

\$~52

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

Judgment delivered on: 6th July, 2015

+ **CRL.M.C.No. 2642/2015**

JOGINDER SINGH & ORS. Petitioners

Represented by: Mr. Amit Kumar and
Mr. Gagan Chawla,
Advocates with all the
Petitioners in person.

Versus

THE STATE (GOVT OF NCT DELHI) & ANR. Respondents

Represented by: Mr. Neeraj Kumar,
Additional Public Prosecutor for the State with
SI Ram Bhav, P.S. Khyala.
Respondent No.2 in person alongwith her Father
and daughter Gurmahak.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A. No.9438/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

+ **CRL.M.C. 2642/2015**

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners seek quashing of FIR No. 371/2013 registered at Police Station Khyala for the offences

punishable under Sections 498A/406/34 IPC on 10.09.2013 and the consequential proceedings emanating therefrom against the petitioners on the ground that the matter has been amicably settled between the parties.

2. Learned counsel appearing on behalf of the petitioners submits that the aforesaid case was registered on the complaint of respondent No.2, Ms. Ishpreet Kaur, consequent upon certain matrimonial and domestic disputes arisen between the parties pursuant to her marriage dated 03.03.2013 with the petitioner No.1 Joginder Singh. After investigation, police has filed the chargesheet. Charges are yet to be framed. However, in the meantime, the parties have amicably settled their disputes and accordingly, obtained a decree of divorce on 21.04.2015 by mutual consent under Section 13 B (2) of the Hindu Marriage Act, 1955. Copies of the settlement arrived at between the parties on 24.04.2014 and the decree sheet dated 21.04.2015 are annexed to the present petition.

3. Learned Additional Public Prosecutor appearing on behalf of the State submits that since the matter pertains to domestic and matrimonial dispute, parties have amicably settled the matter, obtained divorce by mutual consent and the respondent No.2/complainant is no longer interested in supporting the prosecution, therefore, looking to the overall circumstances, no useful purpose will be served in continuing the proceedings. However, submits that if this Court is inclined to allow the present petition, then heavy cost should be imposed upon the petitioners as in the present

case, Government machinery came into motion and due to the exercise carried out by the police, precious public money and time has also been consumed.

4. The petitioners had agreed to pay an amount of Rs.1,50,000/- at the time of quashing of the FIR in question. Accordingly, the demand draft of the said amount has been handed over to the respondent No. 2 in Court, which is accepted by her without any objection.

5. Respondent No. 2 is personally present in the Court and has been identified by the Investigating Officer of the case. She submits that she has already taken divorce from the petitioner No.1. She has received the agreed amount as per the settlement. She has no other complaints whatsoever against any of the petitioners and does not want to pursue the case further. Therefore, she has prayed that she has no objection if the present petition is allowed.

6. 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.”

7. While recognizing the need of amicable resolution of disputes in cases like the instant one, the aforesaid dictum has been affirmed by the Apex Court in a recent judgment in ***Narinder Singh & Ors. Vs. State of Punjab & Anr. 2014 6 SCC 466***. The pertinent observations of the Apex Court are 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.”

8. In the case of ***Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr. (2013) 4 SCC 58***, wherein the Supreme Court in respect of the matrimonial disputes has specifically held as follows:-

“15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not

be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed....”

9. Both the parties, who are present in the Court today, approbate the aforesaid settlement dated 24.04.2014, recorded before the learned Metropolitan Magistrate (West), Mahila Courts, Tis Hazari Courts, Delhi, their subsequent statements recorded by the learned Magistrate on 13.04.2015 to this effect and undertake to remain bound by the same.

10. Keeping in view the settlement arrived at between the parties, aforementioned statements of the petitioner No.1 and the respondent No.2 and in addition to the statement made by the respondent No.2 before this Court that she does not want to pursue the case further

against the petitioners and she has no objection if the present petition is allowed, I deem it appropriate to quash the FIR in question as the subject matter of this FIR is essentially matrimonial, which now stands mutually and amicably settled between the parties because of which, its chances of success in the matter are now greatly diminished.

11. So far as the issue regarding imposition of cost is concerned, this Court has interacted with each of the petitioner about their occupation and comes to the conclusion that the petitioners are very poor. However, the respondent No.2 is also belongs to a very poor family. She has one daughter, namely, Gurmahak, from her previous marriage, who is present in Court.

12. At this stage, showing generosity and just to help Gurmahak, petitioners No. 1, 4 and 7 have come forward to pay an amount of Rs.5,000/- each in favour of Gurmahak.

13. This Court appreciates the kind gesture shown by the petitioners noted above.

14. Accordingly, FIR No. 371/2013 registered at Police Station Khyala for the offences punishable under Sections 498A/406/34 IPC and all proceedings emanating therefrom, are hereby quashed.

15. The petitioners No. 1, 4 and 7 are directed to pay an amount of Rs.5,000/- each in favour of Gurmahak. The total amount of Rs.15,000/- be deposited in favour of above named girl in the form of an FDR for a period of five years. Accordingly, the petitioner No.1 is

directed to get prepared an FDR in the sum mentioned above in the name of Gurmahak to be handed over to the respondent No.2 before the Trial Court on the date fixed, i.e., 30.07.2015.

16. Since the proceedings before the Trial Court stand quashed, therefore, only the petitioner No.1 and the respondent No.2 shall appear before the Trial Court on the date fixed.

17. In view of the above observations, the present petition is allowed.

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

19. The Registry of this Court is directed to send a copy of this order to the concerned Trial Court for compliance.

SURESH KAIT, J.

JULY 06, 2015

Sb/jg