

20#

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.MISC. (MAIN) 2376/2010

MANNU BHARDWAJ

..... Petitioner

Through: Mr. D.K. Sharma and Mr. Shailender
Sharma, Advocates with the petitioner
in person.

versus

STATE & ANR.

..... Respondents

Through: Mr. Sunil Sharma, APP for the State
Mr. Raj Kumar Yadav, Advocate for
R-2 with the complainant in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

21.10.2010

%

This is a petition seeking quashing of FIR No. 275/2007 registered under Sections 323/308/506/34 IPC at PS Keshav Puram, Delhi. The FIR was lodged on the complaint of Respondent No. 2 Shri Duli Chand who is a retired teacher wherein it is stated that he along with his friends had gone for the evening walk where the Petitioner and his friends were playing cricket when a ball hit the Complainant. On the Complainant and his friends dissuading the Petitioner and his friends to play cricket in the park, they abused them and the Petitioner hit the Complainant with a bat resulting in injuries on the head, hands and feet. Though it is alleged that other friends

CRL.MISC. (MAIN) 2376/2010

Page 1 of 5

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

also received injury while saving the Complainant however, their MLCs are not on record and in charge sheet filed only the Petitioner has been named as an accused. The Complainant and the Petitioner have amicably resolved their dispute. Since the complainant is a retired teacher and the Petitioner a student who has repented for his conduct and has tendered his unconditional apology with an assurance to be more careful and sincere in future, the Complainant, who is present in person, does not want to pursue with the matter.

Though Section 308 IPC is non-compoundable however, looking at the future of the Petitioner, who is a student, and the fact that the Complainant being a teacher does not want to pursue the complaint in view of the assurance of reformation it would be in the interest of justice if the present FIR is quashed.

The Hon'ble Supreme Court in *Madan Mohan Abbot vs. State of Punjab*, 2008 (4) SCC 582 held that where the disputes in question involved are purely personal in nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time

so saved can be utilized in deciding more effective and meaningful litigation. 9

In *Manoj Sharma vs. State and others*, 2008 (16) SCC 1, the Hon'ble Supreme Court held:

“4. In *B.S. Joshi case* this Court drew a distinction between compounding of an offence as permitted under Section 320 CrPC and quashing of the complaint or criminal proceedings under Section 482 CrPC as also Article 226 of the Constitution. Pointing out that the appellant in the said case had not prayed for compounding of the offence as the same was not compoundable, this Court observed with reference to the earlier decision in *Pepsi Foods Ltd. v. Special Judicial Magistrate* that where the court will exercise jurisdiction under Section 482 of the Code could not be inflexible or rigid formulae to be followed by the courts could not be laid down. Exercise of such power would depend upon the facts and circumstances of each case but with the sole object of preventing abuse of the process of any court, or otherwise to secure the ends of justice. It was also observed that it is well settled that these powers have no bar, but the same was required to be exercised with utmost care and caution. Accordingly, the learned Judges held that the powers of the High Court under Section 482 of the Code to quash criminal proceedings or FIR or complaint were not circumscribed by Section 320 of the Code of Criminal Procedure.”

In the concurring judgment his Lordships of the Supreme Court held that Section 320 Cr. P.C cannot be read in isolation and it is to be read along with other provisions in Cr.P.C. One such provision being Section 482 Cr.P.C. wherein the words “Nothing in this Code” being a non obstante

clause, gives it an overriding effect over other provisions in the Cr.P.C. It was further held that:

23. "...The words "or otherwise to secure the ends of justice" in Section 482 implies that to secure the interest of justice sometimes (though only in very rare cases) the High Court can pass an order in violation of a provision in CrPC."

It was laid down that no doubt that a case under Section 302 IPC or other serious offences like those under Sections 395, 307 or 304-B IPC cannot be compounded and hence proceedings in those provisions 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 the compromise, however in some other cases the proceedings can be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable.

In the present case initially only a Kalandra under Sections 107/151 Cr.P.C. was prepared and subsequently an FIR under Section 323/506 IPC was registered and only subsequently Section 308 IPC was added. The injuries on the complainant being simple in nature, it would be appropriate to quash the FIR in the interest of justice and would also prevent the abuse of the process of the Court.

For a meaningful reformation the Respondent No.2 desires and the

Petitioner wishes to undertake positive social activities and in this regard offers that he would like to teach children as he is a student of B. Tech. Learned APP for the State also endorses the undertaking of the Petitioner.

It is, therefore, directed that the Petitioner will teach children at the Children's Home for Boys, Alipur I and II run by the Department of Women and Child Development for a period of six months. The Superintendent of the home will fix the timings for the classes twice a week for two hours each taking due care of the Petitioner's timings at the college. A quarterly report in this regard will be sent by the Superintendent, Children's Home for Boys, Alipur I and II to this Court.

For the aforementioned reasons, in the interest of justice FIR No 275/2007 registered under Sections 323/506/308/34 IPC PS Keshav Puram, Delhi and the proceedings pursuant thereto are hereby quashed qua the Petitioner.

Petition stands disposed of. Copy of this order be sent to the Superintendent, Children's Home for Boys, Alipur I and II.


MUKTA GUPTA, J.

OCTOBER 21, 2010

vn