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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 5th September 2018

+ CRL.M.C. 2759/2018 and CrI.M.A.9813-9814/2018

SHIVAM CHAUHAN & ANR. Petitioners

Through: Mr. Rakesh Nautiyal, Advocate

versus

THE STATE (GOVT. OF NCT OF DELHI) & ORS.

.... Respondents

Through: Mr. Mukesh Kumar, APP for the
State with SI Narender Singh, PS
Vasant Kunj South

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. This petition has been presented invoking inherent power of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) with the prayer that proceedings arising out of first information report (FIR) no.629/16 of police Station Vasant Kunj (South), involving offences punishable under Sections 279, 337, and 304-A of the Indian Penal Code, 1860 (IPC) read with Sections 4/181 and 128/177 of the Motor Vehicles Act, 1988 against the first petitioner and the *kalandara* (complaint case) alleging offences punishable under Sections 5/180 and 146/196 of the Motor Vehicles Act, 1988

against the second petitioner be quashed, on the basis of settlement reached with the second and third respondents.

2. The petition has been resisted and strongly opposed by the respondent / State placing reliance on the ruling of a bench of three Hon'ble Judges of the Supreme Court in *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another*, (2017) 9 SCC 641, the thrust of the arguments being that the gravity of the offences involved and their impact on the society at large be not ignored.

3. The petitioners, on the other hand, place reliance on decisions of learned single judges of this Court in *Naveen Kaushik vs. State and Ors.*, (2012) 9 AD (Delhi) 529; *Mohit Sareen vs. State*, (2015) 1 JCC 358; *Manjeet vs. The State (NCT of Delhi) & Ors*, (2016) 1 JCC 574; *Ram Karan vs. State and Ors.*, (2015) 3 JCC 1685; *M.M. Shawl vs. State (Govt. of NCT) Delhi and Ors.*, Crl. M.C. 3920/2015, decided on 27.11.2015; and *Anil Kumar Nayak vs. State and Ors.*, WP(Crl.) No.2568/2016, decided on 22.01.2018, as also similar rulings of learned single judges of Himachal Pradesh High Court, High Court of Punjab and Haryana, High Court of Madhya Pradesh and High Court of Karnataka respectively in *Sandeep Chodha Vs. State of H.P.* (2014) Crl. LJ 4954; *Anil Kumar vs. State of Punjab and Anr.*, (2009) 3 RCR (Crl.) 258; *Sachin vs. State of Haryana*, (2014) 1 Cri.CC 312; *Raju @ Raj Kumar vs. State of Madhya Pradesh*, (2016) 1 MPWN 86; and

Srimurthy K.R. vs. The State of Karnataka, Crl. Petition no.901/2013. Decided on 16.12.2014.

4. It may be mentioned here itself that the aforementioned rulings of learned single judges of this court have generally referred to the decisions of the Supreme Court reported as *Gian Singh vs. State of Punjab, (2012) 10 SCC 303* and *Narinder Singh and Ors. vs. State of Punjab and Anr., (2014) 6 SCC 466*.

5. The petitioner places reliance on the following observations in decision in *Gian Singh* (supra)

“61. 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 proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the 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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.”

(emphasis supplied)

6. In *Parbatbhai Aahir* (supra), a bench of three Hon’ble Judges of the Supreme Court reiterated the law relating to the exercise of inherent power of the High Court under Section 482 Cr. PC for putting an end to the criminal action, taking note, *inter alia*, of rulings in *Gian Singh* (supra) and *Narinder Singh* (supra), summarising it thus :

“16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2 The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of [Section 320](#) of the Code of Criminal Procedure, 1973. The power to quash under [Section 482](#) is attracted even if the offence is non-compoundable.

16.3 In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under [Section 482](#), the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4 While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5 The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6 In the exercise of the power under [Section 482](#) and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7 As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

16.8 Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9 In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10 There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance”.

