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

Judgment delivered on: 1st July, 2015

+ CRL.M.C. 2581/2015

VISHESH & ANR

..... Petitioners

Represented by: Mr. Samson Honey, Adv.

versus

THE STATE (GOVT OF NCT OF DELHI)

& ANR

..... Respondents

Represented by: Mr. M.N. Dudeja, APP

for State with SI Amarjeet Singh, PS-

Geeta Colony.

Mr. Saurabh Kaushik and Mr. Arun Gaur,

Advs. for R2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A. 9216/2015

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

+ **CRL.M.C. 2581/2015**

1. Vide the present petition, petitioners seek directions thereby quashing FIR No. 307/2015, registered at PS-Geeta Colony, punishable under Section 307 IPC.

2. The case of the prosecution is that on 21.05.2015 at about 6 PM two ladies came to the house of Narender Pal, respondent no.2, who were not known to him. They represented themselves as the owner of Shop no. 8 situated at property no. 17/93A, Geeta Colony and rang the door bell of his house and said they want to talk to him. On this, he came downstairs and told them that their tenant Vishesh got installed a chimney for cooking of chicken, which produces so much smoke and requested them to make arrangements for fibre sheets. During conversation on that shop, Vishesh and Tarun started misbehaving with him and also started abusing and beating him up. Vishesh was in full anger, picked up a Farsha (weapon used for cutting chicken) and attacked him. However, since the respondent no. 2 bow down suddenly, he could not hit him. Thereafter, complainant Narender Pal rang at no. 100 and called the police and the said complaint was culminated into FIR mentioned above for the offences punishable under Section 307/34 IPC.

3. Ld. Counsel appearing on behalf of the petitioners submits that respondent no. 2 Narender Pal, who is an Advocate by profession, has resolved the issues with the petitioners and he does not want to pursue the case further. He further submits that the case is at the initial investigation stage. Weapon of offence is not recovered and no injury is caused to the victim / respondent no. 2.

4. Ld. Counsel further submits that due to the intervention of the common friends and to maintain harmony in the Society, the

respondent no. 2 and the petitioners have settled all the disputes and respondent no. 2 does not want to pursue the case further.

5. Respondent no. 2 is present in the court. Being an Advocate, he is fully aware of the consequences and intricacies of the offence. He submits that he did not receive any injury. He was staying in the same building with the petitioners. Due to the intervention of the common friends and to maintain the harmony in the Society, he has compromised this matter with the petitioners and does not want to pursue the case further. The compromise deed to this effect is at Page 27, Annexure P-2 of the Paper Book.

6. Mr. M.N. Dudeja, Id. APP appearing on behalf of the State submits that the offence punishable under Section 307 IPC is in the category of serious crime and is non-compoundable and has to be tried by the Court of Sessions. The Govt. Machinery has been put in motion and there is a sheer wastage of time and money of the public. Therefore, if this Court is inclined to quash the FIR mentioned above, heavy cost be imposed upon the petitioners.

7. It is not in dispute that offence punishable under Section 307 IPC is a serious offence and non-compoundable. However, this Court has a power to accept the compromise, as held by the Constitution Bench of the Supreme Court in the case titled as ***Gian Singh v. State of Punjab and Another (2012) 2 SCC (L&S)998***, wherein the Hon'ble Supreme Court held as under:

“58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. 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 victim and the offender and 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 F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

59. B.S. Joshi : (2003) 4 SCC 675, Nikhil Merchant : (2008) 9 SCC 677, Manoj Sharma (2008) 16 SCC 1 and Shiji alias Pappu (2011) 10 SCC 705 do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power Under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court Under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi : (2003) 4 SCC 675, Nikhil Merchant : (2008) 9 SCC 677, Manoj Sharma (2008) 16 SCC 1 and Shiji alias Pappu (2011) 10 SCC 705, this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence Under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power Under Section 482. The two powers are distinct and different although ultimate

consequence may be same viz., acquittal of the accused or dismissal of indictment.

60. We find no incongruity in the above principle of law and the decisions of this Court in Simrikhia : (1990) 2 SCC 437, Dharampal : 1993 Cri. L.J. 1049, Arun Shankar Shukla : AIR 1999 SC 2554, Ishwar Singh : (2008) 15 SCC 667, Rumi Dhar (Smt.) : (2009) 6 SCC 364 and Ashok Sadarangani JT 2012 (3) SC 469. The principle propounded in Simrikhia: (1990) 2 SCC 437 that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In Dharampal : 1993 Cri. L.J. 1049, the Court observed the same thing that the inherent powers Under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Similar statement of law is made in Arun Shankar Shukla : AIR 1999 SC 2554. In Ishwar Singh : (2008) 15 SCC 667, the accused was alleged to have committed an offence punishable Under Section 307, Indian Penal Code and with reference to Section 320 of the Code, it was held that the offence punishable Under Section 307 Indian Penal Code was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In Rumi Dhar (Smt.)²⁸ although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences Under Section 120-B/465/467/468/471 of the

Indian Penal Code along with the bank officers who were being prosecuted Under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. Ashok Sadarangani JT 2012 (3) SC 469 was again a case where the accused persons were charged of having committed offences Under Sections 120-B, 465, 467, 468 and 471, Indian Penal Code and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in B.S. Joshi : (2003) 4 SCC 675, Nikhil Merchant: (2008) 9 SCC 677 and Manoj Sharma (2008) 16 SCC 1 and it was held that B.S. Joshi : (2003) 4 SCC 675, and Nikhil Merchant : (2008) 9 SCC 677 dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in Ashok Sadarangani JT 2012 (3) SC 469 was more on the criminal intent than on a civil aspect. The decision in Ashok Sadarangani JT 2012 (3) SC 469 supports the view that the

criminal matters involving overtures of a civil dispute stand on a different footing.

61. The position that emerges from the above discussion can be summarised thus: 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 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 pre-dominantly 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.”

8. In view of above, the Court has to deal each and every case on its own facts and circumstances. In the present case, the investigation is at the initial stage. No injury is caused to the victim

/ respondent no. 2. The weapon of offence has not been recovered by the Police.

9. In these circumstances of the case, if this case is sent for trial, than possibility of conviction is remote and bleak and there is every likelihood of acquittal of the petitioners. Therefore, continuation of the criminal proceeding will be futile in view of the compromise arrived at between the parties.

10. Moreover, the accused remained in Jail for 6-7 days. Therefore, to secure the ends of justice, to maintain peace and harmony in the locality and considering the fact that continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer, it is germane that criminal case is put to an end.

11. Considering the facts and circumstances of the case and exercising the inherent powers conferred upon this Court Under Section 482 of the Code of Criminal Procedure, 1973, to prevent abuse of the process of court and to secure the ends of justice, I hereby quash the FIR No. 307/2015, registered at PS-Geeta Colony, under Section 307/34 IPC with emanating proceedings thereto, if any.

12. So far as the imposition of cost is concerned, petitioner no. 1, Vishesh is 21 years of age and is pursuing BBA Final year, whereas petitioner no. 2 Tarun is a petty property dealer and is earning his livelihood by giving property on rent, if available. Therefore,

though, I find force in the submission of the ld. APP for the State, however, keeping in view the financial position of the petitioners, I am not inclined to impose cost upon them in this case.

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

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

SURESH KAIT, J.

JULY 01, 2015

jg/sb