

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

% *Date of decision : 13.03.2023*

+ **CRL.M.C. 1637/2023**

SUNIL KUMAR JAIN

..... Petitioner

Through: Mr. Sangramsingh R. Bhonsle,
Mr. Samridhi S. Jain, Mr.
Pushkara, Ms.Sneha S. Bhonsle
and Mr. Riwan R Rai, Advocates.

versus

STATE OF NCT OF DELHI AND ORS Respondents

Through: Mr. Raj Kumar, APP for the
State with ASI Rakesh and SI
Yudhveer, Singh Yadav, PS
Kotwali.
Mr. Nitika Grover, Advocate
for R-2 to 4.

**CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

RAJNISH BHATNAGAR, J (ORAL)

CRL.M.A. 6217/2023

1. Exemption allowed, subject to just exceptions.
2. The application stands disposed of.

CRL.M.C. 1637/2023 AND CRL.M.A. 6216/2023

3. This is a petition under Section 482 Cr.P.C. for quashing of FIR No. 769/2022, under Sections 279 IPC read with Section 337 IPC, registered at Police Station Kotwali, (North), Delhi and all proceedings emanating therefrom.

4. Issue notice. Learned APP appears on advance notice, and accepts notice.

5. In brief, the facts of the case are that at around 10.30 pm, the Police Station Kotwali received a call with regard to an accident among 3-4 cars on the Carriage Way between Geeta Colony Flyover to Shanti Van and the PCR vehicle had taken the Driver of the Scooty, i.e., Mohit Nayyar (Respondent No. 4), his Wife Saloni Nayyar (Respondent No. 3) and another injured who was the driver of Wagon-R Taxi, i.e., Vijay Tyagi (Respondent No. 2) to the hospital. The driver of another car, Kia, i.e., Rachit Bansal and the driver of the other Wagon R, Rajat Dewan were present at the spot. It was further informed that the driver of the BMW car No. MP- 14 BD-0730, Mr. Sunil Jain, (petitioner herein) was coming from the side of Geeta Colony towards Shanti Van, and he was driving in a rash and negligent manner. The petitioner hit the Wagon R (Taxi) and the other car (make Kia), which in turn hit the scooty and other Wagon R respectively. As a result of this, the present FIR was registered.

6. It is submitted by learned counsel for the petitioner that the matter has been settled between the parties as the petitioner has compensated all the victims. It is further submitted that the respondents/injured have furnished their respective affidavits before the Investigating Agency along with their statements under Section 161 Cr.P.C. stating therein that they do not intend to proceed with the present FIR.

7. Learned counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court in '**Gian Singh Vs State of Punjab**' (2012) 10 SCC 303 and the judgment passed by the co-ordinate Bench of this Court in '**Rohit Kapoor vs. State of Delhi & Anr.**' in Crl.M.C. 542/2016 to contend that the offence punishable under Section 279 IPC is not compoundable but in the larger interest of the society and in order to maintain peace and harmony, the FIR under such Sections can be quashed.

8. Respondent nos. 2, 3 and 4 are present in Court. They state that they have been compensated by the petitioner for the damages and they do not wish to pursue this case further and have no objection, if the FIR in question is quashed.

9. Learned APP for the State submits that chargesheet has been filed and all the victims have tendered their statements under Section 161 Cr.P.C., wherein they have mentioned that they have been compensated and they do not intend to proceed with the present FIR. Thus, the State has no objection in case the present petition is allowed.

10. In the instant case, undisputedly, offence punishable under Section 279 of the IPC is not compoundable, however, considering the facts and circumstances of the case, this Court in exercise of the inherent powers under Section 482 of the Code of Criminal Procedure, 1973, is inclined to allow the present petition. This issue has been decided by the Constitution Bench of the Supreme Court in the case titled as '**Gian Singh**

***Vs. State of Punjab and Another'* (2012) 2 SCC (L&S) 998**

wherein held as under:

“61..... 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.”

11. The aforesaid view has been affirmed by the Apex Court in the case of **‘Narinder Singh & Ors. Vs. State of Punjab & Anr’ 2014 6 SCC 466** wherein held as under:-

“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.”

12. As was mentioned above, an offence punishable under

Section 279 IPC is not compoundable due to its serious nature. However, if the court determines that continuing the criminal case would be pointless and that justice in this case requires that the parties' dispute be resolved and peace restored, it may order the quashing of the FIR or criminal proceedings. It is therefore the court's obligation to halt the unnecessary continuation of the legal process.

13. Keeping in view the statute cited above and looking into the fact that parties have been compensated for their damages and the declarations of respondent Nos.2, 3 and 4, I am of the considered opinion that this matter deserves to be granted a quietus since continuing the proceedings arising from the relevant FIR would be a futile exercise and the present petition is allowed.

14. As a consequence, the FIR No. 769/2022, under Sections 279 IPC read with Section 337 IPC, registered at Police Station Kotwali, (North), Delhi and any subsequent proceedings, are thus quashed.

15. Accordingly, the present petition along with pending applications, if any, stands disposed of.

RAJNISH BHATNAGAR, J

MARCH 13, 2023

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