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

+ **W.P.(CRL) 3368/2017**

NAEEM & ANR

..... Petitioners

Through: Ms.Vijay Sachdeva, Advocate with
petitioners in person.

versus

STATE (GOVT OF NCT OF DELHI) & ORS

..... Respondents

Through: Mr.Rajesh Mahajan, ASC for the
State/R-1 with Mr.Mohit Sharma,
Advocate and Insp.Mukesh Kumar,
PS Mahindra Park.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **30.11.2017**

Crl.M.A. No.19813/2017

1. Exemption allowed, subject to all just exceptions.
2. Application is disposed of.

W.P.(CRL) 3368/2017

1. The instant writ petition has been filed by the petitioners under Article 226 of the Constitution of India read with Section 482 CrPC praying for quashing of FIR No.382/2017 under Section 307/34 IPC, PS Mahindra Park, Delhi and all consequential proceedings arising therefrom, on the basis of settlement arrived at between the parties.
2. Case FIRNo.382/2017 has been registered on the basis of complaint made by respondent No.2/complainant to the effect that on 27th October,

2017 at about 9.50 pm he alongwith his friend Sukhram was sitting the shop of their friend Prahalad at B-47, Bhadola Village. At that time, petitioner no.1 came there and said 'tumhari aaj kal kya dadagiri chal rahi hai'. When he objected to the same, petitioner No.1 hit him near his eye with key of motorcycle which petitioner No.1 was having in his hand and started abusing him in filthy language. Thereafter respondent No.2 alongwith his two friends i.e. respondents No.3 and 4 came out of the shop. Then petitioner No.1 called his younger brother Faheem i.e. petitioner No.2, who came there having sword in his hand and started attacking them. All of them received injuries in the incident.

3. Learned counsel for the petitioners submits that cross case has also been registered in respect of the same incident. She further submits that during the pendency of the criminal proceedings, the parties have settled their dispute amicably and thus, no purpose would be served by prosecuting the petitioners any further, hence FIR may be quashed.

4. 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 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.”

5. 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.

6. 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.

7. 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.'

8. 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 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.

9. The petition is dismissed.

PRATIBHA RANI, J.

NOVEMBER 30, 2017

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