



2024:DHC:844



\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 01.02.2024***+ **CRL.M.C. 570/2022 & CRL.M.A. 3250/2023**

FAIZAN UMAR & ANR.

..... Petitioners

Through: Mr.Alamgir & Mr.Naushad Ali,
Advs.

versus

THE STATE & ORS.

..... Respondents

Through: Ms.Priyanka Dalal, APP with
SI Akshay, PS Shaheen Bagh.
Mr.Kamran Malik, Adv.
(through VC) for R-2 to R-5
with R-2 to R-5 present
(through VC)**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), seeking quashing of FIR No. 0167/2020 registered at Police Station: Shaheen Bagh, (South East District), New Delhi under Sections 307/354/341/452/506/34 of the Indian Penal Code, 1860 (in short, 'IPC'), along with all other proceedings arising therefrom, on the basis of settlement.

2. It is the case of the prosecution that due to a property dispute, the accused had forcefully entered in the house of the complainant by breaking open the lock of the roof. When the same was objected, the



petitioners tried to hit the complainant with an iron rod and disrobe the modesty of the two sisters of the complainant. The complainant along with his sisters ran away and locked themselves in the room. While the petitioners were going away, a gunshot was heard and petitioner no.1 was heard shouting that he would kill the complainant and his sisters.

3. The Status Report indicates that the investigating team has seized one empty cartridge from outside the house. The polygraph test has also been conducted on the petitioners to ascertain whether they had fired gun shots or not, however, the same did not bear any conclusive result. The alleged weapon of offence has also not been recovered.

4. In the meantime, the present petition has been filed stating that the petitioners and the complainant and the victim, that is, sisters of the complainant, have amicably settled their *inter se* disputes and have entered into Settlement Agreement / Memorandum of Understanding dated 12.01.2022.

5. The complainant and the victims appear virtually. They have been identified by the learned counsel for the petitioners and their counsel. They submit that they do not wish to pursue with the complaint out of their own free will and without any coercion. They further submit that the complaint was filed due to some misunderstanding with the petitioners on the property dispute.

6. The learned APP, on the other hand, submits that in the present case, an empty cartridge has been recovered from the site. She further submits that the offence charged is also grave and, therefore, the



present FIR should not be quashed only on the basis of the purported settlement between the parties.

7. I have considered the submissions made by the learned counsels for the parties and also perused the contents of the FIR, Status Report and the settlement between the parties.

8. In *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466, the Supreme Court has laid down the principles that should guide the High Court in considering an application under Section 482 Cr.P.C. while accepting the settlement and quashing the proceedings involving a non-compoundable offence or refusing to accept such settlement, 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.”

(Emphasis Supplied)

9. In ***The State of Madhya Pradesh v. Laxmi Narayan*** (2019) 5 SCC 688, the Supreme Court has laid down the parameters under which the High Courts shall exercise the power conferred under Section 482 of the Cr.P.C.. The Court held that, though the Courts must be slow in exercising their jurisdiction under Section 482 of the Cr.P.C. for quashing the proceedings arising out of offences punishable under Sections 307/308 IPC, the High Courts are not deprived of exercising the powers under Section 482 of the Cr.P.C. in certain special circumstances. It was held that the Court shall weigh on the factors including the nature of injuries, stage of the proceedings, etc. It was held as under:

“15.4. Offences under Section 307 IPC and the Arms Act, etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under



Section 307 IPC and/or the Arms Act, etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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/delicate parts of the body, nature of weapons used, etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paras 29.6 and 29.7 of the decision of this Court in Narinder Singh v. State of Punjab, (2014) 6 SCC 466 should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;"

10. From the Status Report itself, it is apparent that the primary dispute between the parties is over the alleged construction carried out by the complainant's father on the roof of their flat. Though the empty cartridge has been allegedly recovered, the weapon of offence has till date not been recovered. The polygraph test on the accused has also been reported to have borne non-conclusive results.

11. In view of the above facts and taking into account that the



complainant now does not wish to pursue the complaint, continuation of the above FIR and proceedings emanating therefrom would not only result in further acrimony between the parties, but it would also be wastage of time of the statutory authority.

12. Guided by the principles enunciated by the Supreme Court in its judgments in *Gian Singh v. State of Punjab*, (2012) 10 SCC 303; *Parbatbhai Aahir @ Parbatbhai Bhimsinbhai Karmur & Ors. v. State of Gujarat & Ors.* (2017) 9 SCC 641; *State of Haryana & Ors. v. Bhajan Lal & Ors.* 1992 Supp (1) SCC 3; *Narinder Singh* (supra); and *Laxmi Narayan* (Supra), this Court deems it appropriate, in the interest of justice, to exercise its inherent powers under Section 482 of the Cr.P.C. to quash the FIR and all the proceedings emanating therefrom.

13. Accordingly, the petition is allowed. FIR No.0167/2020 registered at Police Station: Shaheen Bagh, (South East District), New Delhi under Sections 307/354/341/452/506/34 of IPC and all consequential proceedings emanating therefrom against the petitioners are quashed, subject to the condition that the petitioners deposit costs of Rs.15,000/- each, either jointly or severally, with the Delhi State Legal Services Authority within a period of four weeks from today, and file proof of such deposit with the Registry of this Court and also supply a copy thereof to the Investigating Officer (IO), within the said period.

14. The costs so deposited shall be utilised by the Delhi State Legal Services Authority for providing support to the POCSO Victims requiring such assistance.



2024:DHC:844



15. The status report filed by the respondent no.1 is taken on record.

16. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

FEBRUARY 1, 2024/rv/ss

Click here to check corrigendum, if any