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

+ **CRL.M.C. 3212/2015**

Date of Decision : October 05th, 2015

SATISH KUMAR MAL & ANR

..... Petitioner

Through: Mr.Amarjeet Rai and Ms.Chitra Mal,
Advs.

versus

STATE (GOVT OF NCT OF DELHI) & ANR

..... Respondent

Through: Mr.Panna Lal Sharma, APP.
Mr.Harish Malik, Adv.with R-2.
ASI Amrit Lal, PS Kirti Nagar.

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

P.S.TEJI, J.

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioners, for quashing of FIR No.289/2004 dated 08.04.2004, under Sections 498A/406 of IPC, 1860 registered at Police Station Kirti Nagar, Delhi on the basis of settlement arrived at between the complainant/respondent No.2, namely, Smt. Manju Mal and the petitioners, namely, Sh. Satish Kumar Mal and Ms. Sapna Tiwari .

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent No.2, present in the Court has been identified to be the complainant/first-informant of the FIR in question by her counsel.

3. Respondent No.2, present in the Court, submitted that the dispute between the parties has been amicably resolved. Respondent no.2 has no grievances against the petitioners. The parties vide the Memorandum of Understanding (MOU) dated 24.07.2012 arrived at New Delhi between Smt. Manju Mal and Shri Satish Mal settled their dispute. As per the MOU the parties have decided to dissolve their marriage by mutual consent on the terms that the respondent no.2 shall continue to have exclusive custody and guardianship of the minor child-Tanish and the petitioner no. 1 shall not claim any custody and visitation rights with respect to the minor child. The respondent no. 2 in accordance with the terms of the MOU has received two installments of Rs.2.5 lakh each at the time of filing the first and the second motion of divorce and as per the compromise term last and final installment of Rs. 2.5 lakh is payable by the petitioner no. 1 at the time of quashing of the proceedings. The

affidavit dated 30.07.2015 of respondent no. 2-Ms. Jaspreet Kaur, giving consent for quashing of the FIR in question has been filed on record. In the affidavit the respondent no. 2 stated that she has settled all the disputes with the petitioners. As the dispute between the parties has been resolved, no useful purpose will be served in continuing the prosecution of the petitioners. Now no dispute with the petitioners survives and so, the proceedings arising out of the FIR in question be brought to an end. Statement of the respondent No.2 has been recorded in this regard in which she stated that she has entered into a compromise with the petitioners and has settled all the disputes with them. She further stated that she has no objection if the FIR in question is quashed.

4. In *Gian Singh v. State of Punjab (2012) 10 SCC 303* Apex Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

“61. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of

justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.”

5. The aforesaid dictum stands reiterated by the Apex Court in a recent judgment in *Narinder Singh v. State of Punjab (2014) 6 SCC 466*. The relevant observations of the Apex Court in *Narinder Singh (Supra)* 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.”

6. The Hon’ble Apex Court and this Court is of the considered opinion that the inherent powers under Section 482 Cr.P.C. are ought to be exercised in the absence of express provisions of law to prevent the abuse of process of law and to secure the ends of justice. Matrimonial litigation is one of the cases where the dispute arises on small issues or differences at a particular point of time which culminates into the situation of entering into the litigation. These differences if not permitted to be sort out immediately or during the short tenure then it leads to the multiplicity of the litigation and makes the life of the family members/relatives as hell. This Court is of the

considered opinion that in matrimonial disputes, the Court must exercise inherent power under Section 482 Cr.P.C. to secure the ends of justice and to avoid the abuse of process of law. When normally the litigation is being initiated, some non-compoundable offences are also alleged between the parties. Definitely, if the offences are compoundable and are covered under Section 320 Cr.P.C, then the parties could settle down the dispute and compound the offences, but due to the addition of non-compoundable offences, it becomes endless litigation despite settling down the matter between the parties and unnecessarily the litigation is being prolonged. In other words, it could be termed that the pendency of such a litigation tantamount to abuse of process of law. The High Court while exercising the inherent power to secure the ends of justice ought to exercise its power to prevent the abuse of process of law and to secure the ends of justice. In other words, if the matrimonial disputes are being settled down, this Court is of the considered opinion that the High Court must exercise its inherent power and put an end to the litigation between the parties arisen on account of matrimonial dispute.

7. The incorporation of inherent power under Section 482 Cr.P.C.

is meant to deal with the situation in the absence of express provision of law to secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process of law is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of the legal process in the delivery of justice. Whereas, the inherent power is not to be exercised to circumvent the express provisions of law.

8. Since the subject matter of this FIR is essentially matrimonial, which now stands mutually and amicably settled between the parties, particularly when an amount of Rs.5 lakh has been paid and a further sum of Rs.2.5 lakh will be paid after quashing of the FIR in question, therefore, continuance of proceedings arising out of the FIR in question would be an exercise in futility and is a fit case for this Court to exercise its inherent jurisdiction.

9. In the facts and circumstances of this case and in view of affidavit of respondent no.2 and the statement made by the respondent no.2 in Court, the FIR in question warrants to be put to an end and proceedings emanating thereupon need to be quashed.

10. Accordingly, this petition is allowed and FIR No.289/2004 dated 08.04.2004, under Sections 498A/406 of IPC, 1860 registered at Police Station Kirti Nagar, Delhi and the proceedings emanating therefrom are quashed against the petitioners.

11. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

OCTOBER 05, 2015
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