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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 4123/2024 & CRL.M.A. 15666/2024,
CRL.M.A. 15667/2024, CRL.M.A. 22764/2024

RAHUL SRIVASTAVA

.....Petitioner

Through: Mr. Mohit Mathur and Mr.
Arun Bhardwaj, Senior
Advocates with Mr.
Rishabh Dubey and Ms.
Aastha Jain, Advs.
Petitioner in person.

versus

THE STATE GOVT. OF NCT OF DELHI
& ORS.

.....Respondents

Through: Mr. Ajay Vikram Singh,
APP for the State with SI
Satyender Gulia, PS Kotla
Mubarakpur.
Mr. Vikram Jit Saini and
Mr. Saurabh Pandey,
Advs. for R-2 to 5.
Mr. Rajendra Kumar, Adv.
for R-4.
R-2A/R-3, R-2B, 2C and
2D in person.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

02.08.2024

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1. The present petition is filed seeking quashing of FIR No. 461/2020 dated 27.12.2020, for offences punishable under Sections 279/304A/37 of the Indian Penal Code, 1860 ('IPC') and Section 185 of the Motor Vehicles Act, 1954 ('MV Act'), registered at Police Station K.M.Pur, including all consequential proceedings arising therefrom.

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2. It is alleged that on 23.12.2020, an unfortunate incident occurred involving the petitioner, Rahul Srivastava, who was driving a Toyota Yaris with registration number DL3CCP9248. While driving, he allegedly hit two individuals standing on the side of the road. One of the victims, Sanjay Kumar, tragically lost his life due to the injuries sustained in the accident, while the other, Kanhaiya Lal, was injured. The incident led to the registration of FIR No. 461/2020.

3. The charge sheet in the present case has been filed.

4. The learned senior counsel for the petitioner submits that the complainants, Insurance company and the petitioner have settled the dispute before the Motor Accidents Claims Tribunal (MACT) in MACT Case Nos. 556/2021 and 557/2021 under two Mediation Settlement Agreements dated 11.12.2023 and the complainants/legal heirs of the deceased have received compensation for a sum of ₹14,50,000/- and ₹1,50,000/- has been paid to the complainant who suffered simple injuries. He submits that the petitioner would further pay a sum of ₹5 lakhs to the legal heirs of the deceased.

5. He submits that on the date of the alleged incident, the petitioner was made to do the breath analyser test after it was sprayed with sanitizer liquid. He submits that unless the allegations are supported by proper medical evidence to prove the negligence/misconduct on the part of the petitioner in an inebriated condition, it would be detrimental to rely only on breath analyzer which is not authenticated as the devices sometimes register interfering substances.

6. He submits that the parties no longer wish to pursue the present complaint and want to put a quietus to the same on



account of the settlement arrived between the parties. He submits that in such circumstances, proceeding further with the present complaint would be futile and would be an abuse of the process of the court.

7. The deceased was unmarried, thus, making his mother the only Class 1 legal heir. It has been informed that the mother of the deceased has also expired and Respondent Nos. 2A, 2B and 2C, being the brothers and sisters, are the only legal representatives.

8. All the legal representatives are present in person in Court today. They submit that the parties have settled the dispute. They submit that they have received a sum of ₹14,50,000/- pursuant to the case filed before the Motor Accidents Claims Tribunal.

9. They submit that since the petitioner has also agreed to pay a sum of ₹5,00,000/- as compensation, they have no objection if the proceedings arising out of the present FIR are quashed.

10. The parties are present before this Court in person and have been duly identified by the Investigating Officer. They state that they have entered into the settlement voluntarily out of their own free will, without any fear, force or coercion.

11. The respondents, on being asked, state that they do not wish to pursue the proceedings arising out of the present FIR, and have no objection if the proceedings are quashed.

12. Offences under Sections 279/304A/37 of the IPC and Section 185 of the MV Act are non-compoundable.

13. 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 **prima facie** 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)

14. 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)

15. The present case relates to offences under Sections 279/304A/337 of the IPC and Section 185 of the MV Act, 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.



16. 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"..."

17. The offences alleged in the present case are personal in nature and do not impact public peace or tranquillity. When it is evident that quashing such proceedings due to a compromise would promote peace and serve the ends of justice, the Court should not hesitate to do so. Non-compoundable offenses often act as a barrier to reaching a compromise. The primary objective of criminal law—to achieve justice and prevent the abuse of legal processes—would not be served by pursuing a prosecution in a matter that has already been resolved to the satisfaction of the injured and the legal heirs of the deceased. Given these considerations, the continuation of the FIR and related criminal proceedings would serve no meaningful purpose and would only result in undue hardship for the petitioner and the victims.



18. The learned senior counsel for the petitioner has also argued that the breath analyzer report is not a conclusive proof of consuming liquor by a person and does not yield proper result. In the present case, there is no averment in the MLC that at the time, the gait of the petitioner was unsteady or that he was speaking incoherently.

19. The incident is of the period when COVID-19 was at its peak and it is common knowledge that everyone was using hand sanitizer. This Court refers to the Report of the Academic Emergency Medicine : Common Hand Sanitizer may Distort readings of Breathalyzer tests in the absence of Acute Intoxication. The relevant extract is reproduced hereunder:

“The use of an alcohol-based hand sanitizer can cause false-positive readings of a breathalyzer when the operator uses the hand sanitizer correctly. The breathalyzer readings are further elevated if more sanitizer is used or if it is not allowed to dry appropriately. Health care workers and others who rely on these machines to make judgments about the alcohol level of others should be careful not to use hand sanitizer immediately before operating a breathalyzer machine and to use it according to manufacturer’s recommendations when they do.....”

20. This Court in the cases of ***Sudhir Jain & Anr. v. The State (NCT of Delhi) & Anr. : 2024:DHC:1346*** and ***Siddharth Gupta v. State & Ors. : 2023:DHC:5792***, quashed the FIR registered under Section 185 of the MV Act, and the consequential proceedings emanating therefrom and held that when compromise has taken place between the parties, no useful purpose will be served in allowing the criminal proceedings to continue.

21. In wake of the foregoing discussion and keeping in view the nature of the dispute and 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 continuance of the proceedings would amount to abuse of the process of Court. I am of the opinion that this is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

22. In view of the above, FIR No. 461/2020 and all consequential proceedings arising therefrom are quashed subject to payment of a sum of ₹5,00,000/- to the legal representative of the deceased within a period two months from the date. The petitioner is also directed to pay a cost of ₹20,000/- to the Delhi Police Welfare Society.

23. The petitioner is directed to submit the proof of payment with the concerned Investigating Officer.

24. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 2, 2024

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