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

+ **W.P.(CRL) 3109/2018, CRL.M.A. 33896/2018 (Exemption)**

SHAMIM AHMAD @ SARWAR Petitioner
Through: Mr. Gajendra Mohan, Advocate with
Petitioner in person.

Versus

THE STATE & ANR. Respondents
Through: Mr. Sanjay Lao, Additional Standing
Counsel for State with Ms. Hemlata
Rawat, Advocate with SI Shakeel
Ahmed, P.S. Jamia Nagar.
Mr. D. A. Saifi and Mr. Arbind
Nayak, Advocates for Respondent
No.2 with Respondent No. 2 in
person.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **09.10.2018**

Crl. M.A.No.33896/2018 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed-off.

W.P.(CRL) 3109/2018

1. This petition seeks quashing of FIR No. 367/2018, dated 03.08.2018 registered under sections 354/354(B) of the Indian Penal Code, 1860 at Police Station Jamia Nagar, New Delhi, on a complaint made by respondent No. 2 regarding physical assault and attempt to outrage her modesty by the petitioner. The respondent No. 2 is stated to be known to the petitioner's

wife. With the intervention of the well-wishers and the neighbours, the *lis* has been amicably settled by way of a Compromise Deed dated 14.08.2018. The petitioner has apologised to the complainant. She is present in the Court and has been identified by the Investigating Officer as well as by her counsel. The latter states, upon instructions, that in view of the aforesaid settlement, the complainant would not like to pursue the matter any further. The petitioner has apologised to the complainant in the Court as well.

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. Since the complainant herself does not wish to pursue her complaint against the petitioners, 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. 367/2018, dated 03.08.2018 registered under sections 354/354(B) of the Indian Penal Code, 1860 at Police Station Jamia Nagar, New Delhi, and all the proceedings emanating therefrom are quashed.

5. At this stage, for having caused undue agony to respondent No.2 and for putting an unnecessary burden upon the administrative machinery engaged in the maintenance of law and order, the petitioner expresses his contrition and remorse and as expiation for whatever has happened in the past, he seeks to undertake some social work, as may be directed by this Court.

6. In the circumstances, the petitioner is directed to plant 20 trees each in the two Kabristans (Graveyards) at Jamia Nagar, New Delhi. For this purpose, he shall report to the CEO of the Delhi Wakf Board, on 22.10.2018 at 11.00 am, who will assign him duties to plant 20 trees each alongside the walls or suitable places in the said Kabristans or in any other Wakf property. The plants/trees shall be of deciduous indigenous variety with a nursery age of three and a half years, and a height of at least eight feet. Depending upon the soil type and topography, the Delhi Wakf Board may consider the following types of trees for plantation:-

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| (i) Gular (Cluster Fig) | (ii) Kadamba (Burflower Tree) |
| (iii) Pilkhan (White Fig) | (iv) Jaamun (Black Plum) |
| (v) Bargad (Banyan Tree) | (vi) Mango |
| (vii) Amaltas (Golden Shower)
[Indian Laburnum] | (viii) Mahua (Butter Tree) |
| (ix) Putranjiva | (x) Badh |
| (xi) Sagwan (Teak Wood) | (xii) Safed Siris (Albizia Procera) |
| (xiii) Kala Siris | (xiv) Anjeer |
| (xv) Kathal- Jackfruit | (xvi) Palash |
| (xvii) Arni | (xviii) Bistendu |

(xix) Rohida

(xx) Medshingi

The Board shall facilitate the plantation and shall also ensure proper wooden fencing for the same.

7. An affidavit of compliance shall be filed by the petitioner as well as Delhi Wakf Board on or before 22.11.2018, failing which the Registry shall list the case for directions. Satellite pictures prior to and after the afore directed plantation shall be obtained by the Board from Geospatial Delhi Ltd. and shall be filed alongwith his affidavit. Similar monthly updates shall be obtained by the Wakf Board to monitor and ensure the upkeep of the said plantation. A Report of the same shall be filed six months after the plantation alongwith fresh photographs to show the health/status of the plants. In case of default, the Registry shall list the case for directions.

8. The petition is allowed in the above terms.

9. A copy of this order be given *dasti* to the learned counsel for the parties under signature of the Court Master. Additionally, a copy be served upon the learned Standing Counsel for the Delhi Wakf Board for due compliance.

NAJMI WAZIRI, J.

OCTOBER 09, 2018

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