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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 02nd March, 2016

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CRL.M.C. No.904/2016

KARTIK CHINTAMANI

..... Petitioner

Represented by: Mr.Rebecca John, Senior
Adv with Mr.Harsh Bora,
& Ms.Nicy Paulson, Advs
with petitioner.

versus

STATE (GNCT OF DELHI) & ANR

..... Respondents

Represented by: Mr.Amit Ahlawat, APP
for the State with
Inspector Mahender
Singh, PS Vasant Kunj
(S).
Ms.Somya Rathore, Adv
for R2/complainant with
R2 in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl.M.A. No.3787/2016 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. 904/2016

1. Vide the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks quashing of FIR No.885/2015 registered at Police Station Vasant Kunj (South) New Delhi for

the offence punishable under Sections 363 the IPC and the consequential proceedings emanating therefrom against him.

2. Learned Senior Counsel appearing on behalf of the petitioner submits that the aforesaid case was registered on the complaint of respondent No.2, Damini Kapoor, who is wife of petitioner regarding custody of their daughter namely Zoya and both the parties are at matrimonial litigation with each other. The matter is still pending for investigation with the police. Meanwhile, the respondent No.2 and the petitioner have amicably settled their disputes and filed petition under Section 13 (B) 2 for divorce by mutual consent and settled the dispute by way of the undertaking dated 09.02.2016 between the parties. The said undertaking is available at Page No.77 of the petition, which facts have not been disputed by the respondent No.2.

3. Learned counsel for the petitioners further submits that consequent to the said settlement and undertaking marriage between the petitioner No.1 and respondent No.2 has been dissolved vide decree of mutual divorce dated 16.02.2016 under Section 13 B (2) of the Hindu Marriage Act, 1955. The issue of child of parties has already been settled and custody of child has been handed over to petitioner, thus, respondent No.2 does not wish to pursue her case further against the petitioner.

4. Respondent No.2 is personally present in the Court through learned counsel and has been duly identified by the Investigating Officer of the case. Learned counsel for respondent No.2, under

instructions of respondent No.2 does not dispute the statement made by learned senior counsel for petitioner and submits that the matter has been settled between the parties. The affidavit of respondent No.2 is at page No.82 of the petition. Therefore, respondent No.2 has no objection, if the present petition is allowed.

5. Learned Additional Public Prosecutor appearing on behalf of the State submits that matter is pending investigation with the police. Since the parties have amicably settled the matter and the respondent No.2/ complainant does not wish to pursue the case against the petitioner, therefore, looking to the overall circumstances, no useful purpose will be served in continuing the proceedings. Thus, the State has no objection if the present petition is allowed.

6. Undisputedly, offence punishable under Section 363 of the IPC is non-compoundable, however, considering the facts and circumstances of the case and in exercise of the inherent powers under Section 482 of the Code of Criminal Procedure, 1973, this Court has power to accept the compromise. This issue has been decided by the Constitution Bench of the Supreme Court in the case titled as ***Gian Singh Vs. State of Punjab and Another*** (2012) 2 SCC (L&S) 998 wherein held as under:-

“58.However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and

the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.”

7. While recognizing the need of amicable resolution of disputes in cases like the instant one, the aforesaid dictum has been affirmed by the Apex Court in a recent judgment in ***Narinder Singh & Ors. Vs. State of Punjab & Anr. 2014 6 SCC 466***. The pertinent observations of the Apex Court 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.

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 who are present in the Court today, approbate the aforesaid settlement/undertaking 09.02.2016 and undertake to remain bound by the same.

9. As discussed above, offence punishable under Section 363 of the IPC is non-compoundable being of serious nature, however, if the Court feels that continuation of criminal proceedings will be an exercise in futility and justice in this case demands that the dispute between the parties is put to an end and peace is restored, it can order for quashing of the FIR or criminal proceedings as it is the duty of the Court to prevent continuation of unnecessary judicial process.

10. In view of the law discussed above, considering the settlement arrived at between the parties and the statements of respondent Nos.1 & 2, 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.

11. Consequently, FIR No.885/2015 registered at Police Station Vasant Kunj South for the offences punishable under Section 363 of the IPC and all proceedings emanating therefrom, are hereby quashed.

12. Accordingly, the present petition is allowed with no order as to cost.

Crl.M.A. No.3786/2016 (for stay)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

MARCH 02, 2016

M/jg

