criminal nature. As per counsel for the petitioners most of the cases where the petitioner Mohd. Azhar was involved either have been quashed or the petitioner has been discharged and only two cases are pending. Counsel thus submits that a lenient view be taken against the petitioner Mohd. Azhar and other accused persons who have already mend their ways. The past record and antecedents of a person always haunts him like a shadow but wherever possible depending upon the facts of a case a criminal must get a fair chance to reform himself. The petitioner Mohd. Azhar in the facts of the present case deserves one such

chance to improve himself.

This view is also being taken by this court because in the said FIR although there are serious allegations that the petitioners had fired on the complainant but since he escaped and did not receive any injury in the incident and also the fact that the weapon of offence was not recovered from the petitioner. Based on the compromise FIR No. 8/2006 is also hereby quashed but subject to costs of Rs.50,000/- on the petitioner No.1 Mohd. Azhar, and Rs.20,000/- on Mr.Shakeel Ahmad petitioner No.3 and Rs.10,000/- each on petitioner Nos. 2 and 4. The costs shall be deposited by the petitioner with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund within a period of two weeks from the date of this order. The receipt of deposits of cost shall be filed by the petitioners within a period of three weeks.

With these directions both the petitions are disposed of.

November 10, 2009
pkv

KAILASH GAMBHIR,J