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

+ CRL.M.C. 725/2013

JUGJEEV SARNA

..... Petitioner

Through: Mr.D.S.Kohli, Advocate

versus

STATE & ANR

..... Respondents

Through: Mr.Parveen Bhati, Additional
Public Prosecutor for respondent-
State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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18.02.2015

By way of this petition, quashing of FIR No.282/2009 under Section 338 of IPC and Section 30 of *Arms Act, 1959* registered at Police Station Punjabi Bagh, Delhi is sought on the ground that incident in question was purely accidental. While entertaining this petition, status report was called and now it is placed on record.

Learned counsel for petitioner submits that the petitioner's pistol was a licensed one and while he was cleaning it in his bedroom, it accidentally went off and in the process respondent No.2, who is his wife and petitioner himself were injured. Attention of this Court was drawn to the status report, which shows that the licence of fire-arm in question has been renewed upto 10th July, 2015 and there was a grace period for renewal of the fire-arm, when the incident in question had taken place. Learned Additional

Public Prosecutor for State submits that respondent No.2, who is the wife of petitioner got injured in the incident in question is present in the Court and has been identified to be so by SI Anoop Singh, who is the Investigating Officer of this case. Respondent No.2-*Mekhala Kaur*, present in the Court, affirms the contents of her affidavit of 19th February, 2013, filed in support of this petition and submits that incident in question was purely accidental and there was never an ill intention. Learned Additional Public Prosecutor for State submits that charge-sheet in this case has been filed for the offence under Section 338 IPC, which is compoundable but offence under Sections 25 & 30 of *Arms Act, 1959* are not compoundable.

The parameters governing quashing of FIR have been dwelt upon by the Apex Court in a recent judgment in *Narinder Singh v. State of Punjab* (2014) 6 SCC 466. The pertinent observations of the Apex Court in *Narinder Singh (Supra)* are as under:-

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in

those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. *When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:*

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. *Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.*

29.4. *On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.*

29.5. *While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice*

and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under

investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

In view of peculiarity of this case and affidavit of respondent No.2-injured, status report placed on record and the fact that incident in question took place by mistake only and that no *prima facie* case under Arms Act is made out, I find that continuance of proceedings arising out of this FIR would be an exercise in futility.

Accordingly, this petition is allowed subject to cost of ₹50,000/- to be deposited by petitioner with *Prime Minister's*

Relief Fund within a week from today. Upon placing on record the receipt of cost, FIR No.282/2009 under Section 338 of IPC and Section 25 & 30 of *Arms Act, 1959* registered at Police Station Punjabi Bagh, Delhi and the proceedings emanating therefrom shall stand quashed *qua* petitioner.

This petition is accordingly disposed of.

Dasti.

(SUNIL GAUR)
JUDGE

FEBRUARY 18, 2015

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