

\$-5 & 6

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

+ W.P.(CRL) 1441/2016

DINESH & ORS

..... Petitioners

Through: Mr.Dinesh Kumar, Advocate.

versus

THE STATE (NCT OF DELHI) & ORS

..... Respondents

Through: Mr.Ashish Aggarwal, ASC for the
State/R-1 with ASI Ram Bhajan, PS
Fatehpur Beri.

AND

- W.P.(CRL) 1447/2016

DHAN SINGH & ORS

..... Petitioners

Through: Mr.Dinesh Kumar, Advocate.

versus

THE STATE (NCT OF DELHI) & ORS

..... Respondents

Through: Mr.R.S.Kundu, ASC for the State/R-1
with Mr.PremSagar Pal and
Mr.Bhagat Singh, Advocates and SI
Vikas Rana, PS Fatehpur Beri.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

23.10.2017

W.P.(CRL) 1441/2016

W.P.(CRL) 1447/2016

1. The above captioned two writ petitions have been filed by the

8

petitioners praying for quashing of two cross FIRs i.e. FIR No.196/2016 under Sections 308/341/506/34 IPC, PS Fatehpur Beri, Delhi and FIR No.197/2016 under Sections 452/308/354/506/34 IPC, PS Fatehpur Beri, Delhi and the consequential proceedings arising therefrom, on the basis of amicable settlement arrived at between the parties.

2. Case FIR No.196/2016 under Sections 308/341/506/34 IPC, PS Fatehpur Beri, Delhi was registered on the basis of statement made by Sh.Dhan Singh (one of the accused in case FIR No.197/2016). As per this FIR, on 24th March, 2016 at about 4.00/4.30 pm he was sitting at his shop in Village Mandi. At that time, Inder Pal, Dinesh and Bittoo (petitioners herein) were sitting in front of their house and were consuming liquor. They were also abusing in a loud voice and when Sunil (nephew of complainant Dhan Singh) was returning home after giving fodder to the buffaloes. All the three petitioners i.e. Inder Pal, Dinesh and Bittoo started abusing Sunil to which he objected. Thereafter, Dinesh caught Sunil and Inder Pal hit on his head with a bear bottle. When Sunil called the complainant Dhan Singh, on hearing his voice, he rushed to rescue Sunil. At that time, Dinesh asked Bittoo to bring lathi and revolver from the house saying '*Aaj inka kaam tamam kar dete hain*'. Bittoo brought a *katta* type weapon and a lathi and handed over *katta* to Dinesh. Bittoo gave two lathi blows on the head of the complainant and one on his hand as a result of which he started bleeding from his head and finger of his hand was fractured. Dinesh attempted to fire through that *katta* type weapon but when could not do so he threw that weapon inside the house. In the meanwhile, wife and mother of Inder Pal came from inside and wife of Inder Pal handed over sword like *patti* used for cutting grass to Dinesh uttering that they should be finished. In the

W.P.(Crl.) No.1441/2016 & 1447/2016 *Page 2 of 7*

meantime, Sant Ram, Mukesh and Balesh also happened to reach there. Accused Dinesh attacked Sant Ram with sword like *patti* used for cutting grass. Wife and mother of Inder Pal started giving beatings to Mukesh and Balesh with *dandas*. Villagers gathered there and saved them but they were threatened by the accused persons that on that day they have been saved but in future if any complaint is received against them they would be killed and police also cannot cause any harm to them.

3. Case FIR No.197/2016 under Sections 452/308/354/506/34 IPC, PS Fatehpur Beri was registered on the basis of statement made by complainant Dinesh (one of the accused in case FIR No.196/2016). He reported to the police that on 24th Mach, 2016 at about 4.00 pm when he was smoking 'hukka' in the courtyard of his house, five persons namely Santu, Sunil, Monu, Sonu and Sachin came there and started teasing his sister-in-law Sangita to which he objected. He was abused and threatened by them that either he should sit silently or he would be killed. In the meantime, his mother also came and they also misbehaved with her and threatened to kill her. Other ladies of the house i.e. *chachi* and *tai* of the complainant Dinesh came there on hearing the noise and at that time, the above persons left but returned after about 20 minutes after due planning and they were armed with *lathis*, *dandas* and sharp edged rods and causing injuries to them and left after threatening them saying that they have been saved. While leaving, the accused persons threatened to kill them.

