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

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Reserved on: 11.08.2023
Pronounced on: 16.08.2023

+ CRL.M.C. 5720/2023

ABHISHEK @ LOVE & ORS. Petitioners

Through: Mr. Mukesh Verma and Mr.
Suraj Prakash Sharma,
Advocates

versus

THE STATE NCT OF DELHI & ORS. Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

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SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioners seeking quashing of FIR bearing no. 358/2017, registered at Police Station, Sultanpuri, Delhi for the offences punishable under Sections 308/34 of the Indian Penal Code, 1860 ('IPC') and all consequential proceedings emanating therefrom.
2. Issue notice. Mr. Naresh Kumar Chahar, learned APP accepts notice on behalf of State.

FACTUAL BACKGROUND

3. Brief facts of the case that the complainant has alleged that Arjun Singh who is his neighbour runs a factory in Krishan Vihar, where his brother Bacchu Singh @ Veeru is also working. It is stated that on 05.05.2017, at around 3.30 PM, Bacchu Singh @ Veeru had come outside the house of complainant and had started abusing him. When he tried to stop him from doing so, he had threatened him that he should not file complaint against him and he had thereafter started beating him. When the complainant's family members had tried to rescue him, he had called the co-accused persons and accused Abhishek @ Love had thrown him on the ground and he was also beaten with bricks by co-accused. Thereafter, they had run away



from the spot. The complainant's family members had taken him to Sanjay Gandhi Memorial Hospital where the police had recorded his statement. He had sustained injuries on the frontal portion of the head. Thereafter, the complainant/respondent no.2 filed a complaint with police authorities and accordingly the present FIR bearing no. 358/2017 was registered at Police Station Sultan Puri, Delhi for the offence punishable under Sections 308/34 IPC against the petitioners. It is stated that during the pendency of the case, with the intervention of the well-wisher and family members, the matter has been amicably settled and compromised between the parties and a Memorandum of Understanding (MoU) was signed by them before the Mediation Centre, Rohini Courts, Delhi, for a sum of Rs. 40,000/.

4. During the course of arguments, it was stated that the matter has been amicably settled between the parties and Rs. 30,000/- have to be paid in cash to the complainant in this case for quashing of the FIR.

QUASHING OF FIR PURSUANT TO SETTLEMENT: JUDICIAL PRECEDENTS

5. At the outset, this Court notes that the guidelines for quashing of the FIRs, in cases where parties have settled the disputes, have been laid down by the Hon'ble Apex Court in cases of *Gian Singh v. State of Punjab* (2012) 10 SCC 303, *Narinder Singh v. State of Punjab* (2014) 6 SCC 466, and *Parbhatbhai Aahir v. State of Gujarat* (2017) 9 SCC 641.



6. In view of the aforesaid circumstances, a reference may be made to the proposition laid down by the Hon'ble Supreme Court in *Narinder Singh (supra)*, wherein it was held that even a non-compoundable offence may be quashed on the ground of a settlement agreement between the offender and the victim, if the circumstances so warrant. The Apex Court observed 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 is 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 307IPC 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 307IPC. 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 later 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...”

7. Furthermore, after analyzing the judicial precedents on exercise of power under Section 482 Cr.P.C. in cases where parties seek quashing of FIR on the ground of settlement, the Hon’ble Apex Court in **Parbatbhai Aahir** (*supra*) had summarised the principles, which read as under:

“16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16.2. The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.



16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

16.5. The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

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 in so far 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; and

16.10. There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The



consequences of the act complained of upon the financial or economic system will weigh in the balance...”

8. The Courts are guided by these principles, laid down by the Hon’ble Supreme Court, in cases of quashing of the FIR.

EXAMINING THE SETTLEMENT AGREEMENT IN LIGHT OF SETTLED PRINCIPLES OF LAW

i. Mediated Settlement Agreement in Question

9. The FIR in question before this Court came up for quashing on the basis of a settlement arrived at between the parties before the concerned Mediation Centre. This Court’s attention was drawn towards the Mediated Settlement Agreement dated 17.05.2023, which has been placed on record, regarding quashing of the FIR and payment of money under Section 308 IPC, which reads as under:

“In the matter of :

State Vs. Tara Chand

FIR No. 359/2017

PS : Sultan Puri

U/s : 323/341/34 IPC

Connected Case:

State Vs Abhishek, FIR No.: 358/17, PS Sultan Puri, u/s 308/34 IPC

Settlement/Agreement

17.05.2023

....l) Both the parties want to put an end to the criminal proceedings in accordance with law either by compounding the offences , if all the offences are so compoundable or by filing



appropriate petition for quashing of FIRs or by any other procedure as they may be advised and as may be applicable in accordance with law.

