

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

% *Judgment pronounced on: 6th April, 2015*

+ **Crl. M.C. No.3491/2014**

SHAAHID Petitioner
Through Mr.R.P.S.Bhatti, Adv.

versus

STATE & ANR Respondents
Through Mr.Ravi Nayak, APP for the State
along with SI Subhash Kumar,
PS Shahadara, in person.
Respondent No.2 in person.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of FIR No.117/2011, under Section 307/34 IPC, Police Station Shahdara, Delhi and proceedings emanating therefrom, on the basis of the settlement arrived at between the petitioner and the respondent No.2/complainant.

2. The petitioner is admittedly an accused in the above said FIR. The terms of the settlement are reproduced herein below:

“1. That the first party has paid a sum of Rs.1,00,000/- (Rupees One Lac only) to the second party by way of compensation.

2. That the second party being related to the first party has accepted the above said amount as compensation and has

also excused the first party since, the above said first party has suffered incarceration for a period of about 02 years.

3. That the first party undertakes not to ever quarrel with or harass the second party or her parents in future.

4. That the first party undertakes to bear the expenses for quashing of the above mentioned FIR in the Delhi High Court.”

3. When the matter is taken up, the petitioner, respondent No.2 and her mother are present. The respondent No.2/complainant has confirmed the settlement and also requested the Court to quash the FIR. Similar is the statement of her mother.

4. The prayer is strongly opposed by the learned APP for the State who has argued that the co-accused Imran who was also involved in the offence is absconding and has been declared proclaimed offender and further the petitioner is having two prior criminal involvements in FIR No.514/1988 under Sections 27/54/59 of Arms Act and FIR No.62/1996 under Sections 283/290 IPC. Learned APP for the State has also argued that the prosecution witnesses have already been examined. They have supported the case of prosecution so as the complainant. It is necessary to refer the details of the incident. The same is reproduced herein below:

“On 9th April 2011 a PCR call Vide DD No. 4A was received at PS Shahdra, Delhi and the same was entrusted to ASI Bhupender Singh for necessary action who went to GTB Hospital, Delhi and collected MLC No. A-1737/11 of injured Nazmeen D/o Chand Khan R/o H. No. 180, Double Story, Kabool Nagar, Shahdara, Delhi aged 15 Yrs.

The Victim had sustained 30 percent to 40 percent burnt injuries and was fit for statement. ASI Bhupender recorded her statement wherein she alleged that on 9th April 2011, she was studying in her house at second floor and at about 12:15 A.M. after midnight, someone knocked the door of her house. At that time, her other family members i.e. her mother, her sister and brother were sleeping. She opened the door and found that her maternal uncle, Shahid, the present petitioner and his son Imran were present at the door of her house. She saw that Imran was having one bottle in his hand containing some liquid substance. Imran poured the said liquid on her and accused Shahid lit the match-stick and threw the same on her due to which her clothes got burnt. She raised alarm and called her mother. Accused persons Shahid and Imran ran away from there. Her mother and her brother Sher Afza Khan on hearing her noise came there and took her in the bathroom and they poured some water to extinguish the fire. The police was called over 100 number and also her father was called who was not present at the house and had gone to factory. Her mother and brother took her to GTB Hospital, Delhi.

In this regard cases FIR No.117/11 U/s 307/34 IPC was registered at PS Shahdra, Delhi on 9th April 2011. On 25th April 2011 accused Shahid S/o Mohd. Illiyas was arrested in above said case and sent to J/C. Nature of injury on the MLC of injured was stated to be grievous in nature. Charge-sheet against Shahid has already been filed and charges were framed under Section 307/34 only against the Petitioner as the Co-accused, Imran S/o Shahid has been declared Proclaimed Offender and the prosecution evidence is complete before the trial court and the case is pending for further subsequent proceedings before the trial court.”

