



\$~85

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

+ **W.P.(CRL) 10/2024**

NITIN YADAV AND ANR

..... Petitioners

Through: Mr. Vijay Kasana, Advocate with
Petitioners in person.

versus

STATE AND ORS.

..... Respondents

Through: Ms. Rupali Bandhopadhyaya, ASC
(Crl.) for State with SI Shivendra Singh, PS:
Subhash Place.

Ms. Nithi Agarwal, Advocate for R-2 to R-5 with
Respondents No. 2 to 5 in person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

28.02.2024

%

1. This petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking quashing of FIR No.699/2023 dated 24.10.2023 under Sections 288/336/304A/34 IPC registered at PS: Subhash Place including proceedings emanating therefrom.

2. As per the case of prosecution, Complainant/Respondent No. 3 resident of Village Ratuli, Post Rati Tihar, Shahjahanpur, Uttar Pradesh was working as a daily wage labour in the company of Petitioner No. 1. Petitioner No. 2 was a driver in Petitioner No. 1's Company. On 24.10.2023 at around 04:30 AM, Respondent No. 3 along with other Respondents was laying sewer lines on the main road between H and I block of Shakarpur, Delhi. Petitioner No. 2 the driver of JCB crane was excavating the site



pursuant whereeto, Respondents entered the site to lay the sewer line. Whilst Respondents were doing their work, the soil near the site fell on the Respondents, due to which Respondent No. 6 and one Rohit i.e. son of Respondent No. 2 were injured. Respondent No. 3 along with Respondent No. 5 jumped into the sewer line to help Rohit and Respondent No. 6. However, in the meantime, a heavy layer of soil fell on all the four persons and they got buried underneath the same. Respondents were taken to the Bhagwan Mahavir Hospital, Pitampura, Delhi by the PCR for treatment. Unfortunately, Rohit succumbed to the injuries and was declared dead by the Doctors. Respondent No. 3 suffered injuries on his body and on his right leg. Thereafter, on complaint of Respondent No. 3, present FIR was registered.

3. It is further stated that Petitioner No. 1 being the Director of M/s. Nitin Enterprises & Builders i.e. the employer and Petitioner No. 2 wrote to the Joint Labour Commissioner for release of insurance/workmen's compensation amount in favour of Respondent No. 2 and the proceedings are stated to be pending.

4. During the pendency of the proceedings, however, with the intervention and efforts of respectable members of the society, family members and relatives of the deceased, parties have arrived at an amicable settlement and it was decided by the Petitioners that they will compensate the family of the deceased for the loss caused to them both of a family member and an earning hand. Accordingly, a Settlement Agreement was executed on 15.12.2023, incorporating the terms of settlement, wherein it was agreed that Petitioners shall jointly and severally pay a sum of Rs.7,00,000/- to Respondent No. 2, towards full and final compensation on



account of all claims of the legal heirs of the deceased. The money stands paid by way of demand draft bearing No. 748917 dated 14.12.2023 drawn on State Bank of India.

5. Issue notice.
6. Learned APP accepts notice on behalf of the State.
7. Ms. Nithi Agarwal, learned counsel accepts notice on behalf of Respondents No.2 to 5.
8. Petitioners and Respondents No.2 to 5 are present in Court and are identified by their respective counsels as well as by the Investigating Officer SI Shivendra Singh, PS: Subhash Place. Learned counsel appearing on behalf of Respondents No. 2 to 5 acknowledges that a sum of Rs.7,00,000/- has been paid to Respondent No. 2, father of the deceased at the time of execution of the MoU. Respondents other than Respondent No. 2, who were working at the time of unfortunate accident and suffered minor injuries have been paid a sum of Rs.1,00,000/-. Respondent No. 6 has been deleted from the array of the parties and amended memorandum of parties has been filed. In view of the settlement, Respondents states that they are satisfied with the quantum of compensation received and have no objection to the quashing of the FIR. In view of the settlement, learned APP for the State leaves the decision to the Court.
9. Parties have been heard and Respondents No. 2 to 5 reiterate their stand that they are satisfied with the compensation amount and do not want the litigation to continue as that is causing a greater financial and mental burden on them. While there can be no dispute that loss of life of a family member can never be compensated in monetary terms, however, the compensation amount paid to the father of the deceased may help him tide



over his immediate financial crisis. Facts and circumstances emerging from the status report are a pointer to the fact that the excavation led to fall of the soil which cannot be on account of negligence of the Petitioners and understanding the situation, Complainant and the legal heirs of the deceased are satisfied and do not want the Petitioners to be prosecuted. At this stage, it would be apposite to refer to the judgment of the Supreme Court in ***Gian Singh v. State of Punjab and Another, (2012) 10 SCC 303***, the relevant paragraphs of which are as under:-

“55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

xxx

xxx

xxx

58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity,



the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.

xxx

xxx

xxx

61. *The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominately civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties*



have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

10. In ***Ajay Agarwal & Ors. v. State of NCT of Delhi and Anr.***, decided on 16.05.2023, in ***CRL.M.C. No. 2899/2018***, this Court relying on the judgments of the Supreme Court and assessing the relevant facts of the case was of the view that High Court is not prohibited *per se* in entertaining petitions for quashing of FIRs involving an offence under Section 304A IPC predicated on settlements between the parties and this could be done for various reasons such as where *prima facie* there is no criminal negligence or *mens rea* or considering the socio-economic situation of the family of the deceased, it would be preferable to provide adequate compensation rather than await the conclusion of trial or where the family accepts adequate compensation and decides not to pursue the complaint, in which case it would be an exercise in futility to continue the criminal proceedings. Co-ordinate Benches of this Court have quashed FIRs under Section 304A IPC, basis the settlement between the parties. In ***Upendra Kumar v. State & Ors.***, decided on 16.05.2023 in ***CRL. M.C. 1630/2018***, this Court observed that since the matter had been settled between the parties for Rs.6,00,000/- and the legal heirs of the deceased had accepted the payment as adequate



compensation, no purpose would be served in continuing the proceedings as the chances of conviction were remote. In this context, I may also refer to orders/judgments of this Court in *Parvinder Singh v. The State & Ors.*, *CRL.M.C. 2451/2023 dated 11.12.2023*; *Ram Lakhan v. State of NCT of Delhi & Ors.*, *W.P.(CRL) 3529/2023 dated 01.12.2023*; *Mahesh Chandra and Ors. v. The State and Ors.*, *CRL.M.C. 8673/2023 dated 29.11.2023* and *Smt. Omvati v. State of NCT of Delhi and Anr.*, *2015 SCC OnLine Del 11356*.

11. On assessment of the facts of this case, this Court is of the view that it would be in the interest of justice to put a quietus to the matter considering that the legal heirs of the deceased have amicably settled the matter with the Petitioners and have received the settlement amount.

12. Accordingly, FIR No.699/2023 dated 24.10.2023 under Sections 288/336/304A/34 IPC registered at PS: Subhash Place stands quashed including proceedings emanating therefrom.

13. Petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

FEBRUARY 28, 2024/shivam