$~42

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

\+ **W.P.(CRL) 3788/2018 & Crl. M.A. No.49637/2018**

NARESH KUMAR ..... Petitioner

Through: Mr. Tarun Gahlot, Advocate with Petitioner in person.

Versus

STATE & ANR. ..... Respondents

Through: Mr. R.S. Kundu, Additional Standing Counsel for State with Ms. Suman Saharam, Advocate and SI Adesh Kumar, P.S. Prashant Vihar.

Mr. Rajesh Kumar and Mr. Kamlesh Kumar, Advocates for Respondent No.2 with Respondent No. 2 in person.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 14.12.2018

Crl. M.A. No.49637/2018 (for exemption)

Allowed, subject to just all exceptions.

The application stands disposed-off.

W.P.(CRL) 3788/2018

1. This petition seeks quashing of FIR No. 512/2018, registered under sections 354(A)/509 IPC at Police Station Prashant Vihar, Delhi, on a complaint of respondent No.2 apropos an altercation between the parties.

2. The *lis* has since been amicably settled between them by way of a Compromise/Settlement Deed dated 31.10.2018, courtesy the Delhi

Mediation Centre, Rohini District Courts, Delhi. The complainant was to be paid a total sum of Rs. 45,000/-, which has been so paid to her in Court today by way of a Demand Draft bearing No.048834, dated 07.12.2018, drawn on Axis Bank Ltd., Ashok Vihar, New Delhi. The parties are present in the Court and have been identified by their counsel as well as by the Investigating Officer of the case. They undertake to abide by the terms of the aforesaid settlement. Their undertaking is accepted.

3. 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."*

4. 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."*

5. The Court is of the view that since the *lis* has been amicably settled, nothing further survives in the case and the FIR has been denuded of its substratum and any further proceedings emanating therefrom would be an exercise in futility, therefore, in the interest of justice, the FIR should be quashed.

6. In the circumstances, FIR No. 512/2018, registered under sections 354(A)/509 IPC at Police Station Prashant Vihar, Delhi, and all proceedings emanating therefrom are hereby quashed.

7. The petition is allowed in the above terms.

NAJMI WAZIRI, J.

DECEMBER 14, 2018
sb