

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.M.C. 3603/2015 & Crl.M.A.12792/2015**

Reserved on: 10.12.2015
Date of decision: 18.12.2015

VARGHESE CHERIYAN Petitioner
Through Mr.Bharat Sharma, Adv. with
petitioner in person.

versus

STATE (NCT OF DELHI) & ANR Respondents
Through Mr. M.P. Singh, APP for the
state.
SI Dinesh Kumar, ASI Ramesh
Kumar, AHTU Crime
Branch/Delhi Police.
Mr.Manoj Taneja, Adv. for R2
with respondent no.2 in person.

+ **CRL.REV.P. 358/2009 & Crl.M.A.6966/2009 & 12259/2015**

SUKHVINDER SINGH @ GAGGA Petitioner
Through Mr.Manoj Taneja, Adv. with
petitioner in person.

versus

STATE N.C.T. OF DELHI Respondent
Through Mr. M.P. Singh, APP for the
state.
SI Dinesh Kumar, ASI Ramesh
Kumar, AHTU Crime
Branch/Delhi Police.
Mr.Manoj Taneja, Adv. for R2
with respondent no.2 in person.

Mr.Bharat Sharma, Adv. for
complainant with complainant
in person.

+ CRL.REV.P. 368/2009 & CrI.M.A.7360/2009

SUKHVINDER SINGH @ GAGGA Petitioner
Through Mr. Manoj Taneja, Adv. with
petitioner in person.

versus

STATE & ANR. Respondents
Through Mr. M.P. Singh, APP for the
state.
SI Dinesh Kumar, ASI Ramesh
Kumar, AHTU Crime
Branch/Delhi Police.
Respondent no.2 in person.

+ CRL.REV.P. 386/2009 & CrI.M.A.7709/2009

DEEPAK @ LALA Petitioner
Through Mr.Puneet Ahluwalia, Adv.
with petitioner in person.

versus

STATE NCT OF DELHI Respondent
Through Mr. M.P. Singh, APP for the
state.
SI Dinesh Kumar, ASI Ramesh
Kumar, AHTU Crime
Branch/Delhi Police.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

Crl.M.A No.12792/2015 in Crl.M.C.3603/2015

Exemption granted subject to all just exceptions.

Application stands disposed of.

Crl.M.C.3603/2015, Crl.Rev.P.Nos.358/2009, 368/2009 & 386/2009

1. All the aforesaid cases arise out of two FIRs namely FIR No.338/2000 dated 10.05.2000 (PS Lajpat Nagar) instituted for offences under Sections 186/353/332/308 of the IPC read with Sections 3/4 of the Public Property Damages Act and FIR No.407/2000 dated 07.06.2000 (PS Lajpat Nagar) instituted for offences under Sections 326/307/34 of the IPC.
2. Crl.M.C. No.3603/2015 (Varghese Cheriyan vs. State & Anrs.) has been preferred for quashing of the FIR No.407/2000 dated 07.06.2000 (PS Lajpat Nagar), registered on the complaint of respondent no.2 (Sukhvinder Singh alias Gagga) and all the related prosecution proceedings as against the petitioner Ct.Varghese Cheriyan arising out of the subject FIR which is pending before the learned Addl. Sessions Judge -04, Saket Courts, New Delhi.
3. Crl.Rev.P.358/2009 is directed against the order dated 26.03.2009 passed by the learned Addl. Sessions Judge, Fast Track Court, Patiala House Courts, Delhi, whereby charges have been framed against petitioner Sukhvinder Singh alias Gagga for offences under Sections 186/353/332/308/34 of the IPC and under Sections 3/4 of the Prevention of Damage to Public Property Act in connection with FIR No.338/2000 (PS Lajpat Nagar).

