

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

% Order delivered on: 23rd March, 2015

+ **Crl. M.C. No.5908/2014**

MAHADEV NAAG @ MAHESH & ANR Petitioners
Through Mr.P.K.Mishra, Adv. with
Ms. Kamini Kaushal, Adv.

versus

THE STATE (NCT OF DELHI) & ANR Respondents
Through Mr.Ravi Nayak, APP for the State
along with ASI Omkar, PS Dwarka
South, in person.
None for respondent No.2.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The present petition has been filed by the petitioners under Section 482 Cr.P.C. for quashing of FIR No.60/2012, under Sections 323/342/370/ 374/34 IPC, Sections 23/26 of Juvenile Justice Act, 1986, Section 16 of Bonded Labour Act and Sections 14/3 of Child Labour Prohibition Act, 1986, registered at P.S. Dwarka South, New Delhi.
2. Brief facts of the case are that on the basis of the complaint made by respondent No.2, the aforesaid FIR was registered on 30th March, 2012 initially against Dr.Sanjay Verma and Dr.Sumita Verma. The petitioners, namely, Mahadev Naag @ Mahesh and Mukesh

Mahto were also arrested in this case. Subsequently, all of them were released on regular bail by order dated 11th April, 2012. After the investigation, the charge-sheet/challan was filed by the concerned IO on 31st January, 2013 and the matter was listed for trial. During the trial, on the request of both the parties, the learned Trial Court referred the matter before the Mediation Centre, Dwarka Courts, New Delhi where, after discussion, the disputes between the parties were amicably settled on 9th October, 2014. The terms and conditions of the settlement are mentioned in the mediation report. Copy of the same is placed on the record which has been duly signed by all the accused including the petitioners and the complainant Gangotri Kumari (minor) through her mother Smt.Saniyaro Devi.

3. As regards Dr.Sanjay Verma and Dr.Sumita Verma, the offences under Sections 323/343/34 IPC and 23 of Juvenile Justice Act were compounded and the FIR with regard to the remaining Sections was quashed by order dated 18th November, 2014 passed by this Court in Crl. M.C. No.5207/2014. Paras 4 to 10 of the said order are reproduced here as under:-

“4. It is stated that the aforesaid FIR came to be lodged at the instance of the complainant and her mother under Sections 23/26 of the Juvenile Justice Act along with Section 14 of the Child Labour Prohibition Act, read with Sections 323/342/374/34 IPC, on the ground that the petitioners had engaged the services of a minor as a domestic servant and had thereafter also ill-treated her. After investigation, the chargesheet was filed in the court below. During the course of the trial, the matter was referred to mediation by the court below, and ultimately, on 09.10.2014, the matter was settled between the parties

before the Mediation Centre, Dwarka, New Delhi. A copy of the settlement arrived at between the parties has also been annexed to the petition. In terms of the settlement, the mother and natural guardian of the complainant agreed to settle the entire dispute for a sum of Rs. 3 Lacs which amount also stands paid to the complainant and her mother on 09.10.2014.

5. Counsel for the petitioner has also drawn my attention to paragraph 5 to 11 of the aforesaid settlement before the mediation centre on 09.10.2014 to demonstrate that the settlement is a comprehensive one that has been arrived at between the complainant and all the accused persons; including one Shri Mukesh Mahto and Shri Mahadev, and the complainants have undertaken to withdraw the matter against these two persons also after having concluded an overall settlement with all of them. He submits that under the circumstances, even though Shri Mukesh Mahto and Shri Mahadev, are not present before this Court today, this is a fit case where the said FIR ought to be quashed at least qua the petitioners since only the petitioners have approached this Court thus far.

6. At the same time, offences under Section 323/343/34 IPC and Section 23 of the Juvenile Justice Act, which were compoundable stand duly compounded before the court below.

7. The complainant and her mother, Saniyaro Devi, also specifically approbate the aforesaid settlement and acknowledge the receipt of the amount of Rs. 3Lacs in the full and final settlement of their claims against the petitioners. They further state that they do not wish to proceed further in the matter and the same be closed.

