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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 2088/2018 & CrI. M.A. No.12616/2018

D S MAHRA @ DIWAN SINGH MAHRA Petitioner

Through: Mr. Himanshu Mehra, Advocate with
Petitioner in person.

Versus

GOVT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Avi Singh, Additional Standing Counsel
for State with Ms. Purnima, Advocate
with SI Sanjay Kumar, P.S. Barakhamba
Road.

Mr. Manoj Pant, Advocate (M. No.
9971560508) with Respondent No. 3 in
person (M. No.9910762430).

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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28.11.2018

1. This petition seeks quashing of FIR No. 0028/2018, dated 03.07.2018, registered at Police Station North Avenue, Delhi, for the offences punishable under section 82 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and sections 323/341/506 IPC, on a complaint by respondent No.3, guardian/Uncle of a school student, whose father has since passed away, complaining that his minor nephew had been physically assaulted in the school by the petitioner. The *lis* has been amicably settled by the Uncle/guardian on his behalf and on behalf of his minor nephew vide Settlement Deed dated 06.07.2018. Since the complainant does not have a counsel, Mr. Pant, Advocate, present in the Court, is appointed as his

counsel for the day. The latter states upon instructions that the complainant does not wish to pursue his complaint any further and has no objection if the present FIR is quashed.

2. The petitioner submits that there was no malice towards the child; he has an experience of almost 30 years as a teacher and there has been no prior case of an assault by him on any student. Canning the student with a wooden stick was to discipline the child, and it would not mean physical assault under sections 323/341 IPC. It is the petitioner's case that he acted out of concern for discipline of the student and more so in loco-parentis. His employer – Kendriya Vidyalaya School, Gole Market, New Delhi, has already taken disciplinary action against him; he has tendered apology, not only to his employer but also to the Uncle – guardian of the minor student and wishes the best for the student. He expresses his remorse and regret at the incident and states that he would be extremely careful in the future and would like to continue to serve in the noble cause of imparting education to school students.

3. In view of the fact that the petitioner has had an unblemished record as a teacher since 1988; that the canning of the student was as loco-parentis and not to take out of his anger for any other ill will and that the *lis* has been settled with the complainant, coupled with the fact that his employer having taken disciplinary action against the petitioner, a case is made out for quashing of the FIR.

4. The learned counsel for the State submits that since the respondent No.3-complainant does not wish to pursue the case against the petitioner any further, no purpose would be served if the petitioner is directed to face trial. Therefore, the State has no objection, if the present petition is allowed.

5. 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.”

6. 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.”

7. The parties have re-iterated the terms of the aforesaid settlement and undertake to remain bound by the same. Since the complainant himself does not wish to pursue against the petitioner, the substratum of the complaint/FIR dissipates and any further proceeding apropos the same FIR would be an exercise in futility. It would, therefore, be in the interest of justice that the FIR be quashed. Since the parties have settled their matrimonial *lis* amicably, nothing survives in the matter. Accordingly, FIR No. 0028/2018, dated 03.07.2018, registered at Police Station North Avenue, Delhi, for the offences punishable under section 82 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and sections 323/341/506 IPC, and all the proceedings arising therefrom are quashed.

8. At this stage, the learned counsel for the petitioner submits that as an expression of his remorse, the petitioner offers to take Coaching Classes for Physics for IXth, Xth and XIth, as directed by the Deputy Director of Education, Central Zone, Government of NCT of Delhi. The petitioner shall appear before the said Dy. Director on 06.12.2018, preferably in the forenoon. The latter shall assign him duties for conducting the aforesaid classes in the evening on Saturdays, at least for 10 weeks.

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

NAJMI WAZIRI, J.

NOVEMBER 28, 2018

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