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

+ **W.P.(CRL) No. 1172/2012**

Date of Decision: 07th August, 2013

MAHENDER MANCHANDA & ANR. Petitioners
Through: Mr. Ramesh Gupta, Sr.
Advocate with Mr. Naveen
Sharma, Advocate with
petitioners in person.

versus

STATE & ANR. Respondents
Through: Mr. Rajesh Mahajan, ASC for
the State with SI Manish
Kumar PS Karol Bagh.
Injured in person.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a petition under Article 226 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure for quashing of FIR No.84/2002 U/s 308/506/34 IPC, PS Karol Bagh, New Delhi and the proceedings emanating therefrom. The aforesaid FIR was registered on the statement of Constable Anand, No. 1566/C, Police Station, Karol Bagh, Delhi wherein, he stated that on 22nd May, 2012,

he was posted along with Constable Vikram at Jessa Ram Hospital Police Picket from 8:00 p.m. onwards till 8:00 a.m. on 23rd May, 2012. On 23rd May, 2012, at about 1:00 a.m. one person informed them that two persons were beating a man at Pusa Road which was at a distance of 100 meter from the police picket and number of persons had gathered there. They immediately reached the spot and noticed two persons were beating a man who was lying on the road. Both persons were shouting that they will kill him as he has hit their vehicle. When they tried to dissuade them, they got annoyed and one of them told that he was Raghav Gambhir, brother of Gautam Gambhir and the aged man shouted ‘Maar Sale Ko, Dekh Lenge’. He was provoking the young man that nobody can do anything against them as his son Gautam Gambhir has connections with higher authorities. Despite their repeated efforts to save the injured, they hit the injured at his face and head with their feet and hands’ fists. When they were busy in looking after the injured, both the accused disappeared from the spot in their vehicle bearing No. DL6CJ 8817. They got the injured admitted in Jessa Ram Hospital for treatment. The Doctor had opined the nature of injuries as grievous. As such, from the perusal of statement and MLC, offence punishable under

Section 308/506/34 IPC was revealed and accordingly, the FIR was registered.

2. This petition has been filed for quashing the aforesaid FIR and the subsequent proceedings thereto on the ground that the vehicle driven by respondent No. 2 collided with the vehicle of petitioner No. 1 around mid night hours, as a result of which, a scuffle took place between the petitioners and the respondent No. 2 which resulted into minor injuries. Pursuant thereof, the petitioners were arrested. By the intervention of common friends, the matter has been amicably settled and no ill-will is left between the parties. Respondent No. 2 does not wish to continue with the proceedings. Hence, the FIR be quashed.

3. Learned counsel for the petitioner relied upon ***Basara & Ors. Vs. State and Anr., 2009*** (98) DRJ 381 where, under the similar circumstances, the FIR under Section 307/34 IPC was quashed.

4. Learned additional standing counsel although did not dispute that offence under Section 308 IPC is non-compoundable, yet after the pronouncement in ***Gian Singh's*** case, there is no legal bar to the quashing of the FIR. However, he highlighted the conduct of the petitioners by submitting that they gave beatings to respondent No.2,

threatened him and tried to exercise their influence by stating that no harm can be done to them as petitioner No. 2 Raghav Gambhir is the brother of Gautam Gambhir who is an influential person. He further referred to the MLC wherein the Doctor initially reported that the injury suffered by respondent No. 2 is grievous. However, later on, reported that it was simple injury.

5. Learned counsel for the petitioner submitted that no case under Section 308 IPC was in fact made out and because of registration of FIR under this section, the petitioners had to remain in jail for five days. Moreover, the Doctor should not have opined the nature of injuries as grievous without referring the X-Ray and it was because of his opinion that Section 308 IPC was invoked, pursuant to which the petitioners had to remain in jail. It was submitted that since the matter has now been amicably settled, no fruitful purpose will be served if the criminal proceeding are continued, as such, the FIR be quashed.

6. It is undisputed that offence under Section 308 IPC is non-compoundable. However, in *Basara* (Supra) relied upon by the learned counsel for the petitioner, reliance was placed on the decision reported as *B.S. Joshi Vs. State of Haryana, 2003 Cri.LJ 2028*

wherein it was held by the Supreme Court that Section 320 of Code of Criminal Procedure, 1973 does not limit or effect the powers of the High Court to quash the criminal proceedings or FIR or complaint even in non-compoundable offences. Para 8 of the said judgment is relevant and is reproduced here-in-below:

“8. It is thus clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.”

7. The view was reiterated in *Gian Singh v State of Punjab & Anr.*, 2012 (9) Scale 257, where the three Judges Bench of the Supreme Court dealt with the issue of quashing of FIR in non compoundable offences. Para 57 of the report is extracted hereunder:

“57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent

power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view,

because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

8. It is apparent from these judgments of Hon’ble Supreme Court that this Court has power to quash the criminal proceedings in cases arising out of non-compoundable offences. What this Court has to look for is whether the quashing would secure the ends of justice or not. Respondent No. 2 who was the injured and the complainant Constable Anand, were present in the Court and the injured has filed the affidavit that with the intervention of common friends, the matter has been amicably resolved and, now, there is no ill-will against the petitioners. He does not wish to continue the proceedings against the

petitioners. He has no claim against the petitioners in any manner whatsoever. As regards, the nature of injuries initially opined to be grievous and subsequently opined to be simple, Dr. Naveen was asked to file the affidavit and he has stated in his affidavit that as per the examination of Mr. Jaspal Singh on 23rd May, 2012, the injuries seemed to be grievous. Therefore, he opined the nature of injuries as grievous and referred the patient for X-ray PNS for final opinion. On receipt of X-ray report, it was observed that Mr. Jaspal has neither received any fracture nor sustained any grievous injuries. Therefore, he opined the nature of injuries as simple.

9. In ***Basara*** (supra), injuries were caused by knife on the abdomen of the son of the complainant. In view of the settlement between the parties, this Court allowed the quashing of the FIR by observing that no useful purpose is likely to be served by continuing with the criminal case registered against the petitioners. The consistent view of the Courts has been that if the High Court is of the view that the continuance of criminal proceedings would be an exercise in futility and would be mere wastage of public money, public time and time of the Court, then it would be appropriate for the

High Court to entertain a petition U/s 482 of the Code of Criminal Procedure and quash the proceedings.

10. Having regard to the facts and circumstances of the case and the legal position as noticed above, I find that no useful purpose will be served by allowing the criminal proceedings, pursuant to FIR No.84/2002 U/s 308/506/34 IPC, to continue as both the sides have stated on affidavit before this Court that the matter has been amicably settled and respondent No. 2 does not want to pursue the above noted case and wants to get the proceedings quashed. It would be an exercise in futility to proceed with the trial of the case as the injured as well as the accused party have compromised and settled the disputes with each other.

11. In view of the above, FIR No.84/2002 U/s 308/506/34 IPC, PS Karol Bagh, New Delhi and the proceedings emanating therefrom are quashed.

12. The petition is disposed of accordingly.

**SUNITA GUPTA
(JUDGE)**

AUGUST 07, 2013

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