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

+ (i) **CRL.M.C. 4758/2014**

SHIVAM GUPTA & ORS Petitioners

Through: Mr. Vineet Malhotra and
Mr. Shubhendu Kaushik, Advocates
Mr. Manav Gupta, Advocate for
petitioner No. 5

versus

STATE & ORS Respondents

Through: Mr. P.S.Patwalia, ASG with Mr. M.
Shoeb Alam, Mr. Shreya Sinha and Mr.
Akash Nagar, Advocates for respondent-
State
Mr. V.K. Bali, Senior Advocate with Mr.
Aditya Soni, Mr. Karan Mehta and Mr.
Vikram Pradeep, Advocates for
respondent Nos. 2, 3 and 4
Ms. Usha Rangnani, ACP with Inspector
Virender Singh, SHO PS-Vasant Kunj

+ (ii) **CRL.M.C. 4762/2014**

SUKHVINDER SINGH & ORS Petitioners

Through: Mr. V.K. Bali, Senior Advocate with Mr.
Aditya Soni, Mr. Karan Mehta and Mr.
Vikram Pradeep, Advocates

versus

STATE & ORS Respondents

Through: Mr. P.S.Patwalia, ASG with Mr. M.
Shoeb Alam, Mr. Shreya Sinha and Mr.
Akash Nagar, Advocates for respondent-
State
Mr. Manav Gupta, Advocate for
respondent No. 6

Mr. Vineet Malhotra and Mr. Shubhendu
Kaushik, Advocates
Ms. Usha Rangnani, ACP with Inspector
Virender Singh, SHO PS – Vasant Kunj

+ (iii) **CRL.M.C. 5711/2014**

SHIV KUMAR & ORS Petitioners

Through: Mr. Vineet Malhotra and
Mr. Shubhendu Kaushik, Advocates

versus

STATE & ORS Respondents

Through: Mr. P.S.Patwalia, ASG with Mr. M.
Shoeb Alam, Mr. Shreya Sinha and Mr.
Akash Nagar, Advocates for respondent-
State

Mr. V.K. Bali, Senior Advocate with Mr.
Aditya Soni, Mr. Karan Mehta and Mr.
Vikram Pradeep, Advocates for
respondent Nos. 2, 3 and 4
Ms. Usha Rangnani, ACP with Inspector
Virender Singh, SHO PS – Vasant Kunj

+ (iv) **CRL.M.C. 5713/2014**

RANVIJAY SINGH Petitioner

Through: Mr. Manav Gupta, Advocate

versus

THE STATE & ORS Respondents

Through: Mr. P.S.Patwalia, ASG with Mr.
M. Shoeb Alam, Mr. Shreya Sinha
and Mr. Akash Nagar, Advocates
for respondent-State
Mr. V.K. Bali, Senior Advocate
with Mr. Aditya Soni, Mr. Karan
Mehta and Mr. Vikram Pradeep,

Advocates for respondent Nos. 2, 3
and 4

Ms. Usha Rangnani, ACP with
Inspector Virender Singh, SHO PS
– Vasant Kunj

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

In the above-captioned four petitions quashing of FIR No.485/2014 registered under Sections 324/307/34 IPC and Section 27 of the *Arms Act, 1959* and cross FIR No.486/2014 under Section 323/327/452/506/34 of IPC and Section 27 of the *Arms Act, 1959* both registered at Police Station Vasant Kunj, Delhi is sought on the basis of misunderstanding between the parties being cleared in terms of Memorandum of Understandings of 31st July, 2014 and 3rd September, 2014.

These petitions are strongly resisted by learned Additional Solicitor General, who has played CCTV footage of the incident in question in the Court in the presence of learned counsel for petitioners, who have also seen it.

The venue of this incident is KEYA Bar where petitioner-*Parth Wadia* with his friends and personal security guards (PSOs) had gone on 27th June, 2014 around 10.15 p.m. and had tried to enter the bar but he was stopped by a security guard-*Neeraj* by saying that the entry for the said day was only for the couples. As per the case projected in cross FIR

in question, a fight took place between PSOs of *Parth Wadia*, who was there with his four friends and the security guards of the Bar and in the said incident, both the sides had suffered injuries, which were found to be of simple nature. As per the version given in these FIRs, the security guard of the KEYA Bar-*Neeraj* is said to have been fled away from the spot after waiving a knife and one of the PSOs of *Parth Wadia* was found to be armed with a pistol. Initially, the FIRs were registered for the offence under Section 323/324/452/506/34 IPC and Section 27 of the *Arms Act* and later on, offence under Section 307 IPC was also added. The first five petitioners of the above captioned first petition are said to be from respectable families and petitioner-*Sukhvinder Singh* [Crl.M.C.No.4762/2014] is stated to be Manager of the KEYA Bar and rest of the petitioners [except petitioner-*Ranvijay Singh* of Crl.M.C.No.5713/2014] are the PSOs and security guards of the said Bar and have placed on record their respective affidavits seeking quashing of the cross FIRs.

