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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 1107/2018

GAURAV CHHABRA & ANR.

..... Petitioners

Through: Mr. Yudhvir Singh Chauhan, Advocate with
Petitioners in person.

Versus

STATE (GOVT OF NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Jamal Akhtar, Advocate with SI Rajesh
Kumar, P.S. Mandir Marg.
Mr. Ravindra Narayana and Mr. Raghav
Narayan, Advocates for Respondent No.2
with Respondent No. 2 in person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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24.07.2018

1. This petition seeks quashing of FIR No. 86/2017 registered at Police Station Mandir Marg, New Delhi, under section 12 of the Protection of Children from Sexual Offences Act (POCSO Act), 2012. The allegations are that the father – petitioner No.1 had verbally abused his minor son apropos something which he considered improper conduct of the son.
2. The FIR was lodged at the instance of respondent No. 2 – the mother of the minor. The matrimony between the complainant and petitioner No.1 has been estranged for some time. The parties have now agreed by way of a Compromise Deed dated 28.02.2018 recorded before the Patiala House Courts, New Delhi, envisaging that, *inter alia*, the parties shall move for divorce by mutual consent and the petitioner shall pay an amount of Rs.34

lacs to the complainant apropos quashing the present FIR. In terms of the settlement, a demand draft of Rs. 5 lacs is to be paid to the respondent No.2 at the time of quashing of the present FIR. Accordingly, a demand draft bearing No. 011832 for an amount of Rs. 5 lacs dated 23.07.2018 drawn on HDFC Bank in favour of Master Gautam Chhabra has been handed over to the complainant through her counsel. The said amount shall be kept in an interest bearing FDR to be renewed automatically in favour of the son to be utilized for his education and personal needs only. The complainant has been identified by the Investigating Officer.

3. It is stated that in view of the fact that the parties have settled the lis amicably, it will be in the interest of justice to quash the FIR and all proceedings emanating therefrom.

4. 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.”

5. 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.”

6. 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.
7. At this stage, the learned counsel for the petitioners submits that as an expression of their remorse for the unwarranted agony caused to his own son, the petitioner No.1 is willing to do some social work, as may be directed by this Court.
8. In the circumstances, for the unwarranted agony and injury caused to the complainant, the petitioner No. 1 shall pay an amount of Rs.50,000/- to the complainant in addition on or before 30th of this month. Let the petitioner No.1 report to DCP Traffic (South) Delhi on 28.07.2018 for being assigned the traffic duty during peak hours for a week.
10. A Compliance report in this regard will be filed by the petitioner No.1 as well as the DCP Traffic South within one week of completion of the assigned duties of social work.
11. The petition is disposed-off in terms of the above.
12. In the event of non-compliance, the case shall be re-notified on 23.08.2018.
13. Copy of this order be served on the DCP Traffic (South) directly, as well as through the Standing Counsel (Criminal), GNCTD.
14. A copy of this order be given *dasti* to the counsel for the parties under the signatures of the Court Master.

NAJMI WAZIRI, J.

JULY 24, 2018/sb