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

Judgment delivered on: 18th September, 2015

+ **CRL.M.C. No.3872/2015**

VIMAL KUMAR

..... Petitioner

Represented by: Mr.Tarunesh Kumar, Ms.Rishina
Parashar, Mr. Narendra and
Mr. Rohan Sharma, Advocates with
Petitioner in person.

Versus

STATE GOVT OF NCT OF DELHI AND ANR

..... Respondents

Represented by: Mr.Mukesh Kumar, Additional
Public Prosecutor for the
State with SI Birendas Singh, PS
C.R. Park.
Mr. Dushyant Yadav and Mr. Vijay
Pratap Singh, Advocate for
Respondent No. 2 with Respondent
No.2 in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.No.13749/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.3872/2015

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks quashing of FIR No.67/2013

registered at Police Station C.R.Park, Delhi, for the offences punishable under Sections 279/338 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, Abdhesh Kumar. The case is at the initial stage of trial, as only chargesheet is filed. Meanwhile, the petitioner and the respondent No. 2 have amicably settled their disputes vide Memorandum of Understanding (MoU) dated 06.08.2015 for a total sum of Rs.65,000/-. Out of which a sum of Rs.15,000/- has already been paid to the respondent No.2 and the balance amount of Rs.50,000/- is paid today in cash in the Court to the respondent No.2, which facts have not been disputed by him.

3. Learned counsel further submits that to this effect, statement of the injured/respondent No. 2 has been recorded by the learned Metropolitan Magistrate on 10.08.2015. Thus, the respondent No.2 has no objection if the present petition is allowed.

4. Respondent No.2 is personally present in the Court with his counsel named above and has been duly identified by the Investigating Officer SI Birendas Singh of Police Station C.R. Park. The learned counsel, under instructions, does not dispute the submissions made by the learned counsel for the petitioner and submits that the matter stands settled between them. Respondent No.2 affirms the contents of aforesaid settlement and of his affidavit dated 17.09.2015 supporting this petition and submits that now no dispute with petitioner survives and so, the proceedings arising out of the FIR in question be brought to an end.

5. Learned Additional Public Prosecutor appearing on behalf of the

State submits that though chargesheet has been filed by the police, however, case is at the initial stage as cognizance is yet to be taken. Since the parties have amicably settled the matter, therefore, the State has no objection if the present petition is allowed.

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:

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
“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. Both the parties who are present in the Court today, approbate the aforesaid MoU dated 06.08.2015 and undertake to remain bound by the same.

8. Therefore, in view of the law laid down by the Hon'ble Supreme Court in the cases of **Gian Singh** (*supra*) and **Narinder Singh** (*supra*), considering the settlement arrived at between the parties and the fact that the respondent No.2/complainant does not want to support the prosecution

case, and the statement of the learned Additional Public Prosecutor for the State, 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.

9. Consequently, FIR No.67/2013 registered at Police Station C.R. Park, Delhi, for the offences punishable under Sections 279/338 and all proceedings emanating therefrom are hereby quashed qua the petitioners.

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

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

Crl. M.A.No.13748/2015 (for stay)

With the disposal of the petition noted above, the instant application has become *infructuous*. The same is dismissed accordingly.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 18, 2015

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