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

% ***Date of decision: September 21, 2022***

+ **W.P.(CRL) 1344/2022**

M/S SAWHNEY BUILDWELL LLP

..... Petitioner

Through: Mr. Sudarshan Rajan, Mr. Hitain Bajaj and Mr. Vijay Kumar Sharma, Advocates.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Rahul Tyagi, ASC for the State with Mr. Aashish Chojar, Mr. Sudeep Raj Saini and Mr. Jatin, Advocates with ASI Rajesh Rai, P.S. Sarita Vihar.

Mr. Ramesh Rawat, Advocate for R-2,3,5,6 & 7.

Mr. Rohit Bhardwaj, Advocate for R-4.

Respondents no. 2 & 3 in person.

CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present petition is filed under Articles 226 & 227 of the Constitution of India read with section 482 Cr.P.C for quashing of FIR bearing no. 208/2022 registered under sections 288/304A IPC at P.S. Sarita Vihar along with consequential proceedings.

2. The perusal of FIR bearing no. 208/2022 reflects that it was got registered on the basis of the complaint made by respondent no. 4/Habibur Rahaman, Contractor, wherein it was stated that he was doing brick and

plaster work on the instructions of M/s Sawhney Buildwell LLP Engineer and contractor at Pacific Mall Jasola Metro Station and on that construction site about 15 workers were employed. He asked Rajiv Jain, Project Manager of the Sawhney Buildwell LLP Company to provide safety apparatus which were not made available by him. On 23.03.2022, the employee labours were working on the site and at about 10:00 a.m. one employer, namely, Akhtar Alam had slipped while working and thereafter, fell down and died on the way to hospital and the accident took place because the safety apparatus were not provided by Rajiv Jain, Project Manager of M/s Sawhney Buildwell LLP Engineers and Contractors. Thereafter, ASI Rajesh Rai, P.S. Sarita Vihar after receipt of DD bearing no. 37A dated 23.03.2022 reached at Apollo Hospital where he obtained the MLC bearing no. 198/2022 pertaining to the deceased Akhtar Alam with the alleged history of falling from a height. ASI Rajesh Rai recorded the statement of the complainant Habibur Rahaman who was the contractor of the deceased. Accordingly, the FIR bearing no. 208/2022 was got registered under sections 288/304A IPC at PS Sarita Vihar.

3. The deceased Akhtar Alam has left respondents no. 2 to 7 as surviving legal heirs except respondent no. 4. The respondent no. 3 and 5 are the parents of the deceased and the respondent no. 2 is the wife of the deceased and the respondent no. 6 and 7 are the minor children of the deceased.

4. M/s Sawhney Buildwell LLP Engineers and Constructors which was responsible for the execution of work at the site through Project Manager, Rajiv Jain has settled with respondents no. 2, 3 and 4 vide settlement dated 18.04.2022. The respondent no. 2 who is the wife of the deceased stated that

she also accepts the settlement on behalf of the respondent no. 6 and 7 being their mother and natural guardian. It is also stated that the respondent no. 3 who is the father of the deceased Akhtar Alam is also responsible for settlement on behalf of the respondent no. 5. The respondent no. 2 is not having any interest adverse to the interest of respondent no. 6 and 7.

5. It is settled between the parties that the petitioner shall pay Rs.5,00,000/- (Rupees Five Lakhs Only) to the respondents no. 2 to 7 except the respondent no. 4 on compassionate and humanitarian ground as compensation. The respondent no. 4 being the contractor has not accepted any compensation from the petitioner. It is stated that the petitioner has already paid a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) out of which, Rs.4,00,000/- (Rupees Four Lakhs Only) has been paid to the respondent no. 2 as well as respondent no. 6 and 7 and Rs. 1,00,000/- (Rupees One Lakh Only) is paid to the respondent no. 3 and 5 being the parents of the deceased Akhtar Alam to their satisfaction. In addition to this amount, the petitioner has also delivered two FDRs amounting to Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand Only) each bearing serial nos. 3235729 and 3235728 both dated 20.09.2022 drawn on IDBI Bank, Branch Mohali, Punjab issued in the names of the respondent no. 6 and 7 respectively. The said FDRs are bound to be matured on 20.09.2023. However, the concerned bank is directed to renew the said FDRs from time to time and they shall be matured only after attaining the age of majority by the respondent no. 6 and 7. It is further directed that neither respondent no. 2 nor respondent no. 3 and 5 or any other person is permitted to withdraw any amount out of these FDRs. The copies of the said FDRs be also placed on record.

