

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

% Date of decision: 22nd February, 2021

+ W.P.(CRL) 1301/2020

VIKAS @ VICKY & ORS. Petitioners
Through: Mr.Ashok Chhikara, Adv. with the
petitioners in person through V. C.

Versus

THE STATE OF NCT OF DELHI & ORS. Respondents
Through: Mr.Rajesh Mahajan, ASC with
Ms.Jyoti Babbar, Adv. for R-1 with SI
Praveen, PS Shahbad Dairy.
Respondent No.2 present in person
through V. C.
Respondent No.3 present in person
through V. C.
Respondent No.4 present in person
through V. C.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. This writ petition has been filed by the petitioners with the
following prayers:

*“It is, therefore, most respectfully prayed that this Hon'ble
Court may kindly be pleased to quash the FIR. NO.
773/2016 U/S 323/308/506/34 IPC OF P.S. SHAHBAD
DAIRY, DELHI, against Petitioners No.1,2 & 3, in the
interest of justice, peace and harmony between the
parties.”*

2. In substance the case of the petitioners is for quashing of the FIR No.773/2016 under Section 323/308/506/34 IPC of P.S. SHAHBAD DAIRY, DELHI.

3. The petition includes a memo of parties where the complainants, at whose behest the FIR has been registered have been made respondent Nos. 2 to 4. It is the case of the petitioners and so contended by their counsel that the petitioners herein as well as respondent Nos. 2 to 4 are neighbours. The subject matter of the FIR is about an incident that happened on October 25, 2016 at 1.00 am when, in the neighbourhood the shouting of a shopkeeper was heard, which made the respondent Nos. 2 to 4 to step out to see some boys are beating the shopkeeper named Pawan. When respondent Nos. 2 to 4 intervened, the petitioners, who were beating the shopkeeper, left him and started beating the respondent Nos.2 to 4 with *dandas*. One of the petitioners hit *danda* on the head of Nitin Dabas the respondent No.4 due to which he became unconscious. In fact, it is alleged that the petitioners threatened to kill them. The petitioners fled away leaving Nitin Dabas on the spot. Thereafter, the police had come who took the respondent Nos. 2 to 4 to the MB Hospital. Learned counsel for the petitioners also submitted that immediately after the incident, an oral settlement had taken place between the petitioners and respondent Nos.2 to 4 and the petitioners continued to be under the impression that in view of the settlement entered between them and respondent Nos.2 to 4, nothing survives in the FIR and the same shall not be pursued against them.

4. Since, it transpired the FIR has not been quashed, the petitioners and the respondents had on August 8, 2020, formally executed a written settlement and compromised all the disputes arising out the abovesaid FIR.

5. He stated that the petitioners have a clean record and never been involved in any criminal case. The Registration of FIR is causing unnecessary harassment to the petitioners. In support of his submission, the learned counsel for the petitioners has drawn my attention to the contents of the FIR and written settlement entered between the parties at pages 43 to 45 of the paper-book. Learned counsel has also relied upon the following judgments in support of his submission that FIR need to be quashed.

I. Parbatbhai Aahir & Ors. vs. State of Gujrat & Ors. (AIR 2017SC4843) (MANU/SC/1241/2017)

II. Jatinder Khurana & Ors. vs. State of NCT of Delhi & Ors. (Crl. M.A 31440/2019 & 31388/2019 decided on 19.07.2019)

III. Dhiraj Verma & Ors. vs. State & Ors. (MANU/DE/0649/2019)

IV. Manoj kumar & Ors. vs. State & Ors. (MANU/DE/0531/2019)

6. On the other hand Mr.Rajesh Mahajan, learned ASC for State, would contend that the case was registered on the statement of Amit Sindhu the respondent No.2 herein who is a resident of village Prahladpur Bangar, Delhi-110042 wherein he has alleged that on October 25, 2016 he was present at Upwan Apartment with his friends

the respondent Nos. 3 and 4 when they heard one shopkeeper namely pawan was shouting whereupon they promptly reached the spot and found that some boys were beating Pawan. They intervened into the matter to rescue him and asked the boys as to why they were beating him. Thereafter the boys started beating them with 'dandas'. One of them Nitin Dabas the respondent No.4, was hit on the head with 'danda' with the result he became unconscious. Thereafter the petitioners ran away and police arrived at the spot and they were shifted to the MB hospital.

