

\$~4

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

Judgment delivered on: 09th September, 2015

+ **CRL.M.C. No.2202/2015**

MOHD ROZWAN AND ORS

..... Petitioners

Represented by: Mr.Archit Arora, Adv with
petitioners in person.

versus

STATE OF NCT OF DELHI AND ORS

..... Respondents

Represented by: Mr. Ravi Nayak, APP for the
State with SI Mousam
Ghani, PS Mayur Vihar,
Delhi in person.
Respondent Nos.2 to 5 in
person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A. No.7770/2015 (Exemption)

Exemption allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.2202/2015

1. Vide the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners seek quashing of FIR No.143/2009 registered at Police Station Mayur Vihar, Delhi for the offences punishable under Sections 323/341/308/506/34 of the IPC and the consequential proceedings emanating therefrom against them.

2. Learned counsel appearing on behalf of the petitioners submits that the aforesaid case was registered on the complaint of respondent No.2, Mohammad Yunus, who received simple injuries besides respondent Nos.3 to 5 in the scuffle. Thereafter, the matter was investigated by the police and petitioners were chargesheeted and after framing of charges, matter is pending for trial before learned Trial Court.

3. Learned counsel further submitted that in the aforesaid incident, cross FIR No.142/2009 was also registered against respondent Nos.3 to 4 on the complaint of petitioner No.2 herein. The matter involved in the aforesaid FIR has been settled between the parties and to that effect, joint statement has been recorded before the Court of learned Metropolitan Magistrate – 05, East District, Delhi vide order dated 01.09.2015. Since, the matter has been settled between the parties, present petition may be allowed.

4. Respondent Nos.2 to 5 are personally present in the Court and have been identified by the Investigating Officer of the case SI Mousam Ghani. All them of jointly state that petitioners are staying in the same locality of which they are habitants and due to intervention of the common friends and respectable members of the society, the matter has been settled. Thus, they do not want to pursue the case any further against petitioners and if the instant petition is allowed, they have no objection thereto.

5. Learned APP appearing on behalf of the State submits that after investigation, police chargesheeted the petitioners and upon framing of charges, prosecution witnesses have been examined and matter is pending for further proceedings before learned Trial Court. It is not in dispute that

aforesaid cross case FIR noted above was also registered, and compromised, however five years passed, thus, public time and money has been consumed. If this Court is inclined to quash the FIR, heavy costs may be imposed upon the petitioners.

6. Undisputedly, offence punishable under Section 308 of the IPC is non-compoundable, however, considering the facts and circumstances of the case and in exercise of the inherent powers under Section 482 of the Code of Criminal Procedure, 1973, this Court has power to accept the compromise. This issue has been decided by the Constitution Bench of the Supreme Court in the case titled as ***Gian Singh Vs. State of Punjab and Another***¹, wherein held as under:

“61..... 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

¹ (2012) 2 SCC (L&S) 998

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 favour 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.”

7. The aforesaid view has been affirmed by the Apex Court in the case of **Narinder Singh & Ors. Vs. State of Punjab & Anr.**² wherein held as under:-

² 2014 6 SCC 466

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.”

8. As discussed above, offence punishable under Section 308 IPC is not compoundable being of serious nature, however, if the Court feels that continuation of criminal proceedings will be an exercise in futility and if justice demands that the dispute between the parties is put to an end and peace is restored, the Court can order for quashing of the FIR or criminal proceedings as it is the duty of the Court to prevent continuation of unnecessary judicial process.

9. In view of the law discussed above, considering the settlement arrived at between the parties and the statement of respondent Nos.2 to 5 and the learned APP for the State, 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.

10. Consequently, FIR No.143/2009 registered at Police Station Mayur Vihar, Delhi for the offences punishable under Sections 323/341/308/506/34 of the IPC and all proceedings emanating therefrom, are hereby quashed.

11. Before parting with this order, though I find force in the submissions of learned APP for the State regarding putting some cost upon the petitioners. However, keeping in view the financial status of the petitioners, I am not inclined to put the petitioners on some terms.

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

13. A copy of this order be given *dasti* to the learned counsel for the parties.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 09, 2015

M/RS