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

% *Date of decision: September 26, 2023*

+ **CRL.M.C. 2765/2019**

NAND KISHORE BAG & ANR Petitioners

Through: **Mr. Sumit Kumar, Mr. Ravindra Nanda, Mr. Nand Kishore and Mr. Abdulah Khan, Advocates with petitioners in person.**

versus

THE STATE & ORS Respondents

Through: **Mr. Yudhvir Singh Chauhan, APP for State/R-1.
Mr. Jeewan Chandra, Advocate for R-2 to 4 with R-3 & 4 in person.**

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (oral)

1. The present petition is filed under section 482 Cr.P.C. for quashing of FIR bearing no. 0022/2019 registered under sections 288/304A IPC at P.S. Fatehpur Beri along with consequential judicial proceedings.
2. As per FIR, a GD no. 025A dated 16.01.2019 was recorded on the basis of PCR call, which was handed over to ASI Virender for further action. ASI Virender along with Ct. Sandeep reached at the spot i.e. 238, Gali No. 19, Phase-6, F Block, Aya Nagar, Delhi where ASI Virender met with the caller, who stated that the construction work was going on the



opposite side of his house, where he saw one labourer had fallen down from the third floor from the property where the construction work was going and blood was oozing out from the body. Thereafter, the caller had left the spot. ASI Virender found that the construction was going on at the said property but no labourer was found at the spot. ASI Virender after receipt of DD no.25A had gone to AIIMS Trauma Centre and obtained the MLC in respect of the deceased, namely, Rabibul Biswas @ Ravi S/o Isrial aged about 25 years.

3. ASI Virender at AIIMS Trauma Centre met with the respondent no. 2, who stated that he is also a labourer and deceased Rabibul Biswas @ Ravi was his nephew. The respondent no. 2 was informed by someone that the deceased Rabibul Biswas @ Ravi had fallen down from the third floor of the house bearing no. 238, Gali no. 19, Phase-6, F Block, Aya Nagar, Delhi where the construction work was going on. The deceased received multiple injuries and was moved to AIIMS Trauma Centre Hospital by the respondent no.2. The said house was found to be belonging to the petitioner no. 1 and the contractor was found to be the petitioner no. 2, who had undertaken the construction work in the property. ASI Virender came to know that the petitioners had not provided the adequate safety apparatus and



other material to the labourers employed for the construction work.

4. The present FIR bearing no. 0022/2019 under sections 288/304A IPC was got registered. After conclusion of investigation, the charge-sheet was filed under sections 288/304A IPC wherein the petitioners were implicated and the trial is stated to be pending in the court of Ms. Manu Shree, MM, South District, Saket, New Delhi/Successor Court.

5. The deceased Rabibul Biswas @ Ravi left behind respondents no. 3 and 4 as his surviving legal heirs besides a daughter, namely, Rohima Khatoon, aged about 04 years. The respondent no. 3 is the wife of the deceased and the respondent no. 4 is the mother of the deceased. The respondent no. 2 is the maternal uncle of the deceased Rabibul Biswas @ Ravi but is not the surviving legal heir.

6. The counsel for the petitioners stated that deceased Rabibul Biswas @ Ravi had died because of the pure accident without attributing any negligence either on the part of the petitioner no. 1 or the petitioner no 2. The allegations as contained in FIR only reflects that the respondent no. 2 came to know that the petitioners have not taken enough safety measures at the spot and had not provided adequate safety equipments to the labourers, which is not sufficient to constitute offence punishable under sections



288/304A IPC. The contents of the FIR as well as the charge-sheet are not disclosing any negligence on the part of either of the petitioners. The petitioners have also agreed to compensate the surviving legal heirs of the deceased suitably vide Settlement Deed dated 20.05.2019 and have agreed to pay Rs.2,00,000/- as compensation to the respondents no. 3 and 4 and the minor child of the deceased Rabibul Biswas @ Ravi. The petitioners have already paid Rs.1,80,000/- to the respondents no. 3 and 4, which is accepted by the respondents no. 3 and 4. The petitioners now have agreed to enhance the compensation amount from Rs.2,00,000/- to Rs.4,00,000/- The petitioners delivered a cheque bearing no. 371151 dated 26.09.2023 drawn on Central Bank of India amounting to Rs.2,00,000/-, issued in the name of the respondent no. 3 who is the wife of the deceased Rabibul Biswas @ Ravi. The petitioners have also paid Rs.20,000/- in cash to the respondent no. 3. It is agreed that out of the compensation of Rs.4,00,000/-, Rs.1,50,000/- shall be kept in favour of the minor daughter, namely, Rohima Khatoon by way of FDR which is to be issued from a nationalised bank/Indian postal department for the period till the time the minor daughter attains the age of majority as per law. The minor daughter shall be entitled for all the accrued benefits including interest.



