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

Judgment delivered on: 17th September, 2015

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CRL.M.C. No.4214/2011

JAI PRAKASH AND ANR

..... Petitioners

Represented by: Mr.Ajay Garg, Mr.Sudesh
Ranjan Singh, and Ms.Parul
Parmar, Advs.

versus

STATE AND ORS

..... Respondents

Represented by: Mr.Izhar Ahmad, APP for
the State with SI Rajesh
Kumar, PS Burari, Delhi in
person.
Mr.Ram Kumar Sharma,
Adv for R2.
Respondent No.3 in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners seek quashing of FIR No.383/2009 registered at Police Station Burari, Delhi, for the offences punishable under Sections 420/467/468/471/506/34 of the IPC and the consequential proceedings emanating therefrom against them.

2. Learned counsel appearing on behalf of the petitioners submit that the aforesaid case was registered on the complaint of respondent Nos.2 and 3 namely, S/Sh Babul Kumar Sanyal and Vikram Singh Rawat.

Thereafter, petitioner moved Bail Appln No.1673/2010 which was considered on 02.02.2011 and this Court while granting bail recorded that petitioner has arrived at a settlement with both the complainants / respondents mentioned above in terms of which it has been agreed that petitioner and other co-accused Jai Parkash and Gurbaksh Singh shall pay a sum of Rs.16.00 Lac to the complainants towards full and final settlement of their claims against them. To this effect, memorandum of understanding dated 29.10.2010 was effected and stated that some of Rs.4.00 Lac has already paid by the petitioner Jai Parkash to the complainant on 29.10.2010. He further stated that a sum of Rs.4.50 Lac was handed over to the complainants in the Court. While, paying said amount, it is recorded that co-accused collectively shall pay balance amount of Rs.3.50 Lac at the time of quashing of the FIR.

3. On the date of passing of the aforesaid order, the complainants / respondent Nos.2 & 3 were present in the Court duly represented through counsel and confirmed that settlement has been arrived and pursuant thereto have received an amount of Rs.8.50 Lac. Moreover, learned APP appearing on behalf of the State on instructions from the Investigating Officer confirmed that settlement had arrived between the parties.

4. In the order dated 24.10.2011 it is recorded that complainants / respondents stated before the Court that cheque which handed over by petitioners was bounced. Accordingly, petitioners paid an amount of Rs.2.50 Lac by cash in the Court of learned Additional Sessions Judge-01 (North), Delhi. It is further recorded that petitioners were to pay a sum of Rs.3.50 Lac at the time of quashing of FIR, but now they have already paid this amount. It is further recorded that compromise was effected

between the parties, but due to non-payment of the amount, respondents have moved the application for cancellation of the bail. It is further recorded that now, an amount of Rs.16.00 Lac in total has been paid by the petitioners. Therefore, nothing survives between them.

5. In view of the overall circumstances; and looking to the pronouncements of the Supreme Court in ***Gian Singh Vs. State of Punjab and Another***¹, which has referred to a number of matters for the proposition that even a non-compoundable offence can also be quashed on the ground of a settlement agreement between the offender and the victim, if the circumstances so warrant; and also ***Narinder Singh & Ors. Vs. State of Punjab & Anr.***², wherein the Supreme Court held as follows:-

“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

¹ (2012) 10 SCC 303

² (2014) 6 SCC 466

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.”

6. As the matter has been settled between the parties and agreed amount of Rs.16.00 Lac paid by petitioners to respondent Nos.2 & 3 as noted above, in view of the law discussed above, in the facts and circumstances as noted above, I am of the considered opinion that this matter deserves to be given a quietus as continuance of proceedings arising out of the FIR in question would be an exercise in futility.

7. Consequently, FIR No.383/2009 registered at Police Station Burari, Delhi, for the offences punishable under Sections 420/467/468/471/506/34 of the IPC and all proceedings emanating therefrom are hereby quashed.

8. In view of the above, the present petition is allowed.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 17, 2015

M/RS