

\$~31

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

Judgment delivered on: 18th September, 2015

+ CRL.M.C. 3857/2015

SHIVRAJ

..... Petitioner

Represented by: Mr. Ashok Chhikara and
Mr. N.K. Chahar, Advs.

versus

STATE GOVT OF NCT OF DELHI & ORS

..... Respondents

Represented by: Mr. Mukesh Kumar, APP for
State/R1.

Mr. Rajesh Dua and Mr. Ankit Mathur, Advs.
for R2 and R3.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.No.13713/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

+ **CRL.M.C. No.3857/2015**

1. Vide the present petition; petitioner seeks directions thereby quashing of FIR No. 137/2009 registered at Police Station Kanjhawala, Delhi, for the offences punishable under Sections 279/304A IPC against him.

2. Learned counsel appearing on behalf of the petitioner submits that aforesaid case was registered due to an accident took place on 05.08.2009, in which son of respondent nos. 2 and 3 received fatal injuries and expired

in the Hospital on 07.08.2009. Thereafter, the matter has been settled between the parties before the MACT Court and as per the settlement, petitioner has paid an amount of Rs.3,80,000/-, which has been accepted by the parents of deceased Raju, i.e., the respondents mentioned above. Thus, they do not want to pursue the case further against the petitioner and if the present petition is allowed, they have no objection.

3. Respondent Nos.2 & 3 are personally present in the Court. They state that they have settled the matter with the petitioner and the total compensation amount has been received by them. Thus they do not want to pursue the case further against the petitioner and if the present petition is allowed, they have no objection.

4. Learned Additional Public Prosecutor appearing on behalf of the State submits that deceased Raju died at the very young age of 19 years. Therefore, keeping in view his age, the settlement amount is very less. Thus, if this Court is inclined to quash the FIR mentioned above, compensation amount paid by the petitioner may be enhanced.

5. 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:-

¹ (2012) 10 SCC 303

² (2014) 6 SCC 466

“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. Both the parties are present in the Court today, approbate to the

settlement arrived on 20.02.2014 and undertake to remain bound by the same.

7. In view of the settlement arrived at between the parties, statements of respondent nos. 2 and 3 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.

8. Consequently, FIR No. 137/2009 registered at Police Station Kanjhawala, Delhi, for the offences punishable under Sections 279/304A IPC and all proceedings emanating therefrom are hereby quashed qua the petitioners.

9. Before parting with the order, I find force in the submissions of learned Additional Public Prosecutor qua enhancement of the compensation, however, Id. Counsel appearing on behalf of the petitioner on instructions from the petitioner has come forward and agreed to pay an amount of Rs. 1,20,000/- (One Lac) to the respondent nos. 2 and 3 in addition to the amount awarded to them.

10. Accordingly, petitioner is directed to pay an amount of Rs.60,000/- each in favour of respondent no. 2 and 3 by way of Pay Order / Draft by Monday, i.e., 21.09.2015. Proof of the same under intimation to the IO concerned shall be placed on record.

11. In view of the above, the present petition is allowed.

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

**SURESH KAIT
(JUDGE)**

SEPTEMBER 18, 2015

jg