(emphasis supplied)

7. It is essential that before the court proceeds to examine the question as to whether the present is a fit case for the criminal proceedings to be brought to an end on the basis of settlement, the background facts and the offences which appear to have been committed are taken note of.

8. The status report which has been filed by the respondent / State reveals that the investigation into the FIR has already been concluded and a report under Section 173 Cr. PC has been presented in the appropriate forum – Juvenile Justice Board in the case of the first petitioner – seeking prosecution (inquiry) for the offences under Sections 279, 337, 304-A IPC and for

offences under Section 4 read with Section 181 and Section 128 read with Section 177 of Motor Vehicles Act, 1988 against him. Simultaneously, a *kalandara* was presented in the court of the Metropolitan Magistrate against the second petitioner seeking his prosecution for the offences punishable under Sections 5 read with Section 180 and Section 146 read with Section 196 of the Motor Vehicles Act, 1988.

9. The background facts, as may be culled out from the said status report and copies of the FIR and *kalandara* which have been submitted, would show that it is the case of the prosecution that the second petitioner is the registered owner of the motorcycle bearing registration no.DL-10S-4523, make Yamaha (“the motorcycle”, for short), the first petitioner, aged about 13 years at the relevant point of time, being his son. No insurance policy covering the third party risk is stated to have been taken out by the second petitioner in respect of the motor cycle for the relevant period. The first petitioner, being a minor, was not entitled to and was not holding a valid driving licence. It is the case of the prosecution that on 25.09.1996 at about 5.15 a.m. the first petitioner had been permitted by his father (second petitioner) to take the motorcycle out on a public road. The motorcycle was allegedly driven by the first petitioner in a rash or negligent manner, he having carried along, on the pillion, two boys, they being 14 years old Abhishek, son of the second respondent and 15 years old Vishal (third respondent). There is evidence available,

including in the form of statement of Vishal that the motorcycle was driven at high speed in a rash or negligent manner over Mahipalpur Flyover. The motorcycle went out of control of the first petitioner (rider) and slipped on the road resulting in all the three persons travelling thereon falling down, each suffering injuries. When they were taken to the hospital, Abhishek, the 14 years old son of the second respondent, was declared brought dead. The evidence gathered is stated to also show that the motorcycle was taken out by the first petitioner within the knowledge of his father (second petitioner), he knowing full well that the first petitioner was neither expected to drive such a vehicle nor had the authority in law to do so in absence of the driving licence.

10. The accusations for offences punishable under Sections 279, 304-A, 337 IPC pertain to the acts of commission and omission on the part of the first petitioner qua the motorcycle and the manner of driving on the public road. The charge for offences under Motor Vehicles Act as laid out against each of the petitioners arise out of the absence of the driving licence in the name of the first petitioner and also absence of a valid insurance cover in gross breach of the law to that effect.

11. It does appear that the parents of deceased Abhishek have entered into a compromise qua the death with the petitioner, the terms of settlement indicating payment of money in lieu of he agreeing to have the proceedings in the criminal case quashed. It is stated that the mother of the third

respondent (injured boy) has also given her no objection by submitting her affidavit. The affidavit which has been submitted (as Annexure 'D'), however, is in the name of Smt. Bala wife of Sh. Rajesh. Strangely, in the memo of parties, the name of the mother is given as Asha wife of Rajesh.

12. It is clear from the above that the offences involved in the case do not pertain to the category of offences which have “*civil flavour*” as referred to in the decisions in *Narinder Singh* (supra) and *Parbatbhai Aahir* (supra). It may be that these offences do not involve the element of “*mental depravity*” for which offences like rape were set out as illustration in the above mentioned rulings of the Supreme Court. It is stated that the father of the deceased child and mother of the injured boy are ready to bury the hatchet. However, the crucial question which falls for consideration is as to whether the offences involved here are such as can be described as non-serious or not grave having no impact on the society or in the nature of a “*mere dispute between private disputants*”. In the opinion of this court, the answer to this question must be in the negative.