4. Crl.Rev.P.368/2009 has been preferred by Sukhvinder Singh alias Gagga whereby a challenge has been put up against the order dated 21.05.2009 passed by the Court of Addl. Sessions Judge, Fast Track Court, New Delhi, whereby the Trial Court has charged only Ct. Varghese under Section 326 of the IPC whereas another co-accused Jeet Pal, (respondent no.2) has been discharged in the case arising out of FIR No.407/2000 (PS Lajpat Nagar).

5. Crl.Rev.P.386/2009 is also against the order dated 26.03.2009, passed by the learned Trial Court whereby the charges have been framed against the petitioner under various sections of the IPC read with Sections 3/4 of the Damages to the Public Property Act in connection with FIR No.338/2000 (PS Lajpat Nagar).

6. In the night intervening between 09.05.2000 and 10.05.2000, while Constable Varghese along with Constable Jeet Pal were patrolling on Government motorcycle in Lajpat Nagar, they found six persons including Sukhvinder Singh alias Gagga and Ravinder alias Raja abusing each other and committing brawl. They were told to go back to their houses. On this, it has been alleged that Sukhvinder Singh alias Gagga, Ravinder alias Raja and his associates got enraged and started abusing Ct. Varghese and Ct. Jeet Pal. All attempts to pacify them proved abortive. Ct. Varghese was caught hold of by Sukhvinder Singh alias Gagga, Ravinder alias Raja and his accomplices and he was assaulted by fists and slaps. The official motor cycle of Ct. Varghese was also damaged. Ct. Varghese was hit on his head by a piece of brick by Ravinder alias Raja. In order to

save himself, Ct. Varghese took out his service revolver and fired in the air. Sukhvinder Singh alias Gagga caught hold of his hand and in the scuffle, a bullet hit Sukhvinder Singh alias Gagga in his right leg. On the statement of Ct. Varghese, FIR No.338/2000 (PS Lajpat Nagar) was registered for the investigation against accused persons including Sukhvinder Singh alias Gagga.

7. In the aforesaid case, Sukhvinder Singh alias Gagga was arrested and was produced in the Court on 10.05.2000. Sukhvinder Singh alias Gagga was injured in his leg. After perusing his MLC, certain directions were issued to the police authorities and he was remanded to judicial custody. He was granted bail later.

8. Sukhvinder Singh alias Gagga had another version to narrate. He also wanted to register an FIR with respect to the injuries received by him as a result of gun shot fired by Ct. Varghese. Since the FIR was not being registered, a complaint was filed in which an order was passed by learned Metropolitan Magistrate under Sections 156(3) of the Cr.P.C. for registration of the FIR. Pursuant to such a direction, FIR No.407/2000 dated 07.06.2000 was filed at PS Lajpat Nagar for offence under Sections 307/326/34 of the IPC against Ct. Varghese and Ct. Jeet Pal.

9. According to the version of Sukhvinder Singh alias Gagga, he was shot at by Ct. Varghese on his refusal to pay bribe money.

10. However, after investigations in the case lodged by Sukhvinder Singh alias Gagga (FIR No.407/2000), a cancellation report was filed before the Court of learned Metropolitan Magistrate. Chargesheet was

filed in FIR No.338/2000 against Sukhvinder Singh alias Gagga, Ravinder alias Raja and Deepak alias Lala. After the submission of chargesheet against Sukhvinder Singh alias Gagga, Ravinder alias Raja and Deepak alias Lala, cognizance was taken and all of them were summoned by the learned Metropolitan Magistrate.

11. A protest petition was filed by Sukhvinder Singh alias Gagga on 10.04.2003 against the cancellation report filed by the police in the case lodged by him. The cancellation report was rejected by the learned Magistrate on 08.10.2003 and cognizance under Section 326/34 of the IPC was taken against Ct. Varghese and Ct. Jeet Pal in FIR No.407/2000. Both of them were summoned as accused in the aforesaid case.

12. For the reasons that one of the cases namely FIR No.338/2000 was a sessions triable case, both the FIRs referred to above were finally marked to the Court of the learned Addl. Sessions Judge for disposal.