4. It is mentioned in the petitions that during the pendency of above two FIRs, the parties arrived at an amicable settlement vide compromise deed dated 28th April, 2016 with the intervention of neighbours, common friends

10

and well wishers. Copy of the compromise deed has been annexed with the petitions.

5. Learned counsel for the petitioners submits that since the parties have settled their dispute amicably, no purpose would be served by prosecuting the petitioners any further, hence both the FIRs may be quashed.

6. In the decision in the case of Gian Singh v State of Punjab & Anr. 2012 (9) SCALE 257, the three Judges Bench of the Supreme Court dealing with the issue of quashing of FIR has observed as under:-

"57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences Under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz: (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil favour stand on different footing for the purposes of quashing, particularly the offences arising

11

from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. 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 proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and 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 affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

7. In the decision reported as State of M.P. vs. Manish & Ors. (2015) 8 SCC 307, while discussing the scope and power of the High Court under Section 482 CrPC to quash the criminal proceedings in a heinous/serious offence on the basis of settlement has been reiterated. In the above noted case, on the basis of settlement between the parties proceedings in case under Section 307/294/34 IPC were quashed by the High Court. The State preferred an appeal against the decision of High Court of Madhya Pradesh in Misc. Criminal Case No.4013/2013.

8. The question that came up for consideration before the Apex Court was whether based on out of Court settlement alleged to have been reached between the private parties, the offences of this nature falling Under Sections 307, 294 and 34 Indian Penal Code which are not covered by

Section 320 Code of Criminal Procedure can be taken note of and such orders of quashing of the proceedings can be passed in exercise of powers Under Section 482 Code of Criminal Procedure.

9. After reiterating the principal laid down in Gian Singh's case (supra) it was held as under:-

7. When we apply the principles set down therein, it can be stated that when it comes to the question of compounding an offence Under Sections 307, 294 and 34 Indian Penal Code along with Sections 25 and 27 of the Arms Act, by no stretch of imagination, it can be held to be an offence as between the private parties simpliciter. Inasmuch as such offences will have a serious impact on the society at large, it runs beyond our comprehension to state that after the commission of such offence the parties involved have reached a settlement and, therefore, such settlement can be given a seal of approval by the Judicial Forum.

8. In the circumstances, the High Court unfortunately having failed to appreciate the said legal position, the impugned order cannot be sustained. We are, therefore, convinced that in a situation where the private Respondents herein are facing trial for offences Under Sections 307, 294 read with 34 Indian Penal Code as well as Sections 25 and 27 of the Arms Act, the cases pending trial before the Court in Criminal Case No. 2602 of 2013, as the offences are definitely as against the society, the private Respondents will have to necessarily face trial and come out unscathed by demonstrating their innocence. The impugned order is, therefore, set aside and the Trial Court is directed to proceed with the trial in accordance with law.

9. With the above observations and directions, the appeal stands allowed.'

10. In view of settled legal position enumerated in Gian Singh's case, (Supra) and reiterated in State of M.P. vs. Manish & Ors. (supra), on the

13

basis of settlement between the parties, criminal proceedings in the cases of heinous offences cannot be quashed in exercise of extra ordinary powers vested in this Court under Article 226 of Constitution of India.

11. Both the petitions are hereby dismissed.

Crl.M.A.No.7508/2016 in W.P.(CRL) 1441/2016

Crl.M.A.No.7556/2016 in W.P.(CRL) 1447/2016

Dismissed as infructuous.


PRATIBHA RANI, J.

OCTOBER 23, 2017

'st'