

\$~51

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

+ **W.P.(CRL) 3245/2018**

GOVIND @ GOVINDA & ANR.

..... Petitioners

Through Mr. Nishchal Joshi, Advocate for
petitioner No.1 along with petitioner
No.1

versus

STATE & ANR.

..... Respondents

Through Ms. Richa Kapoor, ASC with
Ms. Amita Sachdeva, Advocate for
the State with ASI Sukhda, P. S.
Uttam Nagar
Ms. Sapna, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **25.10.2018**

Crl. M.A.No. 34803/2018 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed-off.

W.P.(CRL) 3245/2018

1. This petition seeks quashing of FIR No. 0724/2016 registered at Police Station Uttam Nagar, New Delhi for the offences punishable under sections 498-A/406/34 IPC and the consequential proceedings emanating therefrom against them.

2. The learned counsel appearing on behalf of the petitioners submits that the aforesaid FIR was registered on the complaint of respondent No.2, namely, Ms. Varsha against her erstwhile spouse/ petitioner No.1 and other

petitioners regarding criminal acts against her. The matrimony between respondent No. 2 and petitioner No.1 has ended by way of divorce by mutual consent on 04.07.2018. The dispute between the parties has subsequently been settled through the intervention of well-wishers, family and friends. The matter has already been settled between the parties vide settlement dated 06.03.2018 arrived at before the Mediation Centre, Tis Hazari Courts, New Delhi, whereunder the complainant was to be paid a total sum of Rs. 5.5 lacs of which only Rs. 2.5 lac remains to be paid to her.

3. The complainant has been identified by the Investigating Officer as well as by her counsel. The balance amount of Rs.2.5 lacs has been so paid to her in Court today by way of a Demand Draft bearing No. 794607, dated 20.09.2018 drawn on Canara Bank, Arvind Marg, Jaipur-302011. Respondent No.2 lives with her widowed mother and her father passed away some time ago. She is presently not gainfully employed. The learned counsel for respondent No.2 states, upon instructions, that the complainant does not wish to pursue her complaint any further and rather would like to put her unfortunate past behind her and look for happier times in life.

4. Except the petitioner No.1 other petitioners are not personally present because the father of petitioner/ petitioner No.2 is stated to have met with an accident and is stated to have received severely injured his spine and his other family members are attending to him. The petitioner No.1 has been otherwise supported by way of affidavits of others petitioners. The petitioner No.1 and respondent No.2 have been identified by the Investigating Officer and their counsel.

5. The custody of minor daughter of the parties is to be with her mother/respondent No.2. The court would note that there was no permission

for regular maintenance. The appropriate arrangement have not been made for the maintenance of the child, her rights would be independent to the rights of the parents.

6. At this stage, the learned counsel for the petitioner No.1 states that in the interest of his daughter, he would be willing to make payment of Rs.2500/- per month, directly in the bank account of the mother/respondent No.2 having account No. 91282010122552, MICR Code 110025168, IFSC Code SYNB 0009128 in Syndicate Bank, Uttam Nagar, Delhi, on every 5th day of the each month.

7. Petitioner No.1 desires to meet his daughter on regular basis. The child cannot be deprived of her right to affection of both the parents. The same would be desirable for her balanced mental growth.

8. Respondent No.2 has no objection to the father/petitioner No.1 to meet the child every fortnight for eight hours. The modalities of meeting the child shall be worked out between the parties.

9. 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.”

10. 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.”

11. 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....”

12. In view of the above, parties request that clause No.9 of the agreement

be deemed to be modified. It is so ordered. 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*, nothing survives in the matter. It would therefore be in the interest of justice to quash the FIR in question. Therefore, FIR No. 0724/2016 registered on the complaint of complainant/R-2 under sections 498-A/406/34 IPC at Police Station Uttam Nagar, New Delhi, and all the proceedings emanating therefrom are quashed. In case of any difficulty parties are at liberty to approach the Court.

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

NAJMI WAZIRI, J

OCTOBER 25, 2018

b