2) The matter stands settled for a sum of Rs.40,000/- (Rs. Forty Thousand only) which will be paid equally Rs. 10,000/- (Rs. Ten Thousand) each by accused Bachu Singh, Rinku, Navneet and Abhishek towards compensation to the injured Taj:a Chand in case FIR no. 358/17, PS Sultan Puri, u/s 308/34 out of which Rs.10,000/- (Rs. Ten Thousand only) has been paid in cash which has been acknowledged by Sh. Subhash son of Tara Chand. The remaining amount of Rs.30,000/- (Rs. Thirty Thousand only) shall be paid at the time of quashing of FIR bearing no. 358/17, PS Sultan Puri, u/s 308/34 before the Hon'ble High Court of Delhi on or before 31.07.2023.

3) Parties undertake that in future they would make no attempt to disturb one or another so as to live their life in a positive way without any acrimony against each other. Accused will respect the complainant and her family members in future and complainant would cooperate in all respect in quashing of the present FIRs bearing no. 358/17, PS Sultan Puri, u/s 308/34 and the quashing petition would be filed on or before 31.07.2023...”

10. Perusal of the mediated settlement agreement reveals that the agreement was being recorded in matter of *State vs. Tara Chand* arising out of FIR No. 359/2017, P.S. Sultanpuri, under Sections 323/341/34 of IPC. However, the same agreement also mentions about the connected case i.e. *State vs. Abhishek* arising out of FIR No. 358/2017, PS Sultanpuri, u/s 308/34 IPC. The mediator concerned also settled the matter for offence under Section 308/34 of IPC i.e. in relation to present FIR *vide* para no. 2 of the agreement as extracted in preceding paragraph.

ii. **Scope of Mediated Settlement Agreement: Opinion of this Court**



11. From a perusal of the settlement agreement in question, it is clear that the concerned mediator was aware that offence under Section 308 IPC being non-compoundable can only be quashed. Further, in the present case, which pertains to a non-compoundable serious criminal offence which is also sessions triable case, the mediator has noted that the complainant will co-operate with the accused persons in all respects in quashing of the FIR and that payment of Rs. 30,000/- will be made for quashing of the FIR. It is even mentioned that this FIR will be quashed before 31.07.2023.

12. In this Court's opinion, the mediator went beyond the scope of mediated settlement agreements as per principles of mediation that a non-compoundable offence could not have been compounded by way of a settlement in which the sentence is up to seven years and is a sessions triable case.

13. Merely mentioning in the settlement agreement that matter has been settled, amount has been paid and the FIR will be got quashed could have been of no help, since it is the discretion of the Court under Section 482 Cr.P.C., which is to be exercised in a judicious manner on the basis of settled principles of law depending on the facts and circumstances of each case, as to whether the FIR would be quashed solely on the basis of a settlement agreement or not.

14. In the present case, a criminal case which was compoundable i.e. under Section 323/341 IPC and present case which is not compoundable i.e. under Section 308 IPC was the subject matter of the mediated settlement agreement. The agreement, as argued before this Court, was reached between the parties on the assurance by each



party to the other that the case filed by both of them will be brought to an end. However, only one case was compounded which was compoundable before the learned Magistrate and for getting the FIR quashed in the non-compoundable case, the petitioners have approached this Court. In this background, the petitioners as a matter of right on the basis of compromise wanted the FIR to be quashed. However, the parties were not aware about the correct position of law that the FIR will not be quashed as a matter of right. They pleaded that they had compounded the other criminal case before the learned Magistrate only on this assurance that the present FIR will be quashed and if in case this Court will not quash the present FIR, it will cause serious prejudice to the petitioners.

15. In this background, it is to be noted that when there may be instances where two parties have criminal cases pending against each other which may be cross FIRs or otherwise, one of the FIRs may be compoundable and the other may be non-compoundable and heinous offence. To draw a mediated settlement agreement which states that one party is withdrawing the case before the Magistrate on the assurance recorded in the settlement that the complainant would appear in the High Court for the purpose of quashing of the FIR, will be misleading since mere filing of a petition for quashing in a heinous offence even on the basis of an agreement between the parties may not result in quashing of the FIR.

