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

+ **CRL.M.C. 3893/2011**

% *Judgment delivered on: 24th November, 2011*

JASPAL & ORS.

..... Petitioner

Through : Mr. Radhey Shyam Sharma, Adv.

versus

STATE NCT OF DELHI

..... Respondent

Through : Mr. Naveen Sharma, APP for State.

With ASI Madan Lal, PS-Mukherjee Nagar.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

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| 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)

CRL. M.A. 18355/2011

Exemption is allowed subject to just exceptions.

Criminal M.A. stands disposed of.

+ **CRL. M.C. 3893/2011**

1. Ld. Counsel for the petitioner submits that vide FIR no.149 dated 16.05.2009, case under Section 308/34 Indian Penal Code, 1860 was registered against the petitioners qua the complainant / petitioner no. 3 at PS-Mukherjee Nagar.
2. He further submits that compromise took place on 21.11.2011 between the petitioners and petitioner no.3 has amicably settled all the issues against petitioner no. 1 & 2.
3. Ld. Counsel further prayed that in these circumstances, FIR may be quashed.
4. Petitioner no.3 / complainant is personally present in the Court and IO / ASI Madan Lal of PS-Mukherjee Nagar has identified him. He submits that he has settled all the issue qua the aforesaid FIR and does not pursue the case further and if the present FIR is quashed, he has no objection.
5. On the other hand, Id.APP for the state submits that the offence is under Section 308/34 Indian Penal Code, 1860 and it cannot be compounded and relied upon *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, he has prayed that till the outcome

of the larger Bench of the Apex Court, present petition may be adjourned *sine-die*. Alternatively, he prayed that in the event, the FIR is quashed, heavy costs should be imposed upon the petitioners, as the government machinery has been used and precious time of the Court has been consumed.

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 *Gian Singh (supra)*.

7. Therefore, I also feel that 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. Keeping the settlement into view and the fact that petitioner No.3 does not wish to pursue his case against the petitioner no. 1 & 2, in the interest of justice, FIR No.149/2009 under Section 308/34 Indian Penal Code, 1860 registered against the petitioner no. 1 & 2 at police station Mukherjee Nagar, Delhi and the emanating proceedings therefrom, are hereby quashed.

9. I find force in the submission of learned APP for State regarding costs. Ld. Counsel for the petitioners on instruction from them submits that they want to donate some amount for the welfare purpose. I appreciate the gesture.

10. Keeping in view the financial condition of the petitioner no.1 & 2,

they are directed to deposit cost of Rs.15,000/- and Rs.5,000/- respectively in favour of Delhi Police Welfare Fund within 2 weeks from today. Proof of the same shall be placed on record.

11. CrI.M.C. 3893/2011 is accordingly allowed on the above terms.

12. Dasti.

SURESH KAIT, J

NOVEMBER 24, 2011

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