13. The prime offence leading to the serious consequences for the two victims is constituted by the act on the part of the first petitioner who took out the motorcycle on a public way, without the authority of law – unfortunately with the tacit consent of his complicit father, who is the registered owner of the vehicle – and then using it for rash driving, the gravamen of the accusations sought to be laid against him, by virtue of

Section 279 IPC, being that by such acts he had “*endanger(ed) human life*”. The offence under Section 304-A IPC is the direct fall out of the first said offence that occurred on account of the motorcycle skidding, it having gone out of control of the first petitioner due to rash driving on a public way.

14. Expounding on the issue of culpable negligence and rashness in the context of similarly placed case of motor vehicular fatality, the Supreme Court in *Rathnashalvan v. State of Karnataka* (2007) 3 SCC 474 observed thus :

7. Section 304-A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304-A. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the

further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

(emphasis supplied)

15. Not very long ago, in *Dalbir Singh Vs. State of Haryana*, (2000) 5 SCC 82, dealing with the question of sentence, the Supreme Court laid emphasis on “deterrence” in such offences by observing :-

“1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic”

(emphasis supplied)

16. Laying down the policy of the court vis-à-vis cases of death by rash or negligent act (of driving), the court in *Dalbir Singh* (supra) ruled thus :-

“13... He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is

convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.”

(emphasis supplied)

17. In *Rathnashalvan* (supra), the gravity of and alarming rise in the malaise of fatal accidents in India as indeed the devastating consequences flowing therefrom was brought out as under :-

“12. The editorial under the heading “Road Traffic Injuries & Fatalities in India — A Modern Epidemic” in Indian J. Med. Res. 123, January 2006 contains some interesting observations. The relevant portions read as follows:

“The United Nations General Assembly adopted a resolution on road safety on 26-10-2005 which invites Member States to implement the recommendations of the World Report on Road Traffic Injury Prevention; to participate in the First United Nations Global Road Safety Week; and to recognise the third Sunday in November of every year as the World Day of Remembrance for Road Traffic Victims. This resolution follows the publication of The World Report on Road Traffic Injury Prevention by the World Health Organisation in 2004. This report highlights the fact that all over the world working age people are more likely to suffer hospitalisation, permanent disability and death due to road traffic injuries than most other diseases. The situation in India is not very different.

About 82,000 persons were killed on Indian roads in 2002. Official statistics regarding serious injuries are not reliable as they underestimate the actual number, but it is estimated that the number of people hospitalised may be 15-20 times the number killed. In a do-nothing scenario, it is possible that India will have 1,20,000-1,30,000 road traffic fatalities in the year 2008 and possibly 1,50,000-1,75,000 in 2015. Our vision should aim at reducing the fatalities to less than 1,00,000 in the short term (2008) and less than 70,000 in the long term (2015)."

(emphasis supplied)

18. The above grave scenario was highlighted again in *State of Karnataka v. Muralidhar* (2009) 4 SCC 463. In *Alister Anthony Pereira v. State of Maharashtra*, (2012) 2 SCC 648 taking note, *inter alia*, of the observations in *Dalbir Singh* (supra), and other previous decisions, to highlight the gravity of the offences involved here, the Supreme Court made out a strong case for the offence (of death by negligence) under Section 304-A IPC to be visited by a more stringent punishment. The view in *Alister Anthony Pereira* (supra) was reiterated in *Ravi Kapoor Vs. State of Rajasthan*, (2012) 9 SCC 284 and, yet again, in *Guru Basavaraj alias Benne Settappa Vs. State of Karnataka*, (2012) 8 SCC 734. Infact, lenient view in such matters was frowned upon in *State of Punjab Vs. Balwinder Singh and Ors.*, (2012) 2 SCC 182.

