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

Judgment delivered on: 11th September, 2015

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CRL.M.C. No.3734/2015

MOHD. SAMI

..... Petitioner

Represented by: Mr. Sudhir Kumar Sharma and
Mr.P.K. Aggarwal, with Petitioners
in person.

Versus

THE STATE OF NCT OF DELHI AND ANR

..... Respondents

Represented by: Mr. Sudershan Joon, Addl.
Public Prosecutor for the State with
SI Ishwar Singh, PS Hazrat
Nizamuddin.
Mr.Abhishek Raj, Advocate for
Respondent No.2 with Respondent
No. 2 in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks quashing of FIR No.72/2010 registered at Police Station Hazrat Nizamuddin, New Delhi, for the offences punishable under Sections 498A/406 IPC and the consequential proceedings emanating therefrom against him.

2. Learned counsel appearing on behalf of the petitioners submits that

the aforesaid case was registered on the complaint of respondent No.2, namely, Smt.Faiza Begum, consequent upon certain matrimonial and domestic disputes having arisen between the parties pursuant to her marriage with the petitioner. After completion of the investigation, police has filed the chargesheet, charges have been framed and the case is pending for prosecution evidence. Meanwhile, the respondent No.2 and the petitioner have amicably settled their disputes and separate statements of the parties to this effect have been recorded by the learned Additional Judge-4 (South), Saket Courts, New Delhi, on 17.01.2015. Pursuant thereto, the petitioner has paid the agreed amount of Rs.34,00,000/- (Thirty Four Lacs) in three instalments, i.e., two installments of Rs.10,00,000/- (Ten Lacs) each were paid on 10.03.2015 and 11.05.2015 and the third and final installment of Rs.14,00,000/- (Fourteen Lacs) was paid on 10.07.2015 in favour of the respondent No.2, which facts are not disputed by her.

3. Learned counsel for the petitioner submits that as per the Muslim Rites and Customs, the petitioner has pronounced '*Talaq*' thrice to the respondent No.2, which is accepted by her. Therefore, the respondent No.2 has no objection if the present petition is allowed.

4. Respondent No.2 is personally present in the Court with her counsel named above. She has been duly identified by the Investigating Officer SI Ishwar Singh of Police Station Hazrat Nizamuddin. The learned counsel under instructions does not controvert the submissions made by the learned counsel for the petitioner and submits that the matter stands settled between the respondent No.2 and the petitioner. Respondent No.2 affirms the contents of the aforementioned compromise and of her

affidavit dated 11.08.2015 filed in support of the petition and submits that now no dispute survives with the petitioner. Therefore, she has no objection if the present petition is allowed.

5. Learned Additional Public Prosecutor appearing on behalf of the State submits that after investigation, chargesheet is filed, charges are framed and the case is pending for prosecution evidence. He submits that the present matter is a matrimonial one and since respondent No.2 does not wish to pursue the case further against the petitioners, no purpose would be served if the petitioner is directed to face trial. Therefore, the State has no objection, if this Court allows the present petition.

6. In view of the overall circumstances; and looking to the pronouncements of the Supreme Court in ***Gian Singh Vs. State of Punjab and Another***¹, 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.***², 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:

¹ (2012) 10 SCC 303

² (2014) 6 SCC 466

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 the case of ***Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr.***³, wherein the Supreme Court in respect of the matrimonial disputes has specifically held as follows:-

“15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is

³ (2013) 4 SCC 58

satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed....”

8. Both the parties who are present in the Court today, approbate the aforesaid settlement dated 17.01.2015 and undertake to remain bound by the same.

9. Since the subject matter of this FIR is essentially matrimonial, which now stands mutually and amicably settled between the parties and the complainant is no longer interested in supporting the prosecution because of which, its chances of success in the matter are now greatly diminished. Therefore, in view of the law laid down by the Hon'ble

Supreme Court in the cases of *Gian Singh (supra)*, *Narinder Singh (supra)* and *Jitendra Raghuvanshi (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.72/2010 registered at Police Station Hazrat Nizamuddin, New Delhi, for the offences punishable under Sections 498A/406 IPC and all proceedings emanating therefrom are hereby quashed qua the petitioner.

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

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

**SURESH KAIT
(JUDGE)**

SEPTEMBER 11, 2015
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