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

+ CRL.M.C. 5485/2019

YOGENDRA KUMAR GUPTA Petitioner

Through: Mr. M.N. Dudeja, Mr.
Aditya Mishra & Mr.
Shekhar Yadav, Advs.
Petitioner in person

versus

STATE (GOVT. OF NCT OF
DELHI) & ORS

..... Respondents

Through: Mr. Pradeep Gahalot, APP
for the State with Mr.
Aditya Rathi, Adv.
SI Arvind, PS- GTB
Enclave
Mr. Depender Kumar,
Adv. for R2 to R4
R2 to R4 in person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

20.03.2024

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1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking quashing of FIR No. 228/2010 dated 12.09.2010 registered at Police Station Mansarovar Park for offences under Sections 288/337 of the Indian Penal Code, 1860 ('IPC').
2. The FIR was registered on a complaint that the deceased, namely, Suraj, suffered grievous injuries and expired due to collapse of wall of the factory belonging to the petitioner.
3. It is alleged that the petitioner was responsible for the death of the 12-year-old boy, namely, Suraj, as the wall which



collapsed on the deceased could not be demolished because the petitioner did not allow it to be demolished.

4. The learned counsel for the petitioner submits that the land does not belong to the petitioner. The allegation is that the wall which collapsed on the deceased could not be demolished because the petitioner did not allow it to be demolished. He submits that it is an admitted fact that the duty of demolition of wall was of PWD and it appears that dereliction of the duty on the part of the PWD Officers has been fastened on the petitioner.

5. He submits that the petitioner was not in possession of the land and it is also not mentioned in the charge sheet as to why a 12-year-old boy was present at the site. He further submits that no effort of appropriate investigation has been done by the State.

6. The learned counsel for the petitioner submits that the petitioner/accused has already settled with the family members of the deceased.

7. The present petition is filed on the ground that the matter is amicably settled between the parties, on their own free will, without any coercion, pressure or undue influence by way of a Settlement Deed dated 08.07.2019.

8. In terms of the Settlement Deed dated 08.07.2019, the entire settlement amount of ₹2,80,000/- (Two Lakhs Eighty Thousand Only) already stands received by the legal representatives of the deceased way back in the year 2020.

9. Mr. Dudeja, learned counsel for the petitioner fairly submits that an additional amount of ₹50,000/- will be transferred into the bank accounts of the legal representatives of the deceased within a period of one week from today.

10. The petitioner and legal representatives of the deceased are present in Court and have been duly identified by the



Investigating Officer.

11. The legal representatives of the deceased, 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. The petitioner, at this stage, undertakes to transfer an additional amount of ₹50,000/- into the bank account of the legal representatives of the deceased. The details of the said transfer shall be provided to the Investigating Officer who will verify the said aspect.

13. The charge sheet in the present case was filed way back in the year 2013.

14. Offence under Section 288 of the IPC is non-compoundable whereas the offence under Section 337 is compoundable.

15. 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)

16. 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 serve 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)

17. The present case relates to an offence under Section 288/337 of the 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 ground of 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.

18. 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 high as to 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”...

19. Admittedly, the entire plot where the alleged incident took place, was under the management and control of PWD, wherein the construction was going on and the petitioner or his representative had no control.

20. From the perusal of the FIR and the documents annexed with the present petition, it appears to be a case of an accident. It is not the case of the prosecution that the accused person had shown criminal negligence due to which the alleged accident took place. The allegation of not allowing the PWD to demolish the wall which ultimately fell on the victim, cannot be termed as criminal negligence. The petitioner has admittedly not been charged with the offence of obstructing a public servant in the discharge of public functions under Section 186 of the IPC.

21. The present accident seems to be one of the incidents for which the conviction of the petitioner does not appear to be probable given the fact that the complainant and other family members of the deceased have already settled with the petitioner. The Court, thus, is of the view that the payment of compensation would serve the ends of justice.

22. The legal representatives of the deceased have already agreed to settle and have received the agreed compensation. The petitioner has agreed to pay additional compensation of ₹50,000/- to the legal representatives of the deceased.

23. Keeping in view the nature of 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.

24. However, keeping in mind the fact that the charge sheet has already been filed in the case arising out of FIR No. 228/2010, and the State machinery has been put to motion, ends of justice would be served if the petitioner is put to cost.

25. In view of the above, FIR No. 228/2010 and all consequential proceedings arising therefrom are quashed, subject to payment of additional compensation of ₹50,000/- to the legal representatives of the deceased and depositing a cost of ₹20,000/-, out of which ₹10,000/- is to be deposited with the Delhi Police Welfare Fund and ₹10,000/- is to be deposited with Delhi High Court Bar Association withing a period of eight weeks from today by the petitioner. The proof of transfer of the additional amount of ₹50,000/- and of payment of cost be submitted with the concerned SHO, who, in turn shall verify the said aspect.

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

AMIT MAHAJAN, J

MARCH 20, 2024

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