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

Decided on: 28th April, 2017

+ **W.P.(CRL) 1237/2017**

RAMPAL SINGH & ORS

..... Petitioners

Through: Mr. Javed Ali , Advocate with
Mr. Anish Roy, Adv.

versus

NCT OF DELHI & ORS

..... Respondents

Through: Mr. Avi Singh, ASC for the
State with Ms. Anya Singh,
Advocate
SI Anil Kumar, PS Civil Lines

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

Crl.M.A. 6948/2017 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(CRL) 1237/2017

1. By this writ petition (criminal) invoking Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the petitioners pray for quashing of First Information Report (FIR) No.251/2016 of Police Station Civil Lines involving offences punishable under Sections 323/307/506/34 of the Indian Penal Code, 1860 (IPC) read with Section 25/27/54/59 of the

Arms Act, 1959, primarily on the grounds that the dispute has been resolved with the complainant and the case is still under investigation.

2. The respondent/State, through learned Additional Standing Counsel, has resisted the prayer made in the petition on the ground that the offences involved here include such serious ones as of attempt to murder (Section 307 IPC) and use of firearm in the commission of the attempt to murder (Section 27 of the Arms Act). It has been argued that the extraordinary jurisdiction conferred on this court by Article 226 of the Constitution of India, and the provision contained in Section 482 Cr.P.C., ought not be used to put an end to crimes of such gravity and import.

3. The learned counsel on both sides have been heard and the case diary maintained by the investigating officer, as made available by him, at the hearing has been perused.

4. In order to appreciate the argument of gravity of the offences involved, the contents of the FIR itself should suffice. It was registered on 29.09.2016 at 11:55 p.m. on the basis of statement of Suraj son of Ramesh (the second respondent) respecting an incident that had occurred at about 7:30 p.m. on the same date at a place on road in front of property no.79/16, Old Chandrawal Road, Delhi. According to the first informant, his sister Seema (the fifth respondent) had been married to Rampal son of Jagbir (the first petitioner), a native of Baghpat, U.P. and that there had been a matrimonial dispute simmering for the last four years. Seema had been brought back to the parental house about twenty days prior to the incident. It is alleged that on 29.09.2016, the first petitioner with his

cousin Sanjeev (the second petitioner) came visiting the house of the first informant and insisted on taking away the fifth respondent with them to which the latter raised objection. It is alleged that the first petitioner tried to forcibly take away the fifth respondent but when her family tried to intervene, the first petitioner used a brick piece and hit at the face of his mother Manju (the fourth respondent). It was at this stage that the first petitioner whipped out a pistol and threatened to kill, followed by he pulling the trigger, the bullet discharged from the firearm hitting Savitri (the third respondent), the paternal aunt (*bua*) of the first informant. It is further alleged that one another person of well-built physique came on the scene and took away the pistol that had been used by the first petitioner and ran away. The first and the second petitioners are stated to have been apprehended at the spot and eventually handed over to the police.

5. In *State of Rajasthan vs. Shambhu Kewat*, (2014) 4 SCC 149, quashing by the High Court of a criminal case also involving offences punishable under Sections 307/34 IPC, on basis of a similar settlement, was disapproved by the Supreme Court, *inter alia*, by the following observations:-

“15. We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why Section 307 IPC is held to be non-compoundable, is because the Code has identified which conduct should be brought within the ambit of non-compoundable offences. Such provisions are not meant

just to protect the individual but the society as a whole. The High Court was not right in thinking that it was only an injury to the person and since the accused persons (sic victims) had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is, safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by anyone and money would not be a substitute for the crime committed against the society. Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful coexistence and welfare of the society at large.”

(emphasis supplied)

6. The petitioners rely on *Narinder Singh & Ors. vs. State of Punjab & Anr.* (2014) 6 SCC 466 as a precedent where the Supreme Court allowed the settlement to result in the criminal case involving, *inter alia*, attempt to murder (Section 307 IPC) to be quashed. It has to be borne in mind that each case has to be subjected to scrutiny on its own merits and in the light of its own peculiar facts and circumstances. It is noted that after tracing the development of jurisprudence on the subject, in (para 29 of) the judgment in the case of *Narinder Singh* (supra), while drawing a distinction between the power conferred on this Court under Section 482 Cr.P.C. and the power of the criminal court to allow compounding of the offence under Section 320 Cr.P.C., the Supreme Court held that the guiding factor in the former jurisdiction (Section 482 Cr.P.C) would be as to whether the quashing of the criminal proceedings would secure the

ends of justice or prevent the abuse of process of court. On the specific issue of exercise of such power in cases of grave crimes such as one punishable under Section 307 IPC, the following observations (in para 29.6) are of import:-

“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 (sic) 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”.

(emphasis supplied)

7. In *State of Karnataka Vs. M. Devendrappa*, (2002) 3 SCC 89, a bench of three Hon'ble Judges of the Supreme Court re-examined the

issue concerning the width and scope of the jurisdiction of the High Court under Section 482 Cr. PC for bringing to an end a criminal action by quashing the case and observed that this provision does not confer any new power on the High Court but only saves its inherent power and explained its exercise as under :-

“6. ... It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the

court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice....”

(emphasis supplied)

8. In *Gian Singh Vs. State of Punjab and Another*, (2012) 10 SCC 303, while dealing with identical issues, another bench of three Hon’ble Judges of the Supreme Court observed thus :-

“55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

(emphasis supplied)

9. The case of *State of M.P. vs. Manish & Ors.*, (2015) 8 SCC 307, is yet another precedent against the prayer made in the petition at hand to be entertained. The factual matrix of the said case also involved offence punishable under Section 307/34 IPC and Sections 25 and 27

of the Arms Act. On the basis of position taken by the complaint of the said case informing the court that she did not wish to prosecute the accused persons as the dispute had been amicably settled, the High Court had proceeded to quash the FIR. Observing that the offences involved were against the society at large, the order of the High Court was set aside and directions were given for the criminal trial to proceed further in accordance with law, referring, in this context, to the following observations of a bench of three Hon'ble Judges of the Supreme Court in *Gian Singh* (supra) as under:-

“61. 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 plenitudewith 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the 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 proceeding.....”

(emphasis supplied)

10. The above view applies on all fours to the facts and circumstances of the case at hand. The fact that fire arm was used and it actually caused injury to a woman who had no apparent quarrel with the assailants itself shows not only that the offence of attempt to murder (S.307 IPC) was not added “*for the sake of it*” but also the

gravity of the crime. Thus, this not being a case where continuance of the criminal action would be abuse of judicial process so as to deserve invocation of the extraordinary jurisdiction of this court under Article 226 of the Constitution of India or Section 482 of Cr.P.C., the petition seeking quashing of case FIR No.251/2016, under Sections 323/307/506/34 IPC and 25/27/54/59 of the Arms Act of Police Station Civil Lines, Delhi is hereby dismissed.

APRIL 28, 2017
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R.K.GAUBA, J.