7. The counsel for the petitioners further stated that the surviving legal heirs of the deceased Rabibul Biswas @ Ravi have been duly compensated to their satisfaction and the entire compensation amount has already been paid and no negligence can be attributed on the part of either of the petitioners on the allegations as mentioned in FIR or charge-sheet as such, the present petition be allowed and FIR bearing no. 0022/2019 be quashed along with consequential judicial proceedings.

8. The counsel for the respondents no. 2 to 4 stated that the petitioners have duly compensated the surviving legal heirs of the deceased Rabibul Biswas @ Ravi i.e. the respondents no. 3 and 4 and the minor daughter and as per the allegations made in FIR/charge-sheet, no negligence can be attributed on the part of either of the petitioners as such, he does not have any objection if the present petition is allowed FIR bearing no. 0022/2019 is quashed along with consequential judicial proceedings.

9. The Additional Public Prosecutor for the State/respondent no. 1 stated that under the given facts and circumstances of the case, he does not have any objection is the present petition is allowed and FIR bearing no.0022/2019 be quashed along with consequential judicial proceedings.

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 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.



12. 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.

13. 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.”

14. The Supreme Court in *Daxaben V. The State of Gujrat & Ors.*, SLP

Criminal No.1132-1155 of 2022 decided on 29.07.2022 also observed as

under:-

38. However, before exercising its power under Section 482 of the Cr.P.C. to quash an FIR, criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the offence. Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim. Crimes like murder, rape,



burglary, dacoity even abetment to commit suicide are neither private nor civil in nature. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.

15. The Co-ordinate Bench of this Court in **Santosh Kumar Chauhan V State & Anr.** bearing CRL.M.C. 5598/2019 passed on 02.05.2022 quashed the FIR registered under sections 288/304A IPC on account of settlement between the affected parties and also observed that the petitioner did not have any role to play in the unfortunate incident. The similar Co-ordinate Bench also quashed the FIR registered under sections 279/337/304A IPC in CRL.M.C. 6697/2019 titled as **Satish Kumar & Anr. V State & Ors.** passed on 02.05.2022. 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.

16. This Court in petitions titled as **Rajuram V State and Another** bearing Criminal Miscellaneous no. 6137/2019 and **Vashishta Gakhar V State & Ors.** bearing Criminal Miscellaneous no. 4284/2019 has also quashed FIR under sections 288/337 IPC vide orders dated 23.08.2022 and 05.09.2022, respectively and consequential proceedings under sections 288/304A IPC 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 his control.

17. Rabibul Biswas @ Ravi had died on 16.01.2019 at the property bearing no. 238, Gali no. 19, Phase-6, F Block, Aya Nagar, Delhi where he was employed as a labourer/worker. It appears that he had died after being fallen down from the third floor due to accident to which, no negligence can be attributed on the part of either of the petitioners. The petitioners have duly compensated the respondents no. 3 and 4 including the minor daughter to their satisfaction. The respondents no. 3 and 4 being the major surviving legal heirs of the deceased Rabibul Biswas @ Ravi, also do not have any objection if the present petition is allowed and FIR bearing no.0022/2019 is quashed along with consequential judicial proceedings.

18. After considering totality and facts and circumstances of the case, the present petition is allowed and FIR bearing no.0022/2019 is quashed along with consequential proceedings including judicial proceedings stated to be pending in the court of Ms. Manu Shree, MM, South District, Saket, New Delhi/Successor Court. However, the respondents no. 3 and 4 are directed to get issued FDR amounting to Rs.1,50,000/- from the nationalised bank/Indian postal department in favour of the minor daughter, namely,



Rohima Khatoon within 15 days from today and a copy of the said be placed on record within 07 days thereafter.

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

DR. SUDHIR KUMAR JAIN, J

SEPTEMBER 26, 2023

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