13. Both the cases remained pending for framing of charges.

14. On 26.03.2009, an order on charge was passed by the learned Trial Court against Sukhvinder Singh alias Gagga, Ravinder alias Raja and Deepak alias Lala, in FIR No.338/2000 (PS Lajpat Nagar), directing for framing of charges under Sections 186/353/332/308 of the IPC read with Sections 3 & 4 of the Public Property Damages Act.

15. Crl.Rev.P.358/2009 (Sukhvinder Singh alias Gagga vs. State) has been filed, as aforesaid, against the order dated 26.03.2009, directing for the framing of charges against the petitioner Sukhvinder

Singh alias Gagga in connection with FIR No.338/2000 (PS Lajpat Nagar).

16. By order dated 21.05.2009, in FIR No.407/2000 (PS Lajpat Nagar), charges were framed against Ct. Varghese for offence under Section 326 of the IPC. By the same order, Ct. Jeet Pal was discharged.

17. Both the cases namely FIR No.338/2000 (PS Lajpat Nagar) and 407/2000 (PS Lajpat Nagar) were adjourned and fixed for a particular date, for framing of charges.

18. Charges were framed accordingly on 29.05.2009.

19. Since Ct. Jeet Pal was discharged in FIR No.407/2000 (PS Lajpat Nagar), Sukhvinder Singh alias Gagga challenged the order dated 21.05.2009 vide Crl.Rev.P.368/2009.

20. Ct. Varghese, as has been stated earlier, has filed Crl.M.C.3603/2015 wherein prayer has been made for quashing of FIR No.407/2000 (PS Lajpat Nagar) and all other proceedings arising out of the aforesaid FIR and which is pending before the learned Addl. Sessions Judge, Saket Courts, New Delhi.

21. Crl.Rev.P.386/2009, has been filed only on behalf of Deepak alias Lala seeking set aside the order dated 26.03.2009 passed by the learned Trial Court whereby charges were framed against him in FIR No.338/2000 (PS Lajpat Nagar).

22. While all the petitions referred to above were pending for consideration before this Court, a proposal was made by Sukhvinder

Singh alias Gagga that he would be approaching the Commissioner of Police, Delhi, for grant of approval to settle the dispute with Ct.Varghese. As a result of the aforesaid proposal, on 27.03.2015, a bench of this Court, directed that in the event of any such representation being submitted before the Commissioner of Police (Department) by Sukhvinder Singh alias Gagga, the same be disposed of after affording a hearing to him within six weeks thereafter.

23. It has been submitted on behalf of the parties through their respective counsels that written representations were made by Sukhvinder Singh alias Gagga and Ct. Varghese respectively to the Commissioner of Police, Delhi. The Commissioner of Police heard Sukhvinder Singh alias Gagga, Ct. Varghese and Ct. Jeet Pal. On consideration of all the attending facts and circumstances, the Commissioner of Police, on 09.06.2015, accorded his approval and permitted Ct. Varghese to settle the matter/dispute and approach the Court for quashing of prosecution in all related matters.

24. As a result of the aforesaid permission, a compromise deed-cum-memorandum of understanding was executed and signed by Sukhvinder Singh alias Gagga and Ct. Varghese on 21.08.2015. As part of the settlement, Sukhvinder Singh alias Gagga has agreed to withdraw the Criminal Revision Petition No.368/2009 preferred by him whereby the order discharging Ct. Jeet Pal has been challenged.

25. Accordingly, a joint application (Crl.M.A.12259/2015) was filed in Crl.Rev.P.358/2009 seeking quashing of FIR No. 338/2000 (PS Lajpat Nagar) and prosecution proceedings against Sukhvinder

Singh alias Gagga on the ground of amicable settlement between the parties. Another joint petition (Crl.M.C.3603/2015) was filed by Ct. Varghese and Sukhvinder Singh alias Gagga seeking quashing of FIR No.407/2000 (PS Lajpat Nagar) and all prosecution proceedings emanating there from as against Ct. Varghese. This also was primarily on the ground of amicable settlement arrived at between the parties.

