

\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 3391/2011**

% *Judgment delivered on: 18th November, 2011*

HITENDE TYAGI @ SINTU & ANR. Petitioners
Through : Mr. Saurabh Tyagi, Adv.

versus

STATE & ANR Respondents
Through : Mr. Rajdipa Behura, APP.
Mr. Sanjay Agarwal, Adv. for R2/R3.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

- | | |
|---|----|
| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | NO |
| 2. To be referred to Reporter or not? | NO |
| 3. Whether the judgment should be reported
in the Digest? | NO |

SURESH KAIT, J. (Oral)

1. Learned counsel for the petitioners submits that vide FIR No. 578/2003, a case under Sections 365/325/34 Indian Penal Code, 1860 P.S. Timarpur, Delhi was registered against the petitioners on complaint of respondent Nos. 2 and 3.

2. It is further submitted that the matter has been amicably settled between the parties vide compromise deed dated 27.06.2011 for a total sum of Rs.2.75 lacs and respondent Nos. 2 and 3 do not want to pursue the case further qua the aforementioned FIR.

3. Respondent Nos 2 and 3 are personally present in the court today. They are duly identified by Mr. Sanjay Agarwal, Advocate, who on their instructions submit that they do not want to pursue the case further and they have no objection fit the present FIR is quashed.

4. Learned APP strongly opposes the quashing of FIR as the same pertains to Section 365 of Indian Penal Code, 1860 which is non-compoundable in nature, the FIR should not be quashed.

5. Learned APP referred the case of Hon'ble Supreme Court in ***Gian Singh v. State of Punjab & Anr.*** in ***SLP (Crl.) No.8989/2010*** wherein the Division Bench of the Supreme Court has referred three earlier decisions viz, ***B.S. Joshi v. State of Haryana (2003) 4 SCC 675***, ***Nikhil Merchant v. Central Bureau of Investigation & Anr. (2008) 9 SCC 677*** & ***Manoj Sharma v. State & Ors. (2008) 16 SCC 1*** to the larger Bench for re-consideration whether the abovesaid three decisions were decided correctly or not. Therefore, she has prayed that till the outcome of the

larger Bench of the Apex Court, present petition may be adjourned *sine-die*. Alternatively, she prayed that in the event, the FIR is quashed, heavy costs should be imposed upon the petitioners.

6. The Division Bench of Mumbai High Court in *Nari Motiram Hira v. Avinash Balkrishnan & Anr.* in *Crl.W.P.No.995/2010 decided on 03.02.2011* has permitted for compounding of the offences of ‘*non-compoundable*’ category as per Section 320 Cr. P.C. even after discussing the case of *Gian Singh (supra)*.

7. Therefore, in my opinion unless and until, the decisions which have been referred above, are set aside or altered, by the larger Bench of the Supreme Court, all the above three decision hold the field and are the binding precedents.

8. Learned APP for State submits that the Government Machinery has been mis-used and the precious time of the court has been consumed, heavy costs shall be imposed on the petitioners.

9. Learned counsel for the petitioners has, on instructions from the petitioners, come forward to donate an amount of Rs.50,000/- each for welfare of the needy children.

10. I appreciate this gesture of petitioners.
11. Keeping the Compromise Deed into view and the submissions of the learned counsel for the parties, I quash the aforesaid FIR No. 578/2003 under Sections 365/325/34 Indian Penal Code, 1860 registered at P.S. Timarpur, Delhi against the petitioners and all criminal proceedings emanating therefrom.
12. I further direct, payment of Rs.1 lacs be deposited in favour of “Nursery Primary School for Mentally Retarded, Mayur Vihar, New Delhi” within a period of two weeks. The proof of payment be placed on record.
13. The Principal of the School is directed to keep the amount in FDR initially for a period of 03 years and interest accrued thereupon shall be utilized for the wellbeing of the needy children of the School.
14. Criminal M.C. 3391/2011 is allowed and disposed of.
15. Dasti.

SURESH KAIT,J

NOVEMBER 18,2011/j/RS