

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

+ **CRL.M.C. 710/2016**

Date of Decision: May 27th, 2016

UJJWAL DAHIYA

..... Petitioner

Through

Mr.Rajiv Mohan, Adv. with
Mr.Abhimanyu Kampani, Adv.

versus

STATE & ANR

..... Respondents

Through

Ms.Manjeet Arya, APP for the State
Mr.A. Kampani, Adv. with
respondent no.2 in person.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioner, namely, Smt. Ujjwal Dahiya for quashing of FIR No.102/2012 dated 12.05.2012, under Section 324 IPC registered at Police Station Mundka on the basis of a Memorandum of Settlement executed between the petitioner and respondent no.2, namely, Sh. Harbir Lakra along with others on 21.01.2016.

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent no.2, present in the Court has been identified to be the complainant/first informant in the FIR in question by his counsel.

3. The factual matrix of the present case is that the FIR in question was lodged by the complainant on the allegation that his wife/accused/petitioner, assaulted the petitioner on 10.05.2012 &

11.05.2012. The complainant alleged that his wife hit upon the complainant's private part and bit him several times. The complainant's wife is alleged to have abused and threatened him to withdraw the divorce petition filed by the complainant before Ms.Sujata Kohli, Ld. ADJ, Tis Hazari Courts, Delhi. On 22.04.2012 & 23.04.2012, the complainant's wife made several PCR calls to harass the complainant. On 10.05.2012, at around 7 p.m. the complainant's wife beat him and assaulted him mentally and physically after which the complainant called PCR. Subsequently, FIR no.101/2012 was registered against him on 11.05.2012.

Thereafter, the complainant lodged a complaint on the basis of which the FIR in question came to be registered. The charge sheet was filed and during the course of the trial, the parties arrived at an amicable settlement with each other.

4. Respondent No.2 present in the Court submitted that the dispute between the parties has been amicably resolved with the intervention of relatives, friends and well-wishers. As per the memorandum of settlement, the petitioner and respondent no.2 have agreed to live together along with their daughter at any place of their choice including the matrimonial home, bearing No. 899, near metro station, khasra No. 250, vill. Mundka, Delhi 110041 and they have decided to fully co-operate with each other and their respective family members for making their marriage a success. It is also agreed that Sh. Sukhbir Singh is the owner of house bearing No. 899, near metro station, khasra No. 250, vill. Mundka, Delhi 110041 measuring 1000 sq. yds. And which is the matrimonial house of the petitioner; builtup property

situated in Khasra No. 450/1/2, vill. Mundka, Delhi measuring 500 sq. yds. in the possession of Sh. Sukhbir Singh and built-up property situated in Khasra No. 428/4, Vill. Mundka, Delhi measuring 550 sq. yds. in the possession of Sh. Sukhbir Singh. It is also agreed that Sh. Sukhbir Singh has four sons including respondent no.2 and that Sh. Sukhbir Singh has agreed to transfer 1/4 share out of the said properties in the name of the petitioner and respondent no.2 who shall be joint owners. It is also agreed that Sh. Sukhbir Singh shall not create any third party interest regarding the 1/4 share of petitioner and respondent no.2 during his lifetime. It is agreed that respondent no.2 shall withdraw his divorce petition and the FIR in question. It is also agreed that the petitioner shall withdraw her D.V. case; FIR No. 108/12, PS Mundka and FIR No.101/2012, PS. Mundka. It is agreed that the petitioner shall not prosecute the respondent no.2, Sh. Sukhbir Singh and Smt. Birmati in the FIR No. 127/12, PS Mundka and to extend full cooperation in getting the same quashed before this Court. It is agreed that the petitioner shall withdraw her application under Section 24 & 26 H.M.A. filed on behalf of her daughter at the time of the withdrawal of the divorce petition by respondent no.2. It is also agreed that Lt. Col. Navneet Dahiya brother of petitioner, shall not prosecute respondent no.2 in the case under FIR No. 195/13 Mundka under Section 307 IPC and shall extend all co-operation for getting the same quashed before this Court and also that he shall execute a separate Memorandum of Settlement with respondent no.2 in respect of FIR No. 195/13, PS Mundka under Section 307 IPC after he comes on leave in February 2016. It is agreed that the petitioner and

respondent no.2 shall withdraw their respective cases on or before 10th February, 2016. It is also agreed that all the parties and their respective family members will withdraw any complaint/case filed by them against others including Lt. Col. Navneet Dahiya before any Court of law and if not withdrawn the said complaint/case will be deemed withdrawn and the complainant party will not pursue the same under any circumstances. Respondent no. 2 affirmed the contents of the aforesaid settlement. All the disputes and differences have been resolved through mutual consent. Now no dispute with petitioner survives and so, the proceedings arising out of the FIR in question be brought to an end. Statement of the respondent no.2 has been recorded in this regard in which he stated that he has entered into a compromise with the petitioner and has settled all the disputes with her. He further stated that he has no objection if the FIR in question is quashed.

5. In ***Gian Singh v. State of Punjab (2012) 10 SCC 303*** Apex Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

“61. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.”

6. The aforesaid dictum stands reiterated by the Apex Court in a recent judgment in ***Narinder Singh v. State of Punjab (2014) 6 SCC***

466. The relevant observations of the Apex Court in *Narinder Singh (Supra)* are as under:-

“**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.

7. The inherent powers of the High Court ought to be exercised to prevent the abuse of process of law and to secure the ends of justice. The respondent no.2 agreed to the quashing of the FIR in question and has stated that the matter has been settled out of his own free will. As the matter has been settled and compromised amicably, so, there would be an extraordinary delay in the process of law if the legal proceedings between the parties are carried on. So, this Court is of the considered opinion that this is a fit case to invoke the jurisdiction under Section 482 Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice.

8. The incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with the situation in the absence of express provision of law to secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process of law is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of the legal process in the delivery of justice. Whereas, the inherent power is not to be exercised to circumvent the express provisions of law.

9. It is settled law that the inherent power of the High Court under Section 482 Cr.P.C. should be used sparingly. The Hon'ble Apex

Court in the case of *State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors.* MANU/SC/0842/2014 and in the case of *Inder Singh Goswami v. State of Uttaranchal* MANU/SC/0808/2009 has observed that powers under Section 482 Cr.P.C. must be exercised sparingly, carefully and with great caution. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings.

10. It is a well settled law that where the High Court is convinced that the offences are entirely personal in nature and therefore do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, pursuing prosecution would be waste of time and energy. Non-compoundable offences are basically an obstruction in entering into compromise. In certain cases, the main offence is compoundable but the connected offences are not. In the case of *B.S. Joshi and others v. State of Haryana and another* 2003 (4) SCC 675 the Hon'ble Apex Court observed that even though the provisions of Section 320 Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers under Section 482 Cr.P.C. The Hon'ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon'ble Apex Court justified the exercise of powers under Section 482 Cr.P.C. to quash the

proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were non-compoundable.

In the light of the aforesaid, this Court is of the view that notwithstanding the fact that the offence under Section 324 IPC is a non-compoundable offence, there should be no impediment in quashing the FIR under this section, if the Court is otherwise satisfied that the facts and circumstances of the case so warrant.

11. In the facts and circumstances of this case and in view of statement made by the respondent no.2, the FIR in question warrants to be put to an end and proceedings emanating thereupon need to be quashed.

12. Accordingly, this petition is allowed and FIR No.102/2012 dated 12.05.2012, under Section 324 IPC registered at Police Station Mundka and the proceedings emanating therefrom are quashed against the petitioner.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

MAY 27, 2016
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