8. Counsel for the State submits that looking to the overall circumstances, and the peculiar facts of this case,

and since the matter has been settled on terms between the complainant and the petitioners, as well as other accused, no useful purpose would be served in continuing with the proceedings since the complainant is no longer interested in supporting the prosecution.

9. Looking to the decision of the Supreme Court in ***Gian Singh v. State of Punjab***, (2012) 10 SCC 303, which has referred to a number of matters for the proposition that even a non-compoundable offence can also be quashed on the basis of a settlement between the offender and the victim, if the circumstances so warrant; by observing as under:

“58.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 the victim and the offender and the 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 FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.”

And also in ***Narinder Singh and Ors. v. State of Punjab and Anr.*** 2014(2) Crimes 67 (SC) where 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 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 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.

29.4 On the other hand, 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.

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 Indian Penal Code 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 Indian Penal Code 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 Indian Penal Code 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 Indian Penal Code. 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.

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 a conclusion as to whether the offence under Section 307 Indian Penal Code 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 Indian Penal Code 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.”

I am of the considered opinion that since the complainant has settled the matter on terms with the petitioners before the Mediation Centre, Dwarka Courts, New Delhi, on 09.10.2014, and also received adequate compensation from the petitioners, and where the complainant is no longer interested in supporting the prosecution thereby diminishing its chances of success, no useful purpose would be served in continuing with the proceedings against the petitioners.

10. Consequently, the petition is allowed, and FIR No. 60/2012 registered under Section 374/34 IPC and read with Section 23 of the Juvenile Justice Act, at Police Station Dwarka South, and all proceedings emanating therefrom, are hereby quashed.”

4. Notice of this petition was issued to respondent No.2 who was served by speed post. As per the mediation report, the respondent No.2 has already been paid the entire settled amount of Rs.3 lac by Dr.Sanjay Verma and Dr.Sumita Verma. It does not appear from the said report that any amount was paid by the present petitioners. However, the contention of the learned counsel for the petitioners is

that half of the amount was paid by the petitioners to Dr.Sanjay Verma and Dr.Sumita Verma in cash.

5. Despite of service by speed post, respondent No.2 did not appear today when the matter was taken up. The petitioners are present before Court who are duly identified by their counsel. Their identification proofs have been filed along with the petition.

6. In view of the averments made in the petition coupled with the fact that the same FIR has already been quashed qua two of the accused persons by this Court, as well as the settlement arrived at between the parties, the FIR No.60/2012, under Sections 323/342/370/ 374/34 IPC, Sections 23/26 of Juvenile Justice Act, 1986, Section 16 of Bonded Labour Act and Sections 14/3 of Child Labour Prohibition Act, 1986, registered at P.S. Dwarka South, New Delhi and proceedings pursuant thereto are hereby quashed qua the petitioners.

7. However, in view of the seriousness of the nature of the case, while quashing the FIR, I am of the view that some conditions must be imposed upon the petitioners so that similar offence should not be repeated by them. The details of such conditions are as under:-

- (i) The petitioners shall deposit Rs.20,000/- each with the Delhi High Court Mediation and Conciliation Centre within four weeks from today. The original receipts of depositing the cost shall be filed by the petitioners in the Registry within six weeks and a copy thereof be also handed over to the IO. In case the cost is not deposited by the

petitioners within the stipulated period, the matter shall be listed before Court for further directions.

- (ii) The petitioners shall also furnish their personal bonds of good conduct for a period of 3 years and shall also file their affidavits that they will not indulge in similar type of offences in future. During this period, they shall not reside within the territory of Delhi which they have submitted that they are not residing. The said bonds of undertaking be filed along with the affidavits before the SHO concerned who shall keep the same on record and see that during this period, the petitioners would not repeat the said practices in future.

8. With these directions, the present petition is disposed of.

9. Dasti.

(MANMOHAN SINGH)
JUDGE

MARCH 23, 2015/ka