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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 2967/2017

MOHD MUQEEN & ORS.

..... Petitioner

Through: Mr. S.N.Khan and Mr. Vishal Raj,
Advocates with All Petitioners in
person.

Versus

THE STATE NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Jamal Akhtar for Mr. Rahul
Mehra, Standing Counsel (Crl.) for
State with SI Shekhar, P.S. Sazar
Bazar.

Ms. Rekha Sharma, Advocate for
Respondent No.2 with Respondent
No. 2 in person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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31.10.2017

Crl. M.A.No.17231/2017 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed off.

W.P.(CRL) 2967/2017

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners seek quashing of FIR No.106/2013 registered at Police Station Sadar Bazar, Delhi, for the offences punishable under Sections 498A/406/34 IPC and the consequential proceedings

emanating therefrom against them.

2. The learned counsel appearing on behalf of the petitioners submit that the aforesaid case was registered on the complaint of respondent No.2, namely, Ms. Sana @ Sonia, consequent to certain matrimonial and domestic disputes having arisen between the parties. The matter has already been settled between the parties vide Settlement Deed dated 01.03.2016, which is annexed as Annexure-B to this petition. As agreed, the remaining amount of Rs.75,000/- has been tendered by the petitioner to the respondent No.2 today in Court through her counsel Ms. Rekha Sharma. Petitioner and the respondent No.2 had contracted a marriage, which they ended through a Divorce Deed dated 04.04.2016. The same is annexed as Annexure-C to this petition. The respondent No.2 has gone through her *Iddat* period. The parties are present in the Court. They have re-iterated the terms of the aforesaid settlement.

3. Respondent No.2 has been duly identified by her counsel named above. She does not dispute the submissions made by the learned counsel for the petitioners and submits that the present matter has been amicably settled, her marriage with petitioner No.1 has been dissolved vide aforesaid Divorce Deed dated 04.04.2016 and that she has no complaints whatsoever against her husband and his family members. Respondent No.2 states that no dispute with petitioners survives, and hence, the proceedings arising out of the FIR in question may be brought to an end.

4. The learned Additional Public Prosecutor appearing on behalf of the State submits that the present matter is a matrimonial one and since the respondent No.2 does not wish to pursue the case against petitioners any

further, no purpose would be served if the petitioners are directed to face trial. Therefore, the State has no objection, if the present petition is allowed.

5. In addition to the aforesaid settlement, the petitioner No.1/father of Miss Harshita, a minor, born to the petitioner No.1 and respondent No.2 during their marriage, states that he will pay a sum of Rs.1,500/- per month towards the education and the maintenance of his daughter, whose custody has been given to her mother/respondent No.2. Furthermore, he shall pay a sum of Rs.5,000/- annually to respondent No.2 to take care of other expenses of their daughter. The respondent No.2 has agreed to a balanced upbringing of their daughter Miss Harshita. Since affection and visitation of the father would be necessary, the learned counsel appearing on behalf of the parties have agreed that the father shall be free to visit the child for five hours between 10.00 a.m to 3.00 p.m. on every Sunday.

6. In the aforesaid circumstances and keeping in mind the decision of the Supreme Court in ***Gian Singh Vs. State of Punjab and Another (2012) 10 SCC 303***, holding that even a non-compoundable offence can also be quashed on the ground of a settlement agreement between the offender and the victim, if the circumstances so warrant; by observing 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. The amicable resolution of cases like the present one is an abiding objective. The dictum of *Gian Singh* (supra) has been affirmed by the Apex Court in ***Narinder Singh & Ors. Vs. State of Punjab & Anr. 2014 6 SCC 466*** while observing:

“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. In a similar vein regarding matrimonial disputes the Supreme Court in ***Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr. (2013) 4 SCC 58*** held:

*“15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings. Crl.M.C. No.4327/2015
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16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power

under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed....”

9. The parties are present in the Court and have been identified by their respective counsel. The parties have re-iterated the terms of the aforesaid settlement and the terms been agreed to in Court today, they also undertake to remain bound by the same. In addition thereto, the petitioner No.1/father of Miss Harshita, a minor, born to the petitioner No.1 and respondent No.2, states that for the moment he would pay a sum of Rs.1,500/- per month towards the education and the maintenance of his daughter, whose custody has been given to her mother/respondent No.2. Furthermore, he shall pay a sum of Rs.5,000/- annually to respondent No.2 to take care of other expenses of their daughter. The respondent No.2 has agreed to the development of a strong emotional quotient and a balanced upbringing of their daughter Miss Harshita. The benefit of the affection of the father would be necessary. As a corollary, visitation rights of the father would have to be accommodated. The learned counsel appearing on behalf of the parties have agreed that the father shall be free to visit the child for five hours between 10.00 a.m to 3.00 p.m. on every Sunday.

10. The complainant is no longer interested in pursuing her complaint. She is not supporting the case of the prosecution, hence the latter's probability of success is severely diminished. The proceedings emanating from the FIR would be an exercise in futility. It would therefore be in the interest of justice to quash the FIR in question. Accordingly, since the

parties have settled their matrimonial *lis* amicably, nothing survives in the matter. The FIR and all proceedings emanating therefrom are dismissed.

11. The petition stands disposed off in the above terms.

12. A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

NAJMI WAZIRI, J.

OCTOBER 31, 2017

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