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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 3828/2018 & Crl. M.A. No.49907/2018

AWLEEN KAUR & ORS.

..... Petitioners

Through: Mr. Sanjeev Sahay and Ms. Prerna Sharma,
Advocates with Petitioners in person.

Versus

STATE & ANR.

..... Respondents

Through: Mr. Rahul Mehra, Standing Counsel for State with
Ms. Nandita Rao, Additional Standing Counsel,
Mr. Aman Preet, Advocate with SI Sanjeet Singh,
P.S. Rajouri Garden.
Ms. Himangi Kapoor, Advocate for Respondent
No.2 with Respondent No. 2 in person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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21.02.2019

1. This petition seeks quashing of FIR No. 223/2015, registered at Police Station Rajouri Garden, Delhi, for the offences punishable under sections 323/374/34 of the Indian Penal Code, 1860 and section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the consequential proceedings emanating therefrom against them pursuant to a complaint by respondent No.2, Ms. Amisha that she was kept in illegal confinement for about three months for the household labour. She was brought to Delhi by petitioner No.3 – Mr. Ajit Roshan Kerketa, an agent, as well as one Jai Mangal, but apparently with the consent and blessings of complainant's father. She was employed by the petitioners No. 1 and 2 for household

work. She states that she was being physically assaulted whenever she made a mistake and was never paid any monies for the period of her work. The matter was examined by the Child Welfare Committee, Nirmal Chhaya, Hari Nagar, Delhi, which has ordered that the employers are liable to pay the amount for an unskilled worker at the rate fixed by the State and that the complainant was also entitled to compensation of Rs. 5,000/-. Accordingly, she had been paid Rs.28,126/- towards wages and Rs.5,000/- towards compensation.

2. The learned counsel for the petitioners submits that in addition to the above, the petitioners No. 1 and 2 are ready and willing to be put to terms. The offences are compoundable.

3. The learned counsel for the State submits that since the respondent No.2 does not wish to pursue the case against the petitioner any further, no purpose would be served if the petitioners are directed to face trial. Therefore, the State has no objection, if the present petition is allowed.

4. 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.”

5. 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.”

6. In the circumstances, the FIR and all proceedings emanating therefrom are quashed subject to costs of Rs.1,50,000/- to be paid by petitioners No. 1 and 2 to respondent No.2 within ten days from today.

7. Petitioner No.3-Ajit Roshan Kerketa and said Jai Mangal are present in the Court and have been identified by the Investigating Officer. Since they do not have a counsel, Ms. Vandna Bhatnagar, Advocate, present in the Court, is appointed as their counsel for the day. The latter states upon instructions that the said persons are extremely apologetic for what they have done i.e. robbing of a minor of her innocent teenage days when she should have been studying instead of doing domestic chores. They agree to be put to terms.

8. In the circumstances, they are directed to pay Rs.10,000/- each to the respondent No.2. In addition to the above, as an expression of their contrition and remorse for having put the child through the aforesaid gravity and pain, they undertake to offer manual labour for the plantation and care of trees. Accordingly, they are directed to report before the Deputy Conservator of Forest (South) on 25.02.2019 at 11.00 am, who shall assign them the aforesaid duties in the Central Ridge for a period of ten working days. An affidavit of compliance shall also be filed by the DCF concerned. Mr. Sahay, the learned counsel for the petitioners, submits that the costs of Rs.1,50,000/- alongwith Rs.20,000/- (costs of Rs.10,000/- each to be paid by petitioner No.3 and Jai Mangal) shall be deposited by petitioners No. 1 and 2

within ten days from today. The latter may earlier or subsequently recover the said monies of Rs.20,000/- from the aforesaid persons. Of the monies so deposited, Rs.1,25,000/- shall be kept in an interest bearing FDR initially for a period of five years to be renewed automatically, with Punjab National Bank, Nirmal Chhaya, Jail Road, New Delhi, where the complainant is having an account bearing No.1527001700007260. The remaining amount shall be released to the complainant upon an application being made to this effect.

9. At this stage, the learned counsel for the petitioners submits that as an expression of the contrition of the petitioners for them having caused the unnecessary burden upon the administrative machinery engaged in the maintenance of law and order, the petitioner No. 1 and 2 shall do some social work as may be assigned by the Court. Accordingly, they are directed to plant 50 trees each (50 x 2 petitioners = 100 trees) in Delhi and for this purpose they are directed to report before the Deputy Conservator of Forests (South), GNCTD, on 25.02.2019 at 11.00 am, who shall assign them duties of planting 50 trees each in the plants/trees each in Compensatory Afforestation Schemes or other Schemes. 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 six feet. Depending upon the soil type and topography, the DCF 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) | (viii) Mahua (Butter Tree) |
| [Indian Laburnum] | |

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| (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 |

10. An affidavit of compliance shall be filed by the aforesaid petitioners as well as DCF on or before 25.03.2019, failing which the Registry shall list the case for directions. failing which the Registry shall list the case for directions. Aerial pictures prior to and after the afore directed plantation shall be obtained and shall be filed alongwith his affidavit. Similar quarterly updates shall be obtained by the DCF 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.

11. The petition is allowed in the above terms.

12. A copy of this order be served upon the DCF through the Office of the Standing Counsel (CrI.), GNCTD for due compliance.

NAJMI WAZIRI, J.

FEBRUARY 21, 2019

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