With the consent of learned counsel for both the sides, the above-captioned petitions were heard together and are being disposed of by this common judgment. At the hearing, learned senior counsel for petitioners had submitted that all the petitioners have clean antecedents and none of them had used any weapon or firearm and there was no destruction of any public property. It was submitted that there was no unlawful assembly nor there was any common object of rioting and so no offence under Section 147/148/149 of IPC is made out. It was also submitted that the offence committed by the parties in these petitions at best comes within the ambit of Sections 323/324, which are compoundable and no

offence under Section 307 IPC is made out and the said offence has been later on added. It was pointed out that simple injuries sustained were neither on vital parts nor were found to be dangerous to life. It was also submitted that no house trespass was committed by any of the petitioners nor was any threat extended and so offences under Section 452/506 IPC are also not made out. Reliance was also placed on the decisions in *Narinder Singh & Ors. v. State of Punjab & Anr.* (2014) 6 SCC 466, *Yogendra Yadav v. State of Jharkhand* (2014) SCC Online SC 568, *Gold Quest International Private Limited v. The State of Tamil Nadu & Ors.* (2014) SCC Online SC 703, *Crl.M.C.No.6621/2006 Basara & Ors. v. State & Anr.* decided on 3rd September, 2007 to submit that it is a fit case to quash the proceedings arising out of these cross FIRs.

Learned Additional Solicitor General for respondent-State had submitted that the compromise arrived at between the parties is of no avail as offence committed by the parties is serious one and the CCTV footage reveals that there was unlawful rioting by the parties, which created a sense of fear and insecurity in the minds of public persons, who visit such places. Attention of this Court is drawn to the Apex Court decision in *Gian Singh Vs. State of Punjab* (2012) 10 SCC 303 to submit that FIRs in serious cases like instant one ought not to be quashed. Lastly, it was submitted that quashing of FIRs pertaining to such incident would embolden the criminal elements and create atmosphere of fear and anxiety and such ugly scene created by the parties, who were armed ought to be curbed with a heavy hand.

The accused persons as well as complainant parties of these two FIRs have placed on record their respective affidavits to seek quashing of

these cross FIRs.

After having heard both the sides and on perusal of the FIRs in question, the response of respondents-accused, affidavits of the parties filed in support of this petition to seek quashing of the cross FIRs, I find that the parameters governing quashing of FIR under Section 307 IPC as reiterated by Apex Court in *Narinder Singh v. State of Punjab* (2014) 6 SCC 466 need to be adverted to with particular reference to paragraphs No.29.6 to 29.7, which are as under:-

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.”

Section 159 of IPC reads as under:-

Affray.—When two or more persons, by fighting in a public place, disturb the public peace, they are said to “commit an affray”.

Upon considering the facts of the instant case and after viewing the CCTV footage, this Court is of the considered opinion that taking the prosecution case at its best, the offence committed by the parties largely comes within the definition of affray or offences under Section 323/324 IPC are attracted.

In any case, the prosecution case does not fall within the ambit of Section 307 IPC or Section 27 of the *Arms Act, 1959*. Such a view is being taken particularly after viewing the CCTV footage. During the pendency of these petitions, it was deemed appropriate to refer the parties to Delhi State Legal Services Authority for counseling and in view of report of 27th March, 2015 received from the said Authority, I find that parties in both these petitions, who have clean antecedents, have been adequately counseled. However, this Court is conscious of the ground realities and realizes the need to ensure that such like incidents ought not to occur at public places. Therefore, while quashing the cross FIRs, this Court finds it to be most appropriate to direct that if any of the accused persons of these two FIRs is found to be indulging into such or similar offences in future then the proceedings arising out of FIRs, in question, would be revived against such a petitioner-accused.

With aforesaid rider, these four petitions are allowed with cost of ₹25,000/- each to be deposited by petitioners-Shivam Gupta, Parth

Wadia, Sameer Khurana, Kabir Sheikh, Shubhan Jain, Ranvijay Singh & Sukhvinder Singh and cost of ₹10,000/- each to be deposited by petitioners-*Nepal Singh, Shyam Sunder, Hardeep, Neeraj, Deepak Uppal, Shiv Kumar, Sachin Rathi, Mohan Lal, Sudhir Kumar, Jitender, Gurjit Singh, Mandeep Singh, Harish Kumar & Rajiv* to be deposited with *Prime Minister Relief Fund* within a period of two weeks and upon placing on record the receipt of cost, FIR No.485/2014 registered under Sections 324/307/34 IPC and Section 27 of the *Arms Act, 1959* and cross FIR No.486/2014 under Section 323/327/452/506/34IPC and Section 27 of the *Arms Act, 1959* both registered at Police Station Vasant Kunj, Delhi and the proceedings emanating therefrom shall stand quashed *qua* petitioners.

These petitions are accordingly disposed of.

(SUNIL GAUR)
JUDGE

MAY 29, 2015

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