

\$~30

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

+ **W.P.(CRL) 3805/2018, CRL.M.A. 49799/2018**

RAJESH KAUSHIK

..... Petitioner

Through: Mr. Satish Kaushik, Advocate
alongwith petitioner.

Versus

THE STATE & ANR

..... Respondents

Through: Mr. Ashish Aggarwal, ASC for State
with SI Sanjeev Kumar, PS-Maurya
Enclave.
Dr. Alok, Advocate for R-2 alongwith
R-2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **17.12.2018**

1. This petition seeks quashing of FIR No. 115/2017 registered on the complaint of complainant/R-2 under sections 506/509 IPC at Police Station Maurya Enclave, New Delhi, apropos matrimonial discord and other incidents of aggression on her by the petitioner. Ties of matrimony between the complainant/respondent no. 2 and the petitioner brought to an end on by way of a Divorce Decree dated 01.02.2017. The parties have settled the *lis* and their differences amicably on 21.02.2018 with the intervention of common friends and relatives. The parties are present in Court and have been identified by the Investigating Officer. The latter states, upon instructions, that the complainant/respondent no. 2 does not wish to pursue her complaint any further and would rather like to put her unfortunate past behind her and look for happier times in life.

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. 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.

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....”

5. Since the complainant herself does not wish to pursue her complaint against the petitioner, the substratum of the complaint/FIR dissipates and any further proceeding apropos the same FIR would be an exercise in futility. Since the parties have settled their matrimonial *lis* amicably, nothing survives in the matter. It would therefore be in the interest of justice to quash the FIR in question. Therefore, FIR No. 115/2017 registered under sections 506/509 IPC at Police Station Maurya Enclave, New Delhi, and all the proceedings emanating therefrom are quashed.

6. However, at this stage, the Court would note that the rights of the children cannot be compromised by the parties. The children have their own rights in law. Furthermore, the rights of the children to have the affection of both parents and grandparents ought not to be so precipitately curtailed. For a healthy emotional quotient and a robust psychological growth, they would need unhindered and constant affection and guidance of both the parents. The children's right in the ancestral and parental properties too cannot be compromised by the parents.

7. It is stated that the parties have two children, a son aged 9 years and a

daughter aged 18 years. Their being removed from the society of the father and their paternal family could well have an adverse psychological effect on them and would not be conducive to the development of a healthy emotional quotient.

8. In the circumstances, the parties agree that the father will be free to meet the children at least for eight hours a fortnight. He will also have the right to take the children for vacations during the summer holidays for two weeks and for one week during the winter holidays. He may also visit the children or take them home for overnight stay during major festivals like birthdays, Diwali, Dussehra, etc, subject to mutual convenience.

9. The modalities of the children visiting their father will be worked out amicably between the parties. It will be open to the parties to approach the Court in case a difficulty arises in this regard.

10. Furthermore, the father has stated that he will continue to contribute approximately Rs. 40,000/- per month for the upbringing of the children and he undertakes to pay such monies atleast till their graduation. Their medical needs and other expenses, as may be too will be looked into by the father as per his financial wherewithal. The parties accept these arrangements.

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

NAJMI WAZIRI, J.

DECEMBER 17, 2018

RW