

§-17 & 18

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

- CRL.M.C. 2713/2017 & CrI.M.A.11216-17/2017

OM PRAKASH MAHAYAN & ORSPetitioner

Through: Mr.Nitish Chaudhary, Advocate with
petitioners in person

versus

STATE & ORS

.....Respondent

Through: Ms.Kusum Dhalla, APP for the State
with SI Narasi Prasad Meena, PS
Hazrat Nizamuddin
Mr.V.K.Gupta, Advocate for R-2 to 7
with R-1, R-3, R-4, R-6 & R-7 in
person

AND

+ CRL.M.C. 2714/2017 & CrI.M.A.11218-19/2017

SANJAY KUMAR MAHAYAN & ORSPetitioner

Through: Mr.V.K.Gupta, Advocate with
Petitioner Nos.1, 3, 5 & 6 in person

versus

STATE & ORS

.....Respondent

Through: Ms.Kusum Dhalla, APP for the State
with SI Narasi Prasad Meena, PS
Hazrat Nizamuddin
Mr.Nitish Chaudhary, Advocate with
Respondents in person

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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18.07.2017

1. The above two writ petitions have been filed by the petitioners under Article 226 of the Constitution of India read with Section 482 Cr.P.C praying for quashing of the two FIRs i.e. FIR No.516/2014 under Sections

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325/354(B)/323/509/34 IPC and FIR No.517/2014 under Sections 323/354/341/34 IPC, both PS Hazarat Nizamuddin, New Delhi and proceedings emanating therefrom on the basis of settlement through mediation.

2. FIR No.516/2014 under Sections 325/354(B)/323/509/34 IPC was got registered at PS Hazarat Nizamuddin, New Delhi on the basis of complaint made by Raghunath, respondent No.2/complainant that on 14th September, 2014 when he was standing outside the house with his nephew Vivek, he saw that his neighbour Satish Mahayana being beaten up by Raju Mahayana and Jitender Mahayana. At that time mother and wife of Satish Mahayana came to rescue him but Raju Mahayana and Jitender Mahayana abused them and tried to tear their clothes. On seeing this the complainant and his nephew also went to save them. It is alleged in the FIR that the petitioners also made a deadly attack on the complainant as well as on his nephew by throwing bricks. PCR was informed and Head Constable Kuldeep reached the spot and asked the parties to come to police station. It is further alleged that the elder brother, Om Prakash Mahayana came and attacked the complainant as well as other respondents with a stick kept outside the SI room in front of HC Kuldeep in which Sumit, Satish and the complainant and his nephew attained injuries.

3. FIR No.517/2014 was lodged on the complaint made by Raju, on 14th September, 2014 against Satish and Sanjay under Section 323/354/341/34 IPC at PS Hazarat Nizamuddin. As per the complainant on 14th September, 2014 at about 12:30 PM when he was sitting in front of his house suddenly Satish and Sanjay caught him from behind. It is further alleged that they had also brought 7-8 boys with them and started beating the

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complainant. When the wife of the complainant came to his rescue, they caught her hair and started beating her. When the complainant shouted, Sanjay along with the boys ran away. It has been further alleged that they also gave beatings to the mother of the complainant. The complainant then called his brother Om Prakash who asked him to call police and go to police station. It has been further alleged that when they reached police station then 7-8 boys started beating his brother Om Prakash. Their names were Sanjay, Satish and Sumit.

4. During the pendency of above proceedings, the parties were referred to Mediation Centre, District Courts Saket, New Delhi. It has been submitted by the counsel that the parties have reached a settlement and the disputes have been amicably settled. Copy of the mediation order dated 5th July, 2016 has been placed on record as Annexure P-3.

5. It is further submitted by the counsel that in terms of full and final settlement arrived at between the parties, Om Prakash Mahayan, Raju Mahayan and Jitender Mahayan jointly have paid a total sum of ₹33,000/- to the Raghunath, respondent No.2/complainant in CrI.M.C.No.2713/2017.

6. Raghunath, respondent No.2/complainant in CrI.M.C.No.2713/2017 is present in person and submits that he has settled the matter with the petitioners and in terms of said settlement, he has received an amount of ₹33,000/- from the petitioners. Respondent No.2/complainant further submits that he has no objection if the FIR No.516/2014 under Sections 325/354(B)/323/509/34 IPC, PS Hazarat Nizamuddin, New Delhi in question is quashed qua the Petitioners.

7. In CrI.M.C.No.2714/2017, Mr.V.K.Gupta, learned counsel for the petitioners submits that as the matter has been settled between the parties,

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vide the common mediation order dated 5th July, 2016 before the Mediation Centre, Saket, New Delhi the cross FIR No.517/2014 under Sections 323/354/341/34 IPC, PS Hazarat Nizamuddin, New Delhi may also be quashed.

8. The respondents in Crl.M.C.No.2714/2017 are present in Court today and submit that they have no objection if the FIR No.517/2014 under Sections 323/354/341/34 IPC, both PS Hazarat Nizamuddin, New Delhi qua the petitioners is quashed.

9. Though the petitioners have been charged with the offences, some of them are non-compoundable, but 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 laid down the following guidelines:-

"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

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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 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."

10. Learned APP for the State submits that although in FIR No.516/2014 under Sections 325/354(B)/323/509/34 IPC, PS Hazarat Nizamuddin, New Delhi ₹33,000 has been paid by the petitioners to Raghunath and the cost may also be imposed on the accused persons in case FIR No.517/2014 under Sections 323/354/341/34 IPC, PS Hazarat Nizamuddin, New Delhi.

11. In view of the legal position laid down in *Gian Singh's case* (Supra) and amicable settlement arrived at between the parties, I am of the considered view that no useful purpose would be served by continuing the criminal proceedings against the petitioners, which will only be an exercise in futile and wastage of precious time of the Court.

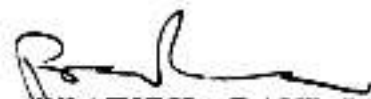
12. However, in the facts and circumstances of the case, it is desirable that the Petitioners in Crl.M.C.2714/2017 must be burdened with cost. Accordingly, the Petitioners are directed to deposit jointly the cost of ₹30,000/- with Pragati Institute for Severally and Profoundly Mentally Retarded (ISPMR), Female Wing, Asha Kiran Complex, Sector-1, Rohini, Delhi-110085 within four weeks from the date of this order. The payment of cost should be made by cheque in favour of "H.O./D.O. for School & Home Mentally Retarded Children" in Account No.394501010013010. The said amount of ₹30,000/- shall be utilized to meet day to day urgent needs of the inmates.

13. A receipt of deposit of the cost be placed on record within two weeks thereafter.

14. Accordingly, in terms of the settlement arrived at between the parties, FIR No.516/2014 under Sections 325/354(B)/323/509/34 IPC and FIR No.517/2014 under Sections 323/354/341/34 IPC, both PS Hazarat Nizamuddin, New Delhi and consequential proceedings emanating therefrom are hereby quashed. The petitions are allowed, subject to deposit of cost by the Petitioners in Crl.M.C. No.2714/2017.

15. A copy of this order be sent to the Superintendent, Pragati Institute for Severally and Profoundly Mentally Retarded (ISPMR), Female Wing, Asha Kiran Complex, Sector-1, Rohini, Delhi-110085 for information and compliance.

Order *dasti*.


PRATIBHA RANI, J.

JULY 18, 2017/ 'hkaur'