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

+ CRL.M.C. 3363/2022

PAWAN BASOYA & ANR.

..... Petitioners

Through: Mr.Sandeep Sharma, Mr.Amit Choudhary, Ms.Kavya Dauk, Mr.Kuldeep Choudhary, Advs.

versus

STATE & ANR.

..... Respondents

Through: Mr.Aman Usman, APP with SI Satyender Gulia, SI Ravi Yadav.
Mr.Nikhil Mehta, Adv. for R-2 with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **22.02.2024**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of the FIR No.0105/2018 registered at Police Station: Kotla Mubarakpur, South-District, New Delhi, under Section 308 of the Indian Penal Code, 1860 (in short, 'IPC'), along with all other proceedings arising therefrom, based on a settlement.
2. Issue notice.
3. Notice is accepted by Mr.Aman Usman, learned APP and Mr.Nikhil Mehta, Advocate on behalf of the respondent no.2.
4. The learned counsel for the petitioners submits that the injury was caused to the respondent no. 2 due to an inadvertent mistake. The



respondent no. 2 was the tenant of the father of the petitioner no. 1 and the petitioner no. 1 and the respondent no. 2 were partying together when the incident took place. He submits that the parties, that is, the petitioners and the respondent no.2, have amicably settled their disputes and have executed Settlement Agreement dated 21.07.2022.

5. The petitioner no.2 also states that his arms licence has been cancelled and he shall not be applying for a fresh licence any time in future.

6. The learned APP, however, opposes the present petition, stating that injury suffered by the respondent no.2 was from a gunshot. The charge-sheet already stands filed against the accused/petitioners. He submits that in these circumstances and considering the nature of the offence involving Section 308 of the IPC, the FIR should not be quashed merely on the basis of the settlement.

7. The respondent no.2, who is present in Court and has been duly identified by the Investigating Officer (IO), does not oppose the present petition and reiterates that the injury was caused due to inadvertence and he joins in the prayer of the petitioners that the FIR and the proceedings consequent thereto be quashed. He submits that he is making this statement out of his own free will and without any coercion.

8. The petitioners are also present in person in court and they have paid a sum of Rs.50,000/- to the respondent no.2 by way of electronic transfer.

9. I have perused the contents of the FIR, Charge Sheet and also the settlement arrived at between the parties.

10. In **Narinder Singh v. State of Punjab**, (2014) 6 SCC 466, the



Supreme Court has explained the principles governing the powers of the High Court to quash or not to quash the proceedings on the basis of settlement in case of non-compoundable offence, 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/delicate 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.”

11. 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 Cr.P.C. The Court held that, though the Courts must be slow in exercising their jurisdiction under Section 482 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 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;”

(Emphasis Supplied)

12. In **Manoj Kumar & Ors. v. State & Anr.**, Neutral Citation No.2016:DHC:2419, a learned Single Judge of this Court has held as under:

“9. As discussed above, offence punishable under Section 308 IPC is not compoundable being of serious nature, however, if the Court feels that continuation of criminal proceedings will be an exercise in futility and justice in this case demands that the dispute between the parties is put to an end and peace is restored, it can order for quashing of the FIR or criminal proceedings as it is the duty of the Court to prevent continuation of unnecessary judicial process.”

13. The above view was reiterated by this Court in **Mahender**



Singh @ Sunny & Anr. v. The State & Ors., Neutral Citation No.2021:DHC:978 while quashing an FIR filed under Section 308 of the IPC.

14. In the present case, it appears that the petitioner no.1 was sitting with the respondent no.2 and was, in fact, showing off a gun that belongs to the petitioner no.2. It also appears to be a case of accidental fire, which led to the injury being sustained by the Respondent no.2.

15. As the disputes between the parties have been amicably resolved, the arms licence of the petitioner no.2 has also been cancelled, and also looking into the nature of the allegations made in the complaint, in my opinion, no useful purpose would be served in keeping the FIR alive, as the chances of its success will be rather minuscule. In fact, it would rather create further acrimony between the parties and will be an unnecessary burden on the State exchequer.

16. Guided by the principles enunciated by the Supreme Court in the above referred judgments, 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.

17. Binding the petitioner no. 2 to his undertaking that he shall not be seeking an arms license in future, and further subject to the condition that the petitioner no. 1 deposits costs of Rs.75,000/- with the Delhi High Court Bar Clerk's Association and the petitioner no. 2 deposits costs of Rs. 75,000/- with the Delhi High Court Bar Association within a period of two weeks from today and they shall also file proof thereof with the Registry of this Court and also supply a



copy thereof to the IO, within the said period, the petition is allowed. Consequently, FIR No.0105/2018 registered at Police Station: Kotla Mubarakpur, South-District, New Delhi, under Section 308 of the IPC and all consequential proceedings emanating therefrom against the petitioners are quashed.

NAVIN CHAWLA, J

FEBRUARY 22, 2024/Arya/ss

[Click here to check corrigendum, if any](#)