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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 354/2024

JANAK RAJ DHAMI

..... Petitioner

Through: Ms. Jyoti Tewari, Adv.
with petitioner in person

versus

NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Naresh Kumar
Chahar, APP for the State
Inspector Anil Yadav & SI
Deepak, PS- Dabri
Mr. Shankar Mandal, Adv.
for victim with LRs of
deceased in person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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10.04.2024

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') for quashing of FIR No. 25/2008 dated 16.01.2008 registered at Police Station Dabri for offence under Sections 304A/34 of the Indian Penal Code, 1860 ('IPC'), including all consequential proceedings arising therefrom. The FIR was registered on a complaint filed by one Vinod Gupta, who is arrayed as Respondent No. 2 in the present petition.

2. The alleged incident belongs to the year 2008, however, charges were ultimately framed in the year 2023.

3. It is alleged that, on 04.01.2008, the brother of Respondent No. 2 (a street vendor by profession) was admitted in Shakuntala Nursing Home for *Laparoscopic Cholecystectomy*. After the said surgery, the brother of Respondent No. 2 complained of chest pain. The general physical also examined him and found

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changes in E.C.G and *Query - Myocardial Infarction Exploratomy Laptotomy* was suggested. Due to non-availability of facilities at Shakuntala Nursing Home, he was discharged and admitted to Sir Ganga Ram Hospital for further treatment on 06.01.2008.

4. The requisite surgery was performed by the Resident Surgeon of Sir Ganga Ram Hospital on 08.01.2008. However, the brother of Respondent No. 2 died on 10.01.2008.

5. It is alleged that the petitioner is the one who is responsible for the death of the brother of Respondent No. 2.

6. The learned counsel for the petitioner states that the petitioner is now 69 years old and is only the administrator and proprietor of Shakuntala Nursing Home.

7. It is submitted that the Respondent No. 2 and the petitioner have arrived at a settlement dated 03.01.2024 on their own free will and without any pressure, coercion, undue influence or duress of any nature.

8. In terms of settlement, a sum of ₹13,00,000/- is handed over to the legal representatives of the deceased by way of a demand draft bearing no. 419679 dt 02.04.2024 drawn on State Bank of India.

9. The parties are present in Court and have been duly identified by the Investigating Officer.

10. The legal representatives of the deceased are present in Court and state that they do not have any objection if the proceedings in the present FIR are quashed.

11. Offences under Sections 279/304A Indian Penal Code are non-compoundable.

12. It is well settled that the High Court while exercising its powers under Section 482 of the CrPC can compound offences which are non-compoundable under the Code on the ground that



there is a compromise between the accused and the complainant. The Hon'ble Apex Court has laid down parameters and guidelines for High Court while accepting settlement and quashing the proceedings. In the case of ***Narinder Singh & Ors. v. State of Punjab & Anr. : (2014) 6 SCC 466***, the Hon'ble Supreme Court had 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.”

(emphasis supplied)

13. Similarly, in the case of **Parbatbhai Aahir & Ors. v. State of Gujarat & Anr. : (2017) 9 SCC 641**, the Hon'ble Supreme Court had observed 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 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; 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.”

(emphasis supplied)

14. The present case relates to an offence under Section 304A of IPC where a person has died due to alleged negligence of the accused person. Thus, while deciding whether proceedings relating to such an offence can be quashed on the basis of the settlement between the accused and family of the victim, it is necessary to consider whether it is probable that the presented facts would constitute gross negligence and an element of *mens rea*, which is required for the purpose of conviction.

15. The Hon’ble Apex Court, in the case of **Jacob Mathew v. State of Punjab, (2005) 6 SCC 1**, while interpreting as to what



constitutes a negligent act to constitute an offence under Section 304A of IPC held that gross negligence and an element of *mens rea* must be shown to exist. The Hon'ble Apex Court observed as under:

“48. We sum up our conclusions as under: ...(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

The word “gross” has not been used in Section 304A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be “gross”. The expression “rash or negligent act” as occurring in Section 304A of the IPC has to be read as qualified by the word “grossly”...”

16. From the perusal of FIR and the documents annexed with the present petition, it does not appears to be a case of negligence. The victim died while undergoing treatment at Sir Ganga Ram Hospital. Given the fact that the complainant and other family members of the deceased have already settled with the petitioner, it would be improbable to secure a conviction in the facts of the present case. The Court, thus, is of the view that the payment of compensation would serve the ends of justice.

17. Keeping in view the aforesaid principle and the nature of dispute and the fact that the parties have amicably entered into a settlement, this Court feels that no useful purpose would be served by keeping the dispute alive and it is a fit case where discretionary jurisdiction under Section 482 of the CrPC can be exercised and the proceedings are quashed.

18. In view of the above, FIR No. 25/2008 and all consequential proceedings arising therefrom are quashed.



19. The present petition is disposed in the aforesaid terms.

AMIT MAHAJAN, J

APRIL 10, 2024

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