

\$~50

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

Judgment delivered on: 7th August, 2015

+ **CRL.M.C. No.3193/2015**

HASIBUN NISHA KHATUN ALIAS HASIBUN Petitioner
Represented by: Ms. Nisha Narayanan, Advocate.

Versus

STATE NCT OF DELHI AND ANOTHER Respondents
Represented by: Mr. Izhar Ahmad, Additional Public
Prosecutor for the State with SI
Rakesh Kumar, P.S Sarita Vihar.
Mrs. Jaspreet Aulakh, Ms. Aditi
Tomar and Mr. Deepak Jain,
Advocates for Respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.No.11366/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.3193/2015

1. Vide the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks quashing of FIR No.444/2014 registered at Police Station Sarita Vihar, New Delhi, for the offence punishable under Section 135 of the Electricity Act, 2003, and the consequential proceedings emanating therefrom against the petitioner.

2. Learned counsel appearing on behalf of the petitioner submits that the aforesaid case was registered on the complaint of respondent

No.2/BSES Rajdhani Power Ltd. The petitioner has paid the full and final settlement amount of Rs.14,500/- to the respondent No.2, who in lieu thereof has issued the 'No Due Certificate' thus, respondent No.2 does not want to pursue the present case against the petitioner.

3. Learned counsel appearing on behalf of the respondent No.2/BSES Rajdhani Power Ltd., submits that the petitioner has made the full and final payment of the bill and now nothing is due against her. Therefore, the respondent No.2 does not want to pursue this case further against the petitioner.

4. Learned Additional Public Prosecutor appearing on behalf of the State submits that since dispute is between the petitioner and the respondent No.2, who is satisfied with the amount paid by the petitioner, the State has no objection if the present petition is allowed.

5. In the case of ***Gian Singh Vs. State of Punjab and Another (2012) 2 SCC (L&S)998***, the Apex Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

“ Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.

Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the 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.”

6. 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.”

7. In view of the law discussed above, settlement arrived at between the parties and the statements of respondent Nos.1 and 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.

8. Consequently, FIR No.444/2014 registered at Police Station Sarita Vihar, New Delhi, for the offences punishable under Section 135 of the Electricity Act, 2003, and all proceedings emanating therefrom are hereby quashed qua the petitioner.

9. In view of the above, the present petition is allowed with no order as to costs.

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

**SURESH KAIT
(JUDGE)**

AUGUST 07, 2015
sb