
(2014) 12 DEL CK 0065

Delhi High Court

Case No: Crl. M.C. 4636/2014

Sunder Sharma

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Dec. 18, 2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 320, 482#Hindu Marriage Act, 1955 " Section 13(1)(ia), 13B(2)#Penal Code, 1860 (IPC) " Section 307, 34, 406, 498A#Protection of Women From Domestic Violence Act, 2005 " Section 12

Citation: (2014) 12 DEL CK 0065

Hon'ble Judges: Sudershan Kumar Misra, J

Bench: Single Bench

Advocate: Ramesh Sethi, Advocate and Party-in-Person, Advocate for the Appellant; Nishi Jain, APP and Rajvir Singh, SI, Advocate for the Respondent

Judgement

Sudershan Kumar Misra, J.

Crl. M.A. 15804/2014 (for exemption)

Exemption, as prayed for, is allowed, subject to all just exceptions.

The application stands disposed off.

CRL.M.C. 4636/2014

1. This petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No. 34/2013 registered under Sections 498A/ 406/ 34 IPC at

Police Station Crime (Women Cell) , Nanakpura on 5th March, 2013 on the ground that the matter has been amicably settled between the parties.

2. Issue notice.

Ms. Nishi Jain, Additional Public Prosecutor and Mr. Sanjeev Kumar, Advocate enter appearance and accept notice on behalf of the

State/respondent No.1 and respondent No.2, respectively.

3. Petitioners as well as complainant/respondent No.2-Ruchika are present in person and are also identified by the Investigating Officer/ SI

Sanjeev Kumar, Police Station Crime (Women Cell) , Nanakpura.

4. The aforesaid FIR is stated to have been lodged by respondent No.2/complainant consequent upon certain matrimonial and domestic disputes

that have arisen between the parties pursuant to her marriage with petitioner No.1-Sunder Sharma on 9th July, 2011. At the same time,

complainant had also instituted proceedings under Section 12 of Protection of Women from Domestic Violence Act, 2005. In addition,

complainant had also instituted proceedings for grant of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955, against petitioner No.1.

5. During the course of hearing of the petition for grant of divorce moved by the complainant, the parties were referred by the Family Court to the

Counselling Cell, and ultimately on 23rd April, 2013 the parties arrived at a settlement on terms. A copy of the said settlement has also been

annexed to this petition. In terms of the aforesaid settlement, parties agreed that the complainant shall withdraw her petition for divorce as well as

that under Domestic Violence Act. At the same time, it was also agreed that the parties will seek divorce by mutual consent and that complainant

will be paid a sum of Rs.5,00,000/- in full and final settlement of all her claims and dues. Further, it was also agreed that, in case of delay on the

part of the petitioner to comply with the terms of settlement, complainant shall be entitled to a further sum of Rs.10,000/-. Ultimately, the marriage

between the parties is stated to have been dissolved by a decree of divorce under Section 13B(2) of the Hindu Marriage Act, 1955 dated 7th

May, 2015 in HMA petition No. 441/2014. A copy of the decree sheet has been annexed to the present petition. Out of the aforesaid amount of

Rs.5,00,000/- Rs.3,00,000/- already stands paid to the complainant. Balance amount of Rs.2,00,000/- is paid to the complainant in the Court

today by way of a demand draft bearing Nos. 438318 drawn on Indian Bank dated 30th August, 2014 and additional amount of Rs.10,000/- is

handed over vide demand draft bearing No. 439980 drawn on Indian Bank dated 12th December, 2014. Petition for divorce as well as under

Domestic Violence Act filed by the complainant are stated to have been withdrawn.

6. The complainant approbates the aforesaid settlement and states that she has no further grievance in the matter; and with the aforesaid payment,

nothing further remains due to her from the petitioners. She states that she does not wish to pursue the matter any further and prays that the same

be closed.

7. Additional Public Prosecutor appearing for the State submits that looking to the overall circumstances and since the matter pertains to a

domestic and matrimonial dispute; where the parties have amicably settled the matter and have obtained divorce by mutual consent; and the

complainant is no longer interested in supporting the prosecution, no useful purpose will be served in continuing with the proceedings.

8. Under the circumstances and looking to the decision of the Supreme Court in the case of Gian Singh Vs. State of Punjab and Another, , which

has referred to a number of matters for the proposition that even a non-compoundable offence can also be quashed on the basis of a settlement

between the offender and the victim, if the circumstances so warrant; by observing as under:

58.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.

And also in *Narinder Singh and Others Vs. State of Punjab and Another*, where the Supreme Court held as follows:-

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 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 pre-dominantly 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 Indian Penal Code would fall in the category of heinous and serious offences and therefore is 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 Indian Penal Code 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 Indian Penal Code 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 Indian Penal Code. 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/delegate 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 later 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 a conclusion as to whether the offence under

Section 307 Indian Penal Code 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 Indian Penal Code 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.

And specifically in respect of matrimonial disputes in *Jitendra Raghuvanshi and Others Vs. Babita Raghuvanshi and Another*, , where the Supreme

Court held as follows:-

15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on

considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties

have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would

not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an

important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down

in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it

out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary

jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is

convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of

justice require that the proceedings ought to be quashed.

I am of the opinion that this matter deserves to be given a quietus at this stage itself, since the parties have resolved their differences and have

obtained divorce by mutual consent; and since the complainant is no longer interested in supporting the investigation.

9. Consequently, FIR No. 34/2013 registered under Sections 498A/ 406/ 34 IPC at Police Station Crime (Women Cell) , Nanakpura on 5th

March, 2013 and all proceedings emanating therefrom, are hereby quashed.

10. The petition stands disposed off.