16. Thus, recording mediation settlements as in the present case is misleading as it is not clear to one of the parties that the FIR against them may not be quashed owing to the gravity of the offence.



17. Coming to the facts of the present case, the complainant in the present case is about 75 years old. The petitioners are the complainants in a criminal case filed against the present complainant which already stands compounded and withdrawn before the learned Magistrate. The terms of the mediation are not clear to the parties as they understood it to mean that the FIR under Section 308 IPC will be quashed as a matter of right on the strength of the mediation agreement, that too on the basis of payment of Rs.40,000/-. Be that as it may, it weighs in the mind of this Court that the complainant is about 75 years old, the nature of injury is simple, and the case against him already stands withdrawn before the learned Magistrate. Both the parties have forgiven each other and though it is not mentioned in the mediation agreement, it was orally stated by the complainant that he wants to forgive the petitioners as they have apologized to him.

18. In these peculiar circumstances of the case, this Court is inclined to quash the FIR. However, a cost of Rs.5,000/- each is imposed on the petitioners which will be deposited with Delhi High Court Bar Association Employees Welfare Fund within one week and the receipt of the same will be filed before the Registry.

SETTLEMENT OF NON-COMPOUNDABLE AND SERIOUS OFFENCES THROUGH PAYMENT OF MONEY: BEYOND THE SCOPE OF MEDIATION

19. This Court remains conscious of the fact that the law and jurisprudence of mediation is still evolving. The jurisprudence



evolves when a case comes before a court of law, and is adjudicated upon pointing out the grey areas of law or agreements, etc.

20. Further, to mention in the mediated agreement that a non-compoundable serious session triable offence is being settled for payment of money and part of it will be paid at the time of quashing of the FIR, suggests and gives an impression as if such offences can be compounded by mere payment of money through a settlement agreement and on appearance of the complainant before the Court or as if on payment of further money, the FIR will be quashed by the Court as a matter of right. It also suggests as if the High Court is bound by such agreements and settlements between the parties and is required to quash the FIR in all cases. However, this is not the position of law nor the process of mediation, permits drawing of such settlement mediated agreements being beyond the scope of the mediation process.

21. It is noted that quashing of the FIR of such offences is purely a discretion vested in the Court which is to be exercised with care, caution and with circumspection according to the principles in this regard laid down by the Hon'ble Apex Court. Therefore, settlement of non-compoundable offences through mediated settlement agreements is not permissible. Even otherwise, to permit the accused and complainant to compromise an offence on payment of money, in session triable serious criminal cases which attracts punishment up to life, cannot be subject matter of mediated settlement agreements.



i. **Guidelines for the Mediators**

22. In these circumstances, this Court issues the following guidelines, to be followed by the mediators in all the mediation centres in the District Courts of Delhi as well as of this Court, at the time of recording mediation settlements:

- i. That the offences under Sections 384/397/394/376/377 and under POCSO Act, etc., being non-compoundable cannot be compounded or compromised by way of a mediated settlement and should not be a subject matter of settlement on payment of money, etc.
- ii. In such cases where one FIR is under compoundable offence and the other under non-compoundable offence, it should be specified that mere presence of the complainant before the Court does not, as a matter of right, confer a right on the accused persons to seek quashing of the FIR as it is discretion of the Court which is to be exercised depending on facts and circumstances of the case.
- iii. The mediators should be sensitized that payment of money cannot become a criteria for quashing of the FIR of heinous offences which will amount to paying money to get out of a criminal case of serious nature.
- iv. The mediators at the end of mediated settlement agreement must mention in the cases as the present one i.e. non-compoundable cases where the parties want the FIR to be quashed in clear terms that quashing of the FIR is the discretion of the Court and the case being non-



compoundable, depending on the facts and circumstances of the case FIR may or may not be quashed by the Court, it becomes relevant and important to do so in situations where both the parties have filed cases against each other and the agreement is based upon settlement that both will be withdrawing cases against each other. However, at times one case is withdrawn from the Court of Magistrate being compoundable the other criminal case being serious in nature may not be found fit to be quashed by the High Court, thereby causing anguish to one of the parties who have withdrawn their complaint in the hope and belief that case against them will also be quashed by the High Court through such settlement.

