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

+ **CRL.M.C. 3918/2011**

ANIL & ORS

..... Petitioner

Through Mr. S K Srivastava, Advocate

versus

STATE & ORS

..... Respondent

Through Mr. S R Kamat, Advocate

SI Mr. Giriraj Singh, PS Badarpur, Delhi

Mr. Anurag, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

ORDER

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28.11.2011

Crl. M A NO. 18470/2011

Allowed, subject to just exceptions.

Crl. M C NO. 3918/2011

Notice. Mr. S K Srivastava, Advocate accepts notice on behalf of the petitioner. Mr. S R Kamat and Mr. Anurag, Advocates accepts notices on behalf of the respondents.

Learned counsel for the petitioner submits that vide FIR no. 315/2008 dated 29th June, 2008, a case under Sections 308/323/341/427 of the Indian Penal Code, 1860 was registered by the petitioners on the complaint of respondent no. 2 at police station Badarpur. He further submits that

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respondents no. 2 to 4 have amicably settled the issue. They all are staying in the same locality. Due to the intervention of the accompanied neighbours, they had decided to withdraw the case and they do not wish to pursue the same.

Respondents no. 3 and 4 are personally present in the Court with their counsel Mr. Anurag. SI Giri Raj Singh, IO of the case is also present who has identified the respondents no. 2 to 4.

Learned counsel for the respondents no. 2 to 4 on instructions submit that they have amicably settled all the issues qua the aforesaid FIR. They do not wish to pursue the said FIR. If the present FIR is quashed, they have no objection.

Learned APP on the other hand submit that the present case is under Section 308, which is non-compoundable.

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 reconsideration 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, as the government machinery has been used and precious time of the Court has been consumed.

3

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)*.

Therefore, I 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.

I find force in the submission of learned APP and to the fact that the precious time of the Court has been consumed. Therefore, the petitioners should be punished with cost.

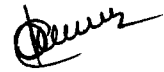
Learned counsel for the petitioner on instructions from the petitioner submits that petitioner no. 2 is running a small hotel and petitioner no.3 having bakery shop in Badarpur itself and petitioner no.1 is a faculty member (computer), in Government Girls Senior Secondary School, Badarpur. He is getting meager salary of ₹.7,500/- and all the three petitioners, i.e, petitioners no. 1, 2 and 3 wish to donate Rs. 25,000/-, ₹ 1 lac and ₹ 1 lac each for some welfare purpose. I, accordingly, direct the petitioners to pay the total amount i.e, ₹.2.35 lacs in favour of the Nursery Primary School for mentally Retarded, Mayur Vihar, Delhi, within four weeks from today and proof of the same shall be placed on the record.

The Principal of the aforesaid school is further directed to keep this money in an FDR initially for three years and thereafter, renew it

9

periodically. The interest accrued thereon shall be utilized for the well being of the needy children of the school.

Keeping in view the settlement of the respondents, Crl. M C No. 3918/2011 is allowed and the FIR and the proceedings arising there from are quashed. Dasti.



SURESH KAIT, J

NOVEMBER 28, 2011

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- fresh Cr MA 19029/11 for
Modification of Order dt 28/11/11.
of Warrant of Cost.