19. The offence of rash driving of a motor vehicle on a public road is not directed against any specific individual. It exposes other users of the road – citizens in general – to

wanton risk to their life, limb or property. The rising fatalities on public roads bring havoc to the victims, or their kith or kin, and create additional burden on the State and the society at large. Untimely loss of a precious human life not only brings immeasurable pain and suffering to the family that is left behind but, at times, loss of the bread earner resultantly throwing those dependent on him virtually on the road or at the mercy of doles of the civil society or State. As observed by the Supreme Court in *State of Punjab vs. Saurabh Bakshi*, (2015) 5 SCC 182, “(s)uch a crime blights not only the lives of the victims but of many others around them”. Recourse to the remedy of accident claim under the law is no solace. After-all, the legal process invariably takes time to deliver, such litigation being long winding and, at times, uncertain, particularly in cases where there is absence of valid insurance cover against third party risk. If the victim somehow survives with injuries, the trauma or aftermath of hurt is also not fully compensatable in terms of money.

20. We are a society wedded to the ethos of “rule of law”. The Constitution of India guarantees to every person on this soil the fundamental right to protection of life (Article 21). When a person moves on the public road in exercise of his fundamental freedom to move, he legitimately expects the State to ensure that all others using the public space or way respect his right to do so without he being put to harm. It is the obligation of the State to ensure enforcement of strict discipline

of the law. If such rights are breached, there is corresponding obligation on the court to ensure that consequences flowing from law follow.

21. Unlike certain other jurisdictions, our jurisprudence does not adopt the policy of Islamic law principle of “*blood money*” (*Diyat*) as the answer to every wrongdoing. On the contrary, the Supreme Court has ruled that in striking the balance to take care of the “*cry of the society*” in grave crimes, “*(m)oney cannot be the oasis*” [*Sumer Singh vs. Surajbhan Singh (2014) 7 SCC 323*]. Against the reality that number of such cases of rash or negligent acts causing mayhem like death or grievous hurt (or permanent disability) have only been escalating over the years, allowing a lid to be put on the criminal prosecution on account of “*settlement*” into which the victim is persuaded to enter, in his or her anxiety, to receive some recompense, would erode the policy of the court to maintain the “*deterrent element*”, such latitude being a result of “*misplaced sympathy*”, having the potency to convey the undesirable impression that driving can be permitted to be a matter of frivolous “*frolic*”.

22. A case of such nature cannot be treated as merely a private dispute between two individuals – not the least for this court to exercise its inherent power to inhibit further judicial process. The jurisdiction under Section 482 Cr.PC, though couched in terms of “*power*” is actually a responsibility which has to be discharged carefully bearing in mind the guiding principles and to “*secure the ends of justice*” in which exercise

societal interest must always be paramount. The liberal attitude in quashing such cases as of death or serious hurt due to rash or negligent acts would be, borrowing the expression from *Muralidhar* (supra), “*result wise counter productive in the long run and against societal interest*” and be in the teeth of the guidelines declared in *Parbatbhai Aahir* (supra).

23. In above view, the approach in the earlier decisions of this court, and some other High Courts, cited by the petitioners does not commend itself to this court.

24. A case of fatal accident involving rash driving by a minor, his parent being almost a willing abettor, is grossly grave and serious in nature. The fact that the motorcycle was not covered by an insurance policy against risk to the third parties only adds to the gravity. The inquiry against the first petitioner, and the prosecution of the second petitioner, in these circumstances, cannot by any reasoning, be described, as abuse of the law. It is clear upon bare perusal of the record that the case is not likely to fail merely on account of possible non-cooperation of the second or third respondents in as much as the State relies upon evidence which is available *dehors* their versions.

25. Following the above noted principles, this court is persuaded not to exercise the inherent power under Section 482 Cr. P.C. so as to quash the criminal action against the second and third respondents.

26. For the foregoing reasons, this court declines to grant the relief prayed for. The petition and the applications filed therewith are dismissed.

R.K.GAUBA, J.

SEPTEMBER 05, 2018

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