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

Judgment delivered on: 6th July, 2015

+ CRL.M.C. 2651/2015

MUZZAFFAR ALI ALIAS SUKKA

..... Petitioner

Represented by: Mr. G.H. Mirza, Adv.

versus

THE STATE GOVT OF NATIONAL CAPITAL
TERRITORY OF DELHI & ANR

..... Respondents

Represented by: Mr. Satish Kr. Verma,
APP for State with SI Vihas Sahu, PS-
Uttam Nagar.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM. No.9456/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

+ **CRL.M.C. 2651/2015**

1. Vide the present petition, petitioner seeks directions thereby quashing the FIR No. 232/2010, registered at PS-Uttam Nagar for the offences punishable under Sections 363 IPC.

2. Ld. Counsel appearing on behalf of the petitioner submits that aforesaid case was registered against the petitioner on the complaint of respondent no.2, i.e., the father of Naseen Banu.

3. The allegations against the petitioner are that on 14.07.2010, petitioner kidnapped Naseen Banu when she was 16 years of age. Both married thereafter vide Nikah dated 16.07.2010. Thereafter, petitioner approached the Sessions Court for anticipatory bail, same was granted vide order dated 28.07.2010. On being traced, Naseen Banu was initially sent to Nirmal Chhaya. Thereafter, vide order dated 15.09.2010, she was allowed to go with the petitioner. Both of them are living together as husband and wife since then and two children are born out of this wedlock.

4. Ld. Counsel appearing on behalf of the petitioner submits that now, petitioner and respondent no. 2 have become close relatives. Respondent no. 2 is present in the Court is no more interested to pursue the case further against the petitioner. If the petitioner is asked to face the trial, it will be a great injustice to respondent no. 2 and his daughter as well. Ld. Counsel further submits that chargesheet has been filed, charges have been framed and the case is pending for prosecution evidence.

5. On the other hand, ld. APP appearing on behalf of the State submits that on the date of her kidnapping, Naseen Banu was 16 years of age. Therefore, the aforesaid case was registered. Though the petitioner and Naseen Banu entered into a marriage vide Nikah on 16.07.2010, however, vide order dated 15.09.2010, ld. Addl. Sessions Judge (West) had given her custody to the petitioner. Thereafter, petitioner and the said lady are living together as husband and wife. Two children are born out of the wedlock. Therefore, there would be no useful purpose to direct the petitioner to face trial.

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. Respondent no. 2 / complainant is present in the Court. He has been identified by the IO concerned. He does not wish to pursue the case further against the petitioner. His daughter is already married with the petitioner and they have two children. Therefore, he has prayed to allow the instant petition. The petition of Respondent no. 2 has supported its statement with affidavit which is on record.

9. As was alleged, on the date of kidnapping of Naseen Banu, she was 16 years of age only. However, the petitioner got the ossification test done of Naseen Banu whereby opined that her age was 18 years. Both of them have already entered into the marriage vide Nikah. Two children are born out of this wedlock. Therefore, there would be no purpose if the trial is allowed to go on.

10. Keeping in view the facts and circumstances of the case, settled law and in the interest of justice, FIR No. 232/2010, registered at PS-Uttam Nagar for the offences punishable under Sections 363 IPC with emanating proceedings thereto, if any, is hereby quashed.

SURESH KAIT, J

JULY 06, 2015

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