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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 1849/2015
KASIM & ORS. Petitioner
Through: Rajuddin Khan, Adv.

versus

STATE & ANR. Respondent
Through: Ms. Richa Kapoor, ASC for the State
with Mr. Rohit Kaul, Adv.
ASI Devender Kumar, PS Uttam
Nagar

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR
ORDER
% **28.08.2015**

Crl.M.A.12457/2015

Exemption granted subject to all just exceptions.

Application stands disposed of.

W.P.(CRL) 1849/2015

The present petition on behalf of the petitioners is for quashing of the FIR No.528/2015 (P.S. Uttam Nagar) for offence instituted under Sections 308/34 of the IPC. The prayer for quashing of the FIR is made on the strength on compromise having been effected between respondent No.2 and the petitioners.

It has been submitted on behalf of the petitioners that petitioners and respondent No.2 are neighbours and because of some dispute of a trivial nature, some scuffle took place in which respondent No.2 received minor

injuries. It has further been submitted that petitioner No.1 has also filed a case against respondent No.2 vide FIR No.526/2015 in the same police station i.e. Uttam Nagar for offences under Sections 308, 506 and 34 of the IPC.

The petitioners as well as the respondent No.2 are present along with their counsels. They have jointly prayed for quashing of the first information report on the ground that they have settled all their disputes with the intervention of well wishers and that no fruitful purpose would be served in quarrelling with each other who are neighbours.

The state does not have any objection to such a prayer for the reasons that the dispute is inter- personal in nature and does not affect the society at large. The counsel for the petitioner has also brought it to the notice of the Court the order passed in Crl. M.C. 3398/2015 whereby the case lodged by petitioner No.1 against respondent No.2 has been quashed on the ground of compromise.

Though Section 308 IPC is not compoundable and does fall under the category of cases listed under Section 320 of Cr.P.C. but the Supreme Court in the case of ***Gian Singh vs. State of Punjab and Another (2012) 10 SCC 303***, has held that even in a non compoundable offence, an order of quashing could be passed on the basis of settlement between the offender and the complainant if the circumstances so warrant.

The same principle has been followed in a recent judgment in ***Narinder Singh & Ors. Vs. State of Punjab & Anr. (2014) 6 SCC 466*** wherein it has been observed:

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the Crl. M.C. 3398/2015 Page 4 of 7 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 Crl. M.C. 3398/2015 Page 5 of 7 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 CrI. M.C. 3398/2015 Page 6 of 7 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 CrI. M.C. 3398/2015 Page 7 of 7 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.”

For the reasons accorded above, this Court is inclined to quash the FIR No.528/2015 (PS Uttam Nagar). The FIR No.528/2015 and all the emanating proceedings thereof are quashed.

The petition is disposed of accordingly.

ASHUTOSH KUMAR, J

AUGUST 28, 2015/ns