6. The counsel for the petitioner stated that the petitioner being

responsible to carry out the work at the site has settled with the surviving legal heirs of the deceased Akhtar Alam and has paid adequate and suitable compensation to respondents no. 2 to 7 except respondent no. 4 to their satisfaction. It is further stated that the deceased Akhtar Alam has died as he had slipped accidentally from a height for which neither the petitioner nor any other person was responsible and further no negligence can be attributed to anybody. During the course of arguments, the counsel for the petitioner also referred to the Status Report filed under the signature of Inspector Rajnish Sharma, P.S, Sarita Vihar, New Delhi where it is mentioned that suitable safety equipments were issued to the labours on 23.03.2022. The Investigating Officer also obtained the record of issuance of safety equipments as such he prayed that the present petition be allowed and FIR bearing no. 208/2022 be quashed along with consequential proceedings.

7. The respondents no. 2, 3 and 5 also stated that they have received compensation for themselves as well as on behalf of the respondent no. 6 and 7 who are the minor children of the deceased Akhtar Alam to their satisfaction and they do not have any objection if the present petition is allowed and FIR bearing no. 208/2022 is quashed.

8. The Additional Public Prosecutor appearing on behalf of respondent no. 1/State also stated that although the matter has been settled amicably between the concerned parties and the respondents no. 2 to 7 except respondent no. 4 have already received adequate compensation amount to their satisfaction but the present FIR was lodged for the offences punishable under section 304A IPC which is a non-compoundable offence. However, he further stated that keeping in view the facts and circumstances of the case and the suitable compensation has already been paid on behalf of the

petitioner, he does not have any objection if the present petition is allowed and FIR bearing no. 208/2022 is quashed.

9. Section 320 of the Code deals with compounding of offences. As per sub section (1) certain specified offences can be compounded without leave/permission of the court and as per sub section (2) certain specified offences can be compounded with leave/permission of the court.

10. The Supreme Court continuously observed that the extraordinary power Under Section 482 Code of Criminal Procedure should be exercised sparingly and with great care and caution and can be used to prevent abuse of the process of the court or to secure ends of justice and the exercise of inherent powers entirely depends on facts and circumstances of each case. Section 482 saves the inherent power of the High Court and reads as follows:-

Section. 482. Saving of inherent power of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

11. The Supreme Court in various decisions considered issue whether High Court in exercise of its inherent powers under section 482 of the Code can quash criminal proceedings/ FIR/ complaint and section 320 of the Code does not limit or affect the powers under section 482 of the Code. The Supreme Court in **Dharampal and Others V Ramshri (Smt.) and others**, 1993 Cri.L.J. 1049 observed that the inherent powers Under Section 482 of the Code cannot be utilized for exercising powers which are expressly

barred by the Code. In **Arun Shankar Shukla V State of Uttar Pradesh and Others**, AIR 1999 SC 2554 held as under:-

...It is true that Under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well-neigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. The High Court has intervened at an uncalled for stage and soft-pedalled the course of justice at a very crucial stage of the trial.

12. The Supreme Court in various cases also considered categories of cases, in respect of which FIR can be quashed. The Supreme Court in **Gian Singh V State of Punjab and Ors.**, (2012)10SC C 303 laid down following principles:-

57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and

different from the power given to a criminal court for compounding the offences Under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil favour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the

criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

13. The Supreme Court in **State of Madhya Pradesh V Laxmi Narayan & Ors.**, 2 (2019) 5 SCC 688 recapitulated principles laid down in **Gian Singh** case and observed as under:-

- (1) That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;
- (2) Such power is not to be exercised in those prosecutions which involved 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;
- (3) Similarly, such power is not to be exercised for the offences under the special statutes 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;
- (4) xxx xxx xxx

(5) While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc.