5. No doubt in the case of **Narinder Singh and Ors. vs. State of Punjab and Another**, (2014) 6 SCC 466, the Supreme Court has laid down the law as well as terms and conditions for quashing of

proceedings on the basis of settlement between parties if an offence alleged is under Section 307 IPC. The Supreme Court has observed in the said judgment that the High Court has got the inherent power under Section 482 Cr.P.C. to quash the criminal proceedings involving non-compoundable offences in view of the compromise/settlement arrived at between the parties.

6. The general guidelines and limitations on exercise of power of the High Court in all such cases have been discussed in great details. The said judgment has been again reconsidered in the case of **State of Madhya Pradesh vs. Deepak**, (2014) 10 SCC 285 by the same Hon'ble Judge who has referred the earlier decision i.e. **Narinder Singh** (supra) particularly para 29 and subsequently gave its finding with regard to guidelines to be applied at the time of quashing of proceedings under Section 307 IPC. Para 29 referred by the Supreme Court and its subsequent finding arrived at in the case of **State of Madhya Pradesh** (supra) reads 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.”

7. In paras 13 and 14 of **State of Madhya Pradesh** (supra) while applying the said para 29, the Supreme Court has held as under:

“13. It is clear from the reading of the passages extracted above, that offence under Section 307 is not treated as a private dispute between the parties inter se but is held to be a crime against the society. Further, guidelines are laid down for the Courts to deal with such matters when application for quashing of proceedings is filed, after the parties have settled the issues between themselves.

14. When we apply the ratio/principle laid down in the said case to the facts of the present case, we find that the injuries inflicted on the complainant were very serious in nature. The accused was armed with sword and had inflicted blows on the forehead, ear, back side of the head as well as on the left arm of the complainant. The complainant was attacked five times with the sword by the accused person out of which two blows were struck on his head. But for the timely arrival of brother of the complainant and another lady named Preeti, who rescued the complainant, the attacks could have continued. In a case like this, the High Court should not have accepted the petition of the accused under Section 482 of the Code.”

8. In case the law laid down by the Supreme Court in the case of **State of Madhya Pradesh** (supra) is read with the present case, this Court is of the considered view that without going into merit and expressing opinion on merit, the prayer made in the present case for quashing of FIR is not liable to be allowed for the following reasons:

- i) Admittedly, the co-accused Imran, son of the present petitioner, is absconding and he has been declared as proclaimed offender.

- ii) All the prosecution witnesses have been examined and they have supported the case of the prosecution so as the complainant.
- iii) Accused was involved in other cases.
- iv) The factual position about the absconding of his son Imran, who is the co-accused, as well as the previous involvements of the petitioner has not been disclosed in the petition.

9. In case both the judgments i.e. **Narinder Singh** (supra) and **State of Madhya Pradesh** (supra) are read in meaningful manner, no doubt the High Court has got the inherent power to quash the criminal proceedings involving non-compoundable offences in view of the settlement/compromise arrived at between the parties. However, while laying down the general guidelines and limitations in the said judgments for quashing the criminal proceedings, the intention behind the said judgments is not that the party should come before Court without disclosing all the facts and truth.

10. In the present case the true facts are missing in the petition filed by the petitioner.

11. Admittedly the son of the petitioner namely Imran is absconding and has been declared as proclaimed offender. In case of fairness, it was the duty of the petitioner to settle the matter with the complainant after bringing his son before the justice of law. The said fact about his whereabouts is also not mentioned in the present petition. As per

complaint, when the complainant opened the door and found her maternal uncle i.e. petitioner, his son Imran was present at the door of her house. She saw that Imran was having one bottle in his hand containing some liquid substance and he poured the said liquid on her and the petitioner lit the match-stick and threw the same on her due to which her clothes got burnt and both ran away from there.

12. In view of the said facts and circumstances of the case and considering the gravity of the offence and grievous injury caused to the female victim aged about 15 years at that time, the alleged offences fall under the category of serious offences. Thus without expressing any opinion on merit as the matter is at the final stage, I am not inclined to quash the FIR in question. However, it is made clear that the final judgment would be passed by the trial court as per merit of the case and without being influenced of the present judgment. The petition is dismissed.

(MANMOHAN SINGH)
JUDGE

APRIL 06, 2015