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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on: 5th August, 2015

+ **CRL.M.C. No.3138/2015**

SHAH ALAM & ORS. Petitioners
Represented by: Mr.Zafar Sadique, Advocate.

Versus

STATE (GOVT OF NCT OF DELHI) & ANR. Respondents
Represented by: Mr. Ravi Nayak, Additional
Public Prosecutor for State
with IO ASI Khurshid Ali,
PS Pandav Nagar.
Mr. R.K. Yadav, Advocate
for the Respondent No. 2
with Respondent No. 2 in
person.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.No.11214/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

Crl. M.A.No.11215/2015 (for delay)

Keeping in view the averments made in the instant application,
delay of 28 days in filing the petition noted above is condoned.

Accordingly, the application is disposed of.

CRL.M.C. No.3138/2015

1. Vide the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners seek quashing of FIR No.22/2000

registered at Police Station Trilokpuri, Delhi, for the offences punishable under Sections 341/448/380/457/120-B/34 IPC and the consequential proceedings emanating therefrom against the petitioner.

2. Allegations against the petitioners are that the respondent No.2/complainant Mohd. Danish was residing on rent in the property bearing No.E-77, Pocket-D, Mayur Vihar, Phase-II, Delhi, owned by Mr. Ashok Bohara. On 24.01.2000, after locking the house, the respondent No.2 went out for some business purposes and when returned on 29.01.2000 at about 8.30 PM, he found 4-5 persons with two women present in the house. When inquired, it was told that the said house belonged to them as they had purchased the same. Though goods and articles of respondent No.2 were lying in the house but the aforesaid persons did not allow him to enter. Therefore, he made a complaint which has been culminated into case mentioned above.

3. Learned counsel appearing on behalf of the petitioners submits that the respondent No.2 has settled the dispute with the petitioners, therefore, he does not want to pursue this case further against them.

4. Respondent No.2 is personally present in the Court with his counsel named above. He has been duly identified by Investigating Officer ASI Khurshid Ali. The learned counsel, on instructions, submits that petitioner No.8, Ashok Bohara is the landlord of the property in question wherein respondent No.2 was living on rent since 1994. There was some misunderstanding between the respondent No.2 and the petitioner No.8 as he wanted to evict the respondent No.2, however, complainant continued to remain therein. Thus, when respondent No.2 had gone out, the petitioner No.8 sold the house in question to petitioner No.1, who took possession of the same with the help of petitioners No. 2 to 7.

5. Learned counsel further submits that the dispute between the parties has been fully resolved and amicably settled. Till date, respondent No. 2 has not been examined. Respondent No.2 affirms the contents of his affidavit dated 23.06.2015 supporting this petition and submits that now no dispute with petitioners survives and so, the proceedings arising out of the FIR in question be brought to an end.

6. Learned Additional Public Prosecutor appearing on behalf of the State submits that when this case was registered, primarily the prosecution authorities was of the view that the petitioners have a racket active in land grabbing and there was no sale and purchase qua the property in question. He further submits that since petitioner No.8, Ashok Bohara and respondent No.2/complainant, i.e., landlord and tenant of the said property have come forward and have not denied their landlord-tenant relationship, thus, the State has no objection if the present petition is allowed. However, submits that cost may be imposed upon the petitioners as FIR in question pertains to the year 2000.

7. Under the circumstances and looking to the decision of the Supreme Court in the case of ***Gian Singh Vs. State of Punjab and Another (2012) 10 SCC 303***, wherein the Apex Court 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; 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.”

8. The aforesaid view has been affirmed by the Apex Court in the case of ***Narinder Singh & Ors. Vs. State of Punjab & Anr. 2014 6 SCC 466*** wherein held as under:-

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.”

9. Keeping in view the law discussed above, settlement arrived at between the parties and the statements of the learned Additional Public Prosecutor for the State and respondent No.2, 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.22/2000 registered at Police Station Trilokpuri, Delhi, for the offences punishable under Sections 341/448/380/457/120-B/34 IPC and all proceedings emanating therefrom are hereby quashed against the petitioners.

11. Before parting with the order, as regards the issue of imposition of costs upon the petitioners is concerned, I find force in the submissions of the learned Additional Public Prosecutor for the State. However, the petitioner No.1 has come forward to contribute a sum of Rs. 1,00,000/- for the welfare purposes.

12. Accordingly, the petitioner No.1 is directed to deposit an amount of Rs.1,00,000/- in favour of the Superintendent, '*Welfare Fund for Children and Destitute Women*' Nirmal Chaya, Jail Road, Tihar, New Delhi, who shall keep the amount in the form of FDR and interest of the same shall be used for the well being of the said persons. The cost amount shall be deposited within two weeks and proof thereof shall be placed on record with intimation to the concerned Investigating Officer.

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

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

**SURESH KAIT
(JUDGE)**

AUGUST 05, 2015

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