14. The Supreme Court in **Ramgopal & another V State of Madhya Pradesh**, Criminal Appeal No. 1489 of 2012 decided 29th September, 2021 observed as under:-

11. True it is that offences which are ‘non-compoundable’ cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would amount to alteration, addition and modification of Section 320 Cr.P.C, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of ‘compoundable’ offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can

quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post- conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extra-ordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in *Narinder Singh & Ors. vs. State of Punjab & Ors.* 3 (2014) 6 SCC 466 and *Laxmi Narayan (Supra)*.

14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect

on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a ‘settlement’ through duress, threats, social boycotts, bribes or other dubious means. It is well said that “let no guilty man escape, if it can be avoided.”

15. Another Co-ordinate Bench of this Court in W.P.(CRL) 1612/2016 titled as **Sanjay V State & Ors.** also quashed FIR registered under sections 288/304A IPC on the basis of settlement between the concerned parties.

Reliance is also placed on judgments delivered by different Co-ordinate Benches of this Court wherein FIR involving offences punishable under section 304A was ordered to be quashed, which are titled as **Kamal Kishore V The State (NCT of Delhi) & Ors.** in CRL.M.C. 3878/2019 decided on 22.01.2020; **Punit Sikka & Anr. V The State (NCT of Delhi) & Ors.** in CRL.M.C. 5874/2018 decided on 18.02.2019; **Akhilesh Goenka @ Akhil Lohia V State & Ors.** in CRL.M.C. 6536/2019 decided on 18.12.2019; **Babu Khan And Anr. V State & Ors.** in W.P.(CRL.) 2227/2019 decided on 05.09.2019 and **Jasvinder Singh Malhotra V State of NCT of Delhi & Ors.** in CRL.M.C. 996/2016 decided on 16.03.2016.

16. This Court in petition titled as **Rajuram V State and Another** bearing Criminal Miscellaneous no. 6137/2019 decided on 23.08.2022 has quashed FIR under sections 288/337 IPC and consequential proceedings under sections 288/304A IPC and also in **Vashishta Gakhar V State & Ors.** bearing CRL. M.C. 4284/2019 decided on 05.09.2022 has quashed FIR

registered under sections 288/337 IPC at P.S. Rajinder Nagar has quashed the FIR on the basis of the settlement between the parties and by also observing that the petitioner was not responsible for the alleged incident that had happened due to the reasons beyond human control.

17. In the present case, the petitioner has undertaken the construction work at the site and has provided adequate safety apparatus to the workers. The deceased Akhtar Alam was also employed as a labour at the site through respondent no. 4/Habibur Rahaman, Contractor. The settlement has already been recorded between the concerned parties and the respondents no. 2 to 7 except for respondent no. 4, have already received compensation to their satisfaction. The quashing of proceedings on account of settlement may bring out peace and would secure ends of justice although no monetary compensation can substitute the loss of life but may help to overcome the difficulties of life due to the loss of an earning family member.

18. The perusal of the said FIR and the Status Report submitted on behalf of the respondent no. 1/State reflects that the deceased had died as he had fallen from a height for which no negligence can be attributed to any person. There is no material or averment found in the FIR or the Status Report which can suggest that anybody on behalf of the petitioner including the Project Manager, Rajiv Jain was negligent to carry out the construction at the site.

19. After considering all facts, this Court is of the opinion that if the trial arising out of this FIR is allowed to be continued, it would be an exercise in futility and shall cause prejudice to the concerned parties.

20. After considering all facts and in the interest of justice the present is petition allowed and FIR bearing no. 208/2022 registered under sections

288/304A IPC at P.S Sarita Vihar and consequential proceedings, along with judicial proceedings is quashed.

21. The present petition along with pending applications, if any, stands disposed of.

22. The copy of this order be also sent to the concerned trial court for information.

(SUDHIR KUMAR JAIN)
JUDGE

SEPTEMBER 21, 2022/sk/kg

