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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 8282/2024**

ASHA NAGPAL & ORS.Petitioners
Through: Ms. Parul Dureja & Mr.
Rajan Chutani, Advs.

versus

THE STATE NCT OF DELHI & ANR.Respondents
Through: Mr. Utkarsh, APP for the
State.
Mr. Ashish Agarwal &
Ms. Meenakshi, Advs. for
R-2 with R-2 in person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
21.11.2024

CRL.M.A. 31671/2024 (*exemption from filing certifies
copies/typed copies/legible documents*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present petition is filed seeking quashing of FIR No. 504/2022 dated 13.09.2022, registered at Police Station Moti Nagar, for offences under Sections 288/304A of the Indian Penal Code, 1860 ('IPC').
4. Chargesheet was filed against the petitioner for offences under Sections 288/304A/34 of the IPC.
5. It is alleged that on 13.09.2022, husband of Respondent No. 2 late Vinod Kumar, while performing Jhiri work on a construction site – property No. C-45, Bali Nagar, New Delhi which was being developed under the supervision of Petitioner
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No. 4, tragically fell and succumbed to the injuries.

6. The aforementioned incident led to the registration of the present FIR. The FIR was registered against the petitioners, i.e., the contractor Petitioner No. 4 and the property owners Petitioner Nos. 1 to 3.

7. The present petition is filed on the ground that the matter is amicably settled between the petitioners and Respondent No. 2, who is the wife of the deceased, on their own free will, without any coercion, pressure, or undue influence by way of Memorandum of Understanding (MoU) dated 16.09.2022.

8. In terms of the MOU dated 16.09.2022, out of the total settlement amount of ₹7,00,000/-, ₹5,00,000/- has been given to the Respondent No. 2 and balance amount of ₹2,00,000/- along with additional amount of ₹2,50,000/- has been given today in Court by way of demand drafts in the following manner:

S. No.	Demand draft no.	In favour of	Date	Amount (in ₹)
1.	686599	Sunaina Kumari (daughter of the victim) represented through R-2	20.11.2022	75,000/-
2.	686597	Saloni Kumari (daughter of the victim) represented through R-2	20.11.2022	75,000/-
3.	686598	Akash Kumar son of the victim) represented through R-2	20.11.2022	75,000/-
4.	020217	Sunaina Kumari (daughter of the victim) represented through R-2	20.11.2022	75,000/-



5.	020219	Akash Kumar (son of the victim) represented through R-2	20.11.2022	75,000/-
6.	020218	Saloni Kumari (daughter of the victim)	20.11.2022	75,000/-

9. Respondent No.2 is present in Court and he has been duly identified by the Investigating Officer.

10. Respondent No.2, on being asked, states that she does not wish to pursue the proceedings arising out of the present FIR and she has no objection if the proceedings are quashed.

11. Offences under Sections 288/304A of the IPC are non-compoundable in nature.

12. It is well settled that the High Court while exercising its powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') [erstwhile Section 482 of the Code of Criminal Procedure, 1973] can quash offences which are non-compoundable 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 to be adhered to by the 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)

13. 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)

14. The present case relates to the offences under Sections 288/304A of the IPC where a person has died due to alleged



negligence of the accused persons. 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 whether the element of *mens rea*, which is required for the purpose of conviction, is present.

15. 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 so as to constitute an offence under Section 304A of the 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”...”

16. It is not disputed that the Petitioner No. 1 to 3 have been made accused solely for the reason that they are the owners of the building where the accident had happened. The case of the prosecution is that the construction was being carried out through the contractor/ Petitioner No. 4. The deceased Vinod Kumar was performing Jhiri work at the construction site and due to the



sudden breakage of a wooden board used by the deceased, he tragically fell and succumbed to injuries.

17. From the perusal of the FIR and the documents annexed with the present petition, it appears to be a case of accident. It is not alleged that the petitioners were the one because of whom, such incident happened and the person lost his life. It is also not the case that such accidents happened on regular basis and that other persons also used to get injured on a regular basis. Given the fact that the family members of the deceased have already settled the dispute with the petitioner, it would be improbable to secure a conviction in the facts of the present case.

18. This Court, thus, is of the view that the payment of compensation would serve the ends of justice.

19. 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 528 of the BNSS.

20. However, keeping in mind the fact that the charge sheet has already been filed in the present case arising out of the above-mentioned FIR, and the State machinery has been put to motion, ends of justice would be served if the petitioner is put to cost.

21. In view of the above, FIR No.504/2022 and all consequential proceedings arising therefrom are quashed, subject to payment of a cost of ₹20,000/- by the petitioners, to be deposited with the Delhi Police Welfare Society within a period



of twelve weeks from date.

22. The proof of payment of cost to be submitted with the concerned SHO within a period of twelve weeks.

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

AMIT MAHAJAN, J

NOVEMBER 21, 2024

“SK”