

\$~

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

Reserved on: 27th August, 2018

Pronounced on: 24th September, 2018

+ CRL.M.C. 4327/2018 and Crl. M.A. 30773-30774/2018

MOHIT KHURANA

..... Petitioner

Through: Mr. Anuj Kapoor, Advocate

versus

STATE (NCT OF DELHI) & ORS.

..... Respondents

Through: Mr. Mukesh Kumar, APP for the
State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

1. The petitioner is facing criminal prosecution on the basis of report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) submitted on conclusion of investigation into first information report (FIR) no.137/2017 under Sections 279 and 338 of Indian Penal Code, 1860 (IPC) of police station Inder Puri at the instance of the third respondent. He has approached this court invoking the inherent power under Section 482 Cr. PC read with Article 226 of the Constitution of India to seek quashing of the proceedings in the said case (Crl. Case no.14335/17) on the ground that the matter has been amicably settled with second and third respondents, the former (second respondent) having been described as the victim, she purportedly having suffered grievous injuries in the accident that was

caused statedly due to rash or negligent driving of Santro car bearing no.DL-2CAE-0156 by the petitioner.

2. The petition is resisted vehemently by the learned Additional Public Prosecutor placing reliance on *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another*, (2017) 9 SCC 641.

3. The petitioner, *inter alia*, relies on the decision of the Supreme Court in *B.S. Joshi and Ors. vs. State of Haryana and Anr.*, (2003) 4 SCC 675. Noticeably, the case involved in *B.S. Joshi* (supra) concerned offences punishable under Sections 498A, 323, 406 IPC. In *Parbatbhai Aahir* (supra), a bench of three Hon'ble Judges of the Supreme Court culled out the principles which govern the exercise of the extraordinary power under Section 482 Cr. PC vested in the High Court to bring an end to the proceedings in a criminal case, and stated 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”.

4. The allegations against the petitioner include those attributing the offence of he having driven the motor vehicle in a rash or negligent manner on a public street, this leading to a motor vehicular accident being caused resulting in grievous injuries being suffered by the second respondent. From the factual matrix, it is clear that the offence under Section 279 IPC was not directed against any specific individual. It was rather against the public at large. It concerned the right of the people at large to use the public way free from the lurking

danger of such motorists as tend to throw all caution to winds and indulge in such driving as endangers human life.

5. In another case of rash driving of a motor vehicle leading to similar mishap, *albeit* leading to death of a human being, this Court in *Crl.M.C. 2759/2018, Shivam Chauhan & Anr. v. The State (Govt. of NCT of Delhi) & Ors.*, by decision rendered on 05.09.2018, declined to quash the criminal proceedings based on “*settlement*”, observing thus :-

“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).

6. The above views squarely apply to the case at hand.

7. For above reasons, the petition and the applications filed therewith are dismissed.

(R.K. GAUBA)
JUDGE

SEPTEMBER 24, 2018

yğ



नित्यमेव जयते