

\$~25

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4020/2018**

SOMNATH BHARTI & ORS.

..... Petitioner

Through Mr.Dayan Krishnan, Sr.Advocate with
Ms.Ayushi Rajput, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI)& ANR. Respondent

Through Mr.Kewal Singh Ahuja, APP for the State
Insp.Karun Sagar, Dwarka.

Ms.Shivani Tyagi for R-2 alongwith R-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **07.03.2019**

The State has filed status report dated 06.03.2019 under the signature of Investigating Officer. The second respondent has filed her affidavit giving no objection to the prayer for quashing of the proceedings arising out of FIR No.745/2015 of PS Dwarka North.

A copy of the report (charge-sheet) under Section 173 of Code of Criminal Procedure, 1973 (Cr.P.C.) was filed by the petitioner, it indicating that, as per the investigating agency, sufficient evidence had come on record to seek prosecution of the first petitioner on the charge for offences punishable under Sections 307 /315 /324 /498A /406 /417 / 420 /506 /34 of Indian Penal Code, 1860 (IPC) and of the other petitioners on the charge under Section 212 IPC. The evidence gathered during investigation which may have been presented with said charge-sheet has not been shared with this Court.

The offences under Sections 498A/406/420/506/34 IPC have been alleged in the context of marital discord between the first petitioner and the second respondent. In terms of well settled law, so there should be no difficulty in entertaining the prayer for quashing in regard to such offences. Reference, if required, may be made in such context to decisions of the Supreme Court reported as *Gian Singh v. State of Punjab*, (2012) 2 SCC 303, *Jitender Raghuvanshi v. Babita Raghuvanshi* (2013) 4 SCC 58, *Narinder Singh and Others v. State of Punjab and Another* (2014) 6 SCC 466 and *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another*, (2017) 9 SCC 641. But, given the fact that the case also involves offences punishable under Section 307 IPC (*attempt to murder*) and Section 315 IPC (*Act done with intent to prevent child being born alive or to cause it to die after birth*), the matter requires further scrutiny.

In a decision rendered on 05.03.2019, by a bench of three Hon'ble Judges of Supreme Court in the *State of Madhya Pradesh v. Laxmi Narayan and others* (Crl.Appeal No.349/2019), the law respecting exercise of inherent power under Section 482 of Cr. PC by the High Court has been revisited and while reiterating that such jurisdiction is not to be exercised in context of prosecution which involves "*heinous and serious offences*", the Court has clarified, in the particular context of offence under Section 307 IPC, as under:

"offences under Section 307 IPC and the Arms Act etc.

would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove.”

(emphasis supplied)

The investigation undoubtedly has been concluded and a charge sheet presented in the court of cognizance. On being asked, learned senior counsel submitted that cognizance has already been taken and process issued. Given the above guidance of the Supreme Court in

Laxmi Narayan (supra), it has to be examined whether the offences under Section 307 IPC, as indeed under Section 315 IPC (which is similar in nature), are well founded or not. The petitioners have already entered appearance, the case already committed to the Court of Sessions, the case being pending now before the Court of Sessions for further proceedings. Ideally, the question of charge should be considered by the concerned criminal court where the case is pending lest the conclusions, or adjudication, on such issue by this Court in such proceedings as at hand causes prejudice to either side.

At this stage, learned senior counsel submitted that the hearing on the petition at hand may be deferred to a later date and the stay against the proceedings before the trial court, as ordered earlier, may be vacated so that the petitioners can make their submissions on the questions of charge before the trial court and after the trial court has rendered its decision on the subject, if need be, pursue their remedies additionally in such regard and then press the petition at hand before this court.

As requested, the stay against the proceedings before trial court, as directed by order dated 09.08.2018, is vacated.

Be listed on 07th May, 2019.

Dasti under the signatures of Court Master.

R.K.GAUBA, J

MARCH 07, 2019

da