

\$~26

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

+ **CRL.M.C. 34/2018**

SMT DHANWANTI & ORS

..... Petitioners

Through Ms. Kajal Chandra with Ms. Prerna
Chopra and Mr. Viren Kapur,
Advocates with petitioners in person.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through Mr. Amit Ahlawat, APP for State
ASI Rajbir, PS Anand Vihar.
Mr. Suresh Kumar Sharma, Advocate
for the respondent No.2 with
respondent No.2 in person.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

%

05.01.2018

CRL.M.A. 135/2018 (exemption)

Exemption is allowed subject to all just exceptions.

CRL.M.C. 34/2018

1. The petitioners seek quashing of FIR No.619/2014 under Section 186/341/506/34 IPC, Police Station Anand Vihar. The FIR emanates out of a matrimonial discord and an incident which happened consequent to respondent No.2 seeking to enforce some rights in terms of an order of the Court permitting her entry into the first floor of the premises owned by the Petitioner No.2. Petitioner No.2 is the father of the husband of the respondent No.2, who is not an accused in the FIR. The petitioner No.1 is the mother and the petitioner Nos.3 and 4 are the sisters of the husband of respondent No.2, the complainant.

2. It is contended that the complainant had an order in her favour from the concerned Court under the Domestic Violence Act and, consequent to which, she wanted to enter the premises. At the time when she sought to enforce the order, an altercation took place. It is also contended in the FIR that the petitioners refused to comply with the directions of the SHO as well as the Investigating Officer to let the respondent No.2 enter the premises. Because the altercation as well as the refusal of the petitioners to permit the respondent No.2 to enter in the premises and permit the SHO as well as the Investigating Officer to enforce the order of the Court, the subject FIR has been registered. It is contended in the FIR that the petitioner No.2 had refused to open the door despite being directed to do so by the police officers and stated that since he was the owner of the house, he would not permit anyone to enter.

3. It is stated by the petitioners that there is a settlement between the petitioners and the husband of the respondent No.2 with the respondent No.2, consequent to which the marriage between the respondent No.2 and her husband has been dissolved by mutual consent. In terms of the agreement between the parties as well as the respondent No.2, a sum of Rs.15,00,000/- have been paid to her in full and final settlement of all her claims qua *stridhan*, permanent alimony, dowry articles, maintenance for herself as well as for the minor son. It has also been agreed between the petitioners, former husband of the respondent No.2 as well as the respondent No.2 that she would not object to the quashing of the FIR.

4. Respondent No.2 is present in Court and is identified by her counsel as well as the Investigating Officer. Respondent No.2 confirms that the settlement has taken place and she is agreeable to the quashing of the FIR No.619/2014 under Section 186/341/506/34 IPC, Police Station Anand Vihar.

5. Learned Additional Public Prosecutor has contended that since one of the offences the petitioners are charged with is under Section 186 of the IPC, i.e. obstructing an officer from performing his duties, discretion under Section 482 of Cr.P.C. should not be exercised.

6. In view of the settlement between the parties and the fact that the marriage between the respondent No.2 and her husband has already been dissolved by way of a decree of divorce by mutual consent and further all disputes between the petitioners, the husband of the respondent No.2 and the respondent No.2 have been amicably settled and the respondent No.2 does not wish to prosecute the complaint any further, in my view, the ends of justice would be served in quashing the FIR No.619/2014 under Section 186/341/506/34 IPC, Police Station Anand Vihar and the consequent proceedings emanating therefrom.

7. Insofar as the offence under Section 186 Cr. P.C. is concerned, the punishment prescribed for the said offence is three months or fine which may extend to Rs.500/-, or both. Keeping in view the judgment of the Supreme Court in *Gian Singh vs. State of Punjab*: (2012) 10 SCC 303, wherein, the Supreme Court held as under:-

“48. A five-Judge Bench of the Punjab and Haryana High Court in Kulwinder Singh v. State of Punjab [(2007) 4 CTC 769] was called upon to determine, inter alia, the question whether the High Court has the power under Section 482 of the Code to quash the criminal proceedings or allow the compounding of the offences in the cases which have been specified as non-compoundable offences under the provisions of Section 320 of the Code. The five-Judge Bench referred to quite a few decisions of this Court including the decisions in Madhu Limaye [(1977) 4 SCC 551 : 1978 SCC (Cri) 10], Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404], Simrikhia [(1990) 2 SCC 437 : 1990 SCC (Cri) 327] , B.S. Joshi [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] and Ram Lal [(1999) 2 SCC 213 : 1999 SCC (Cri) 123] and framed the following guidelines: (Kulwinder Singh case[(2007) 4 CTC 769] , CTC pp. 783-84, para 21)

“21. ... ‘(a) Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.

(b) Cases pertaining to property disputes between close relations, which are predominantly civil in nature and they have a genuine or belaboured dimension of criminal liability. Notwithstanding a touch of criminal liability, the settlement would bring lasting peace and harmony to larger number of people.

(c) Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or commercial claim.

(d) Minor offences as under Section 279 IPC may be permitted to be compounded on the basis of legitimate settlement between the parties. Yet another offence which remains non-compoundable is Section 506(II) IPC, which is punishable with 7 years imprisonment. It is the judicial experience that an offence under Section 506 IPC in most cases is based on the oral declaration with different shades of intention. Another set of offences, which ought to be liberally compounded, are Sections 147 and 148 IPC, more particularly where other offences are compoundable. It may be added here that the State of Madhya Pradesh vide M.P. Act 17 of 1999 (Section 3) has made Sections 506(II) IPC, 147 IPC and 148 IPC compoundable offences by amending the schedule under Section 320 CrPC.

(e) The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by public servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter VII (relating to army, navy and air force) must remain non-compoundable.

(f) That as a broad guideline the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair.

While parting with this part, it appears necessary to add that the settlement or compromise must satisfy the conscience of the court. The settlement must be just and fair besides being free from the undue pressure, the court must examine the cases of weaker and vulnerable victims with necessary caution.'

To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the court to exercise its power under Section 482 CrPC. The only principle that can be laid down is the one which has been incorporated in the section itself i.e. 'to prevent abuse of the process of any court' or 'to secure the ends of justice'."

58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the

offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. 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. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.”

8. In my view, no fruitful purpose would be served in continuing with the proceedings. Continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. Insofar as the allegations with regard to commission of an offence under Section 186 are concerned, I am of the view that the said offence alleged to have been committed is really an offshoot of the main dispute between the petitioners and the respondent No.2. Ends of justice would be served, in case, the petitioners are directed to deposit cost for the time spent in the investigation by the police offices.

9. Accordingly, it is directed that a cost in the sum of Rs.15,000/- be paid by the petitioners jointly to “*Prisoners Welfare Fund, Jail No. 14, Mandoli*”, Mangal Pandey Marg, Harsh Vihar, Village Mandoli, Delhi with a period of two weeks from today. The receipt of deposit of the costs imposed by this Order be furnished to the concerned Investigating Officer within a period of three weeks from today.

10. In view of the above, FIR No.619/2014 under Section 186/341/506/334 of the Indian Penal Code and the consequent proceedings arising therefrom are, hereby, quashed.

11. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

JANUARY 05, 2018
st