26. It was argued by the learned counsel appearing for the parties that they have amicably resolved all the disputes and no grievance against each other is left to be redressed. The parties herein before the Court want to put an end to the litigation pending between them and would have no objection if both the cases, in question (including all proceeding arising therefrom) are quashed by this Court.

27. It was further submitted that the dispute between the parties are inter-personal in nature and they have suffered mental agony and trauma since 2000. The matter stands resolved because of the intervention of all concerned as also because of the permission granted by the Commissioner of Police to Ct. Varghese in entering into settlement. It was lastly submitted that in order to bring peace and harmony between the parties as also for ends of justice, the matters be given quietus as continuance of proceedings in the aforesaid matters would not only be an exercise in futility but would be against the spirit and accord of justice.

28. The Supreme Court in ***Gian Singh vs. State of Punjab 2012 10 SCC 3030*** has referred to a number of circumstances when a non-

compoundable offence could be quashed on the basis of settlement between the offender and the victim, if the circumstances so warrant.

29. The Supreme Court in ***Gian Singh vs. State of Punjab (supra)*** has observed as hereunder:

“.....However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.”

30. In ***Narender Singh and Anrs. vs. State of Punjab and Anrs. 2014 (2) JCC 1360***, the Supreme Court has laid down the guidelines for acceptance of settlement between the parties in exercise of the powers under Section 482 of the Cr.P.C. while accepting the settlement and quashing the proceedings or refusing to accept the settlement with a direction to continue with the criminal proceedings. The aforesaid guidelines are as hereunder:

“(I) 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.

(II) 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.

(III) 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 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.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly 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.

(V) 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.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is 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 later 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.

(VII) 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 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. ”

31. After giving an anxious consideration over the pros and cons of the aforesaid cases, this Court is of the opinion that it would be in the interest of justice to put an end to the litigation between the parties. The allegations leveled in both the FIRs namely FIR No.338/2000 (PS

Lajpat Nagar) and 407/2000 (PS Lajpat Nagar) appear to be highly exaggerated and having brought into existence for settling some private dispute as against each other. Though, in FIR No.338/2000 (PS Lajpat Nagar), Ct. Varghese has alleged intemperate behavior of Sukhvinder Singh Gagga and Ors., but the allegations, on deeper analysis, appear to be one where there was some kind of show down between the police constables and local persons. Similarly, the case lodged by Sukhvinder Singh alias Gagga as against Ct. Varghese and Ct. Jeet Pal Singh appear to be counter blast to the case lodged by Ct. Varghese against him and his associates.

32. Thus, after going through the entire material available before this Court, FIR No.338/2000 (PS Lajpat Nagar) and FIR No.407/2000 (PS Lajpat Nagar) are quashed. All other proceedings emanating there from are also quashed. Resultantly the orders dated 21.05.2009 whereby the charges have been framed against Ct. Varghese, the order dated 26.03.2009 and 29.05.2009 whereby charges have been directed to be framed against Sukhvinder Singh alias Gagga and all others are also set aside.

33. Crl.M.C. 3603/2015, Crl.Rev.P.358/2009, Crl.Rev.P.386/2009 are allowed.

34. Crl.Rev.P.368/2009 is dismissed as withdrawn.

35. All the petitions are disposed of accordingly.

Crl.M.A.6966/2009 & 12259/2015 in Crl.Rev.P.358/2009 & Crl.M.A.7709/2009 in Crl.Rev.P.386/2009

1. In view of the petitions having been allowed, these applications have become infructuous.

2. These applications are disposed of accordingly.

Crl.M.A.7360/2009 in Crl.Rev.P.368/2009

1. In view of the petition having been dismissed as withdrawn, no orders are required to be passed in the instant application.

2. Dismissed as infructuous.

ASHUTOSH KUMAR, J

DECEMBER , 2015
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