

\$~32

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

+ **W.P.(CRL) 871/2018**

BHAWANI RAM

..... Petitioner

Through: Mr. Naresh Kaushik and Mr. Vijay
Shankar, Advocates with Petitioner in
person.

Versus

THE STATE (NCT) DELHI & ANR.

..... Respondents

Through: Mr. Amit Chadha, Additional Public
Prosecutor for State with SI Amit,
P.S. Lajpat Nagar.
Respondent No. 2 in person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **24.07.2018**

1. This petition seeks quashing of FIR No. 0080/2018 registered at Police Station Lajpat Nagar, New Delhi, under section 308 IPC in view of the circumstance that the complainant - respondent No. 2, a Guard at PGDAV College, had been assaulted by the petitioner, which resulted in grievous injuries to him. The petitioner also has suffered injuries in the altercation between the parties. With passage of time and healing of wounds, the parties had endeavoured to settled the *lis* amicably and have been successful in their endeavour. They have apologized to each other. The complainant has been identified by the Investigating Officer.
2. 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.”

3. 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.”

4. Since the complainant himself does not wish to pursue the complaint any further, the FIR is denuded of its essential substratum. Therefore, any further proceedings arising therefrom would be an exercise in futility.
5. Accordingly, the FIR No. 0080/2018 registered at Police Station Lajpat Nagar, New Delhi, under section 308 IPC and all proceedings arising therefrom are hereby quashed.
6. At this stage, the learned counsel for the parties submits that as an expression of their contrition for having assaulted each other and caused undue pain and injury, the petitioners and the complainant agree to undertake some social work, as may be directed by this Court.
7. Accordingly, they are directed to appear before the Deputy Forest Conservation Officer (South), GNCT of Delhi on 06.08.2018 at 11.00 a.m. who shall assign them duties for two weeks for maintenance of Compensatory City Forest, which are under his jurisdiction. Each of the petitioners shall plant at least 300 trees during the aforesaid period.
8. The petition is allowed in the above terms.

9. A copy of this order be given *dasti* to the learned counsel appearing on behalf of the parties and a copy will also be sent to the Deputy Conservator of Forests (South) through the office of the Standing Counsel (Civil), GNCT of Delhi, 423, Lawyers Chamber, Delhi High Court.

NAJMI WAZIRI, J.

JULY 24, 2018

sb