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

+ **CRL.M.C. 555/2024**

MOHD AHATKAM

..... Petitioner

Through: Mr. Shashwat Kumar, Mr.
Aman Alam & Mr. Mohit
Tiwari, Advs. with
petitioner in person

versus

**STATE OF NCT OF NCT OF
DELHI AND ORS**

..... Respondents

Through: Mr. Utkarsh, APP for the
State
SI Pooja, PS- Tilak Marg
R2,4 & 5 in person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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02.02.2024

CRL.M.A. 2243/2024 (for exemption)

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

CRL.M.C. 555/2024 & CRL.M.A. 2244/2024

3. The present petition is filed for quashing of FIR 125/2015, filed under Sections 288/337 of the Indian Penal Code (IPC), at Police Station Tilak Marg. The FIR was registered pursuant, to a DD entry registered, over a phone call from AIIMS Trauma Centre, alleging that one Amirul Khan has been admitted in the hospital in injured condition. The legal heirs of the deceased are Respondent Nos. 2, 4 & 5 in the present petition. The charge sheet has already been filed.



4. It is alleged that on the unfortunate day of 18.04.2015, the Amirul Khan was working at a site of the petitioner, who is sub-contractor, and had slipped from the 4th floor of the building, and sustained severe injuries. It is alleged that the Amirul Khan sustained injuries, because of the negligence caused on the part of the petitioner, since petitioner did not provide the adequate safety equipment. On 30.04.2015 Amirul Khan succumbed to the injuries, during the treatment.

5. The FIR was initially registered under Sections 288/337 of the IPC, but later upon the demise of the Amirul Khan the petitioner was charged for offences under Sections 288/304A of the IPC.

6. It is submitted that the family of the deceased has been compensated for a total sum of ₹5,00,000/- out which ₹4,00,000/- has been paid by the Company for which the petitioner was working as a sub-contractor whereas ₹1,00,000/- has been paid by the petitioner; along with the said amount it is also submitted that the medical treatment expenditure of the deceased was also paid along with transportation costs of carrying the body of the deceased from Delhi to Bihar. It is also submitted that apart from the settlement amount, the two sons of the deceased (Respondent Nos. 4 and 5) are also working for the petitioner, after the demise of their father, since the year 2015.

7. It is submitted that on 01.05.2015, the matter was settled with the intervention of the respectable members of the society between Respondent Nos. 2, 4 and 5 (legal heirs of the deceased) and the petitioner. The copy of the Compromise Deed dated 01.05.2015 is also annexed as “Annexure B”.

8. Parties claim to have entered into the agreement voluntarily, of their own free will and without any pressure,



coercion, undue influence or duress of any nature.

9. The parties are present and have been duly identified by the Investigating Officer ('IO'), they state that the matter has been settled between the parties and they do not have any objection if the proceedings are quashed. Sub-Inspector Pooja, IO in the present case also states that she has no objection if the proceedings are quashed.

10. Offences under Sections 288/304A Indian Penal Code are non-compoundable.

11. It is well settled that the High Court while exercising powers under Section 482, Cr.P.C, can compound offences which are non-compoundable under Cr.P.C 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 Courts exercising jurisdiction under Section 482 for quashing of proceedings on the ground of settlement. In ***Narinder Singh & Ors. V. State of Punjab & Anr.*** reported as ***(2014) 6 SCC 466***, the Supreme Court has 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.”

12. Similarly, in ***Parbatbhai Aahir & Ors v. State of Gujarat & Anr.*** reported as (2017) 9 SCC 641, the Supreme Court has 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.”

13. 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.

14. 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”...”

15. From the perusal of FIR and the documents annexed with the present petition, it appears to be a case of an accident. It is not alleged that the petitioner was the one because of whom, the deceased slipped and lost his life. It is also not a case that such accidents happened on regular basis and that some other workers also used to get injured on regular basis. Given the fact that the 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.

16. Keeping in view the aforesaid principle, the nature of the



dispute and the fact that the parties have mutually settled their disputes, this Court feels that no useful purpose would be served by keeping the dispute alive and continuance of the proceedings would amount to abuse of the process of Court. It is also significant to note that the children of deceased have been given employment by the petitioner as they are working with the petitioner since the year 2015. I am of the considered opinion that it is a fit case where discretionary jurisdiction can be exercised and the proceedings be quashed.

17. However, keeping in mind the fact that the FIR was registered way back in the year 2015; the chargesheet has already been filed and the state machinery has been put to motion, ends of justice would be served, if the petitioners are put to cost.

18. Thus, keeping in mind the nature of allegations, the settlement between the parties and the law laid down by the Hon'ble Supreme Court from time to time, FIR No. 125/2015 and all consequential proceedings arising therefrom are quashed, subject to the petitioner paying a of cost of ₹20,000/- (Rupees Twenty Thousand only) to be deposited with the Delhi Police Welfare Fund.

19. The present petition, along with the pending application(s), if any, is disposed of in the aforesaid terms

AMIT MAHAJAN, J

FEBRUARY 2, 2024

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