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

+ W.P.(CRL) 2054/2015 & Crl. M.A.13686/2015

AKASH SONIK & ORS

..... Petitioners

Through: Mr.Vikrant Chowdhary, Advocate.

versus

STATE (GNCT OF DELHI) & ANR

..... Respondents

Through: Ms.Srilina Roy, Advocate for the
respondent No.1.

Mr.Azhar Qayum, Advocate for the
respondent No.2.

ASI Dharamvir Singh, P.S.CWC
Nanak Pura, New Delhi.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **21.12.2015**

Crl. M.A. 13686/2015 (for delay of 48 days)

For the reasons stated in the application, delay of 48 days stands
condoned.

Application stands disposed of.

W.P. (Crl.) 2054/2015

The present petition has been filed on behalf of the petitioners seeking
quashing of FIR No. 27/2010 (P.S. Nanakpura) instituted for the offences
under Sections 498A/406/34 of the IPC, on the strength of a settlement
having been arrived at with the respondent no.2/complainant.

The petitioner no.1 married respondent no.2 on 26.11.2004, in

accordance to Hindu rites and ceremonies. The marriage was duly consummated and two children were born out of the wedlock. However, due to certain matrimonial disputes and differences respondent no.2 was compelled to leave her matrimonial home along with her child, in the month of March 2008. Later, in the year 2010, the subject FIR (FIR No. 27/2010) was lodged by the respondent no.2 against the petitioner and his family at PS Nanakpura.

It is submitted that due to intervention of well wishers and after mutual discussions, the parties have decided to amicably resolve all their disputes. In pursuance thereof, a compromise deed was also executed on 12.12.2014. In terms of the said compromise, it was agreed that the custody of the two children would remain with respondent no.2. Furthermore, it was agreed that the petitioners would pay an amount of Rs. 14 Lakhs to respondent no.2 towards full and final settlement including permanent alimony and maintenance of the said children. It was also agreed that petitioner no.1 would have no visitation rights and shall in no manner try to contact respondent no.2 or any other member her family. The said amount of Rs. 14 Lakhs was agreed to be paid in three installments. The first installment of Rs. 4 Lakhs was agreed to be paid at the time of signing the said compromise deed, thereafter, the second installment of Rs. 5 Lakhs was agreed to be paid at the time of completion of the First Motion and the remaining amount of Rs. 5 Lakhs would be paid at the time of finalization of the Second Motion. Pursuant to the completion of the aforementioned conditions, it was undertaken, the parties would approach this court for quashing of the subject FIR.

The first installment of Rs. 4 Lakhs was duly paid by the petitioner

no.1, vide cheque dated 15.12.2014, which was duly encashed by respondent no.2. However for some reason there was delay in filing the First Motion and therefore the subsequent conditions were not fulfilled by the petitioner no.1. On 16.12.2015 before this court, the petitioner no.1 undertook to pay the remaining amount of Rs. 10 Lakhs to the respondent no.2/complainant and on the other hand the respondent no.2 assured this court that she would file the First Motion on or before the next date of hearing.

It is submitted by the counsel on behalf of the petitioners that he is ready to fulfill the remaining conditions of the compromise arrived at with the respondent no.2 and has brought two demand drafts, of Rs. 5 Lakh each, to court today towards full and final settlement of his obligation in terms thereof. It is submitted by the counsel on behalf of the respondent no.2 that the First Motion has been filed and the parties are required to appear in the same.

The parties are present in court.

The investigation in the matter is still continuing.

Two demand drafts dated 18.12.2015 for Rs. 5 Lakhs each, have been handed to the respondent no.2, who accepts the same without any caveat towards full and final settlement of all her claims and disputes against the petitioners.

Considering the fact that the grievance of the respondent No.2 has been completely redressed, this Court is inclined to quash the FIR but subject to certain conditions.'

In ***Gian Singh vs. State of Punjab & Another***, (2012) 10 SCC 303, the Supreme Court has held that cases which are not compoundable under Section 320 of the Cr.P.C. could also be quashed, when continuation of any

criminal proceeding would be an exercise in futility and where justice demands that the dispute between the parties should be put to an end and peace is restored. But ending of such criminal proceedings could only be ordered for securing the ends of justice

The Supreme Court has further observed in ***Gian Singh vs. State of Punjab & Another*** (Supra):

“58..... No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the 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 the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the 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 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. 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.”

[Refer to B.S. Joshi, (2003) 4 SCC 675; Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1.]

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 chargesheet 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.”

Thus, the inherent powers of the High Court, having a wide plenitude could be used for quashing the FIR for securing the ends of justice and to prevent the abuse of the process of the court.

The subject FIR (FIR No. 27/2010, P.S. Nanakpura) and the emanating proceedings thereof are, for the reasons aforesaid, quashed.

The petition is disposed of in terms of the aforesaid.

ASHUTOSH KUMAR, J

DECEMBER 21, 2015

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