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

Judgment delivered on: 29th September, 2015

+ CRL.M.C. 3508/2015

SHWETA SABHARWAL AND ORS

..... Petitioners

Represented by: Mr. Atul Kumar and Mr. Rahul
Thukral, Advs.

versus

THE STATE DELHI ADMN. AND ANR

..... Respondents

Represented by: Mr. Sudershan Joon, APP for
State with SI Harbir Singh, PS-R.K. Puram.
Ms. Sangeeta Sharma, Adv. for R2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A. No.12519/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

+ **CRL.M.C. 3508/2015**

1. Vide the present petition; petitioners seek directions thereby quashing of FIR No.70/2013 registered at Police Station R.K Puram, New Delhi for the offences punishable under Sections 468/120B/471/420/467 IPC and Section 12 of Passport Act against them.

2. Learned counsel appearing on behalf of the petitioners submits that the aforesaid case was registered on the complaint of respondent No.2, namely, Sh. Harish Chander Sabharwal.

3. It is also pertinent to mention here that there is a cross-case being

FIR No. 47/2012 for the offences punishable under Sections 498A/406/34 IPC registered at PS-Bindapur on the complaint of Smt. Shweta Sabharwal (petitioner no.1 herein).

4. Ld. Counsel appearing on behalf of the petitioners submits that both the aforesaid cases have been settled between the parties vide settlement dated 28.11.2014 before Id. District Judge, Dwarka Courts, New Delhi. As per the agreement an amount of Rs.22,00,000/- was agreed to be paid to Smt. Shweta Sabharwal, petitioner no. 1 herein. Out of which Rs.7,00,000/- was paid to her at the time of recording of the settlement and Rs.15,00,000/- is to be paid at the time of quashing of the FIR mentioned above. The aforesaid amount of Rs.15,00,000/- has been paid to the petitioner no.1 today in the Court by way of demand drafts being nos. 037588 and 150974 dated 11.08.2015 and 16.05.2015 of Rs.50,000/- and Rs.14,50,000/- respectively both drawn on Axis Bank Ltd., Pitam Pura, Delhi.

5. Respondent No.2 is personally present in the Court. He has been duly identified by SI Harbir Singh, IO of the case. The respondent No.2 does not dispute the submissions made by learned counsel for the petitioners and submits that the present matter has been amicably settled and he has no complaints whatsoever against the petitioners. Thus, if the present petition is allowed, he has no objection.

6. Learned Additional Public Prosecutor appearing on behalf of the State submits that though the respondent no. 2 has come forward to quash the FIR mentioned above, however, in this process, Govt. machinery has been put into motion and precious public time of the court

has been consumed. Therefore, if this Court is inclined to quash the FIR mentioned above, heavy cost be imposed upon the petitioners.

7. In view of the overall circumstances; and looking to the pronouncements of the Supreme Court in ***Gian Singh Vs. State of Punjab and Another, (2012) 10 SCC 303***, which 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; and also ***Narinder Singh & Ors. Vs. State of Punjab & Anr., (2014) 6 SCC 466***, wherein the Supreme Court held as follows:-

“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. Both the parties are present in the Court today, approbate to the aforesaid settlement dated 28.11.2014 and undertake to remain bound by the same.

9. In view of the settlement arrived at between the parties, statement of respondent no.2 and the law laid down by the Hon'ble Supreme Court in the cases of **Gian Singh** (*supra*) and **Narinder Singh** (*supra*) and in the facts and circumstances as noted above, 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.

10. Consequently, FIR No.70/2013 registered at Police Station R.K Puram, New Delhi for the offences punishable under Sections 468/120B/471/420/467 IPC and Section 12 of Passport Act and all proceedings emanating therefrom are hereby quashed against the petitioners.

11. Before parting with the instant petition, I find force in the

submission of the Id. APP for the State on the issue of cost. However, petitioner no.1 has come forward and agreed to contribute an amount of Rs.1,00,000/- for some welfare purpose.

12. Accordingly, she is directed to pay an amount of Rs.1,00,000/- in favour of “*The Superintendent, ‘Nirmal Chaya’, Tihar Jail, Hari Nagar, New Delhi, Welfare Fund for Children and Destitute Women’ Nirmal Chaya, Jail Road, Tihar, New Delhi* within two weeks under prior intimation to the IO concerned. Proof of the same shall be placed on record.

13. The Superintendent of the aforesaid Centre is directed to keep the said amount in the form of FDR initially for a period of 1 year to be renewed periodically and interest accrued thereon be utilized for the well-being of the children and the destitute women of the aforesaid centre.

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

**SURESH KAIT
(JUDGE)**

SEPTEMBER 29, 2015

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