7. During the course of investigation, statements were recorded, wherein Pawan has stated that petitioner No.1 was main assailant in the case. On enquiry, it was found that the petitioner No.1 was previously residing at flat No.-61 LIG Flats, GH-4, Upwan Apartment, Rohini Sector-28 since July, 2016 but was absconding after the date of the incident.

8. It is the case of the State that efforts were made to arrest the accused persons at several hideouts but they deliberately changed their addresses time and again and evaded the arrest. After an MLC conducted on Nitin Dabas, the doctor opined the nature of injury as grievous. On the remaining two MLCs opinions were kept pending for want to further treatment documents from the injured persons. Despite reaching several hideouts of the accused at Samahlkha, Sonapat, Haryana and Panipat they were not traceable. Non-bailable warrants were issued to the accused persons.

9. Mr. Mahajan has relied upon the three judgements, i.e., *The State of Madhya Pradesh vs Laxmi Narayan 2019(5) SCC 688*, *Prabathbai Aahir @ Parbatbhai Bhimsinhbhai Karmar and Ors vs.*

The State of Gujarat 2017(9) SCC 641, Gian Singh vs. State of Punjab & Anr 2012(10) SCC 323 and Sunil Kumar vs N.C.T. of Delhi And Ors. 1998(8) SCC 557 in support of his submissions. He states, two factors weigh against the petitioners, inasmuch the injury on Nitin Dabas was opined as *grievous injury*. They were absconding and despite efforts to trace them out, they could not be located. He concedes to the fact that there are certain mitigating factors inasmuch as the fight was a sudden fight when the respondent Nos. 2 to 4 came to save the shopkeeper. No sharp weapon was used by the accused persons for beating the respondent Nos. 2 to 4 rather it was a '*danda*'. There is no previous involvement of the accused person in any criminal case and the accused persons and the respondents have settled their inter-se dispute by way of a written settlement.

10. Having heard the learned counsel for the parties and the parties in person (as identified by the IO), at the outset I may state that the Supreme Court in *Prabhatbhai Aahir (supra)* has reiterated the following parameters for exercising inherent jurisdiction under Section 482 Cr.P.C. for quashing of FIR / Criminal proceedings:

“16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant

element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9 In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice”

11. Having noted the law on the subject, the facts as noted are that the petitioners herein who were beating the shopkeepers were intervened by the respondent Nos. 2 to 4 which made the petitioners, using the ‘dandas’, beat the respondent Nos. 2 to 4. Surely, it can be said there was a sudden provocation. The ‘danda’ is not a sharp weapon / fire arm which would have found fatal. No doubt, the injury suffered by Nitin Dabas on his head was termed as grievous but there is no conclusion with regard to injury on the other two respondents.

12. It is the case of the prosecution that the petitioners were absconding. On the other hand, the case as argued by the learned counsel for the petitioners is that immediately after the incident the parties had orally settled their disputes and the petitioner No.1 had left the place where he was living in Rohini to his home town and the petitioners were under the impression that the FIR shall not be pursued. It is a fact and so stated by the Counsel and the parties in person that they in the month of May, 2020 have formally entered into a settlement in writing whereby the respondent Nos. 2 to 4 have decided not to

pursue the FIR and shall cooperate for the quashing of the same. That apart, as stated by Mr. Mahajan, the petitioners do not have any past criminal case(s) registered against them.

13. In view of the position of law laid down by the Supreme Court and the judgments of the co-ordinate bench of this Court in *Dhiraj Verma and Ors. (supra)* and *Manoj Kumar & Ors. (supra)* which also includes an offence under Section 308 of IPC, this Court is of the view that continuance of proceedings arising out of the FIR in question would be an exercise in futility.

14. Accordingly, this petition is allowed, subject to costs of Rs.20,000/- to be deposited by each of the petitioners with the Delhi High Court Legal Services Authority within one week from today. Upon placing on record the proof of deposit of costs within one week thereafter and handing over the copy to IO, the FIR No.773/2016 under Section 323/308/506/34 IPC registered at Police Station SHAHBAD DAIRY, DELHI and the proceedings emanating therefrom shall stand quashed.

15. The petition is disposed of.

V. KAMESWAR RAO, J

FEBRUARY 22, 2021/bh