- v. The mediators should be able to foresee the issue of enforceability of the type of above-mentioned mediated agreements and explain the same to the parties concerned. The fact of mediator having explained the same to the parties should be reflected in the mediated agreements.
- vi. The mediators should also keep it in mind that though in such cases, where both the parties have cases pending against each other or heinous criminal offences which are non-compoundable and attract stringent punishment though both sides may be ready to perform their part of agreement, it is not legally enforceable agreement as there is no assurance of FIR being quashed as a matter of right. In case of non-quashment of such cross-FIR, it will prevent one



party to still face the criminal trial against whom the settlement was to get the FIR quashed and the party against whom a compoundable offence is alleged will gain the benefit of the agreement despite failing to get the FIR quashed as a matter of right from the High Court.

- vii. A mediator is ethically responsible to ensure that the parties are informed of the legal issues surrounding enforceability in the areas in which he or she has mediated.
- viii. Mediation is a process where the disputants constructively settle their disputes. In cases as the present one, they must be made aware of technical rules, procedures and procedural justice which may be at the discretion of the Court.
- ix. The mediator must keep in mind that one of the parties should not be prejudiced by performing their part of agreement when the agreement which is to be performed in their favour is not wholly dependent upon the agreement or consent of the other party.
- x. The present mediated settlement agreement is a useful reminder that in a hurry to end litigation, one should not draw mediation agreements which are non-enforceable as part of it may be subject to discretion of the Court, which is not mentioned in the mediation agreement.
- xi. These directions are also a reminder of importance of clarity of communication in writing the terms and consequences of the mediation agreement for each party which should be



clarified before mediation settlement is reached, written and signed by the parties.

- xii. The mediation agreements should be also written in Hindi where the parties understand Hindi as their mother tongue so that it is understood by them completely.

23. It is expected that mediators in Delhi who are adequately and sufficiently trained by able and trained experts, having vast and long experience, will go through the settlement agreements carefully before signing it themselves, and the parties signing it and should know as to which offences cannot be compounded or be quashed as a matter of right.

24. In this regard, the Incharge Mediation, High Court of Delhi as well as the District Courts will bring this judgment to the notice of all the learned mediators alongwith the following judgments which contain the guiding principles for quashing of the FIRs i.e. ***Narinder Singh v. State of Punjab*** (2014) 6 SCC 466; ***Gian Singh v. State of Punjab*** (2012) 10 SCC 303 and ***Parbhatbhai Aahir v. State of Gujarat*** (2017) 9 SCC 641, etc.

CONCLUSION

25. The present case highlights the aspect of mediation which has led to one case being withdrawn by one party before the Court of learned Magistrate on the belief that on their appearance before this Court, as a matter of right, the FIR against them will be quashed by payment of substantial amount of money to the complainant. The



present case is an example where for the parties, the mediator and one of the Court of Magistrate, the mediation was over, for the parties the cases were settled, however, one of the cases was not over as the settlement agreement qua an offence under Section 308 IPC could not have been quashed as a matter of right.

26. In cases of settlement in such cases, parties at times being close relatives or neighbours settle their disputes with the intervention of their relatives, friends or amongst themselves as they want to forgive and forget the unpleasant incidents. However, this Court is of the opinion that cases involving serious and heinous offences cannot be permitted to be settled on the basis of payment of money as it will set a wrong precedent. The practice of sending cases for quashing of FIRs, upon payment of money, involving crimes against society at large, or which are multi-victim cases, needs to be deprecated. While there is no denying that the law favours settlement of disputes through agreement of the parties, there can be no summary procedure adopted to settle cases which are not compoundable and are beyond the scope of mediation. It is in this background that the aforesaid guidelines have been laid down by this Court.

27. This Court clarifies that this Court **is not passing any order, nor any observation of this order be read, regarding any settlement of matrimonial offences, but only heinous criminal offences which are non-compoundable in nature.** To give an impression that an FIR can be quashed on payment of money as a matter of right, as was apparent from the statement made by the



complainant and the accused before this Court, is not permissible. Nor this Court can be a party to any quashing which is on the basis of exchange of money so as to give an impression that after committing a heinous offence, the criminal proceedings can be brought to an end as a matter of right by payment of money.

28. Accordingly, the present petition stands disposed of.

29. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 16, 2023/zp

