

Vipin Rastogi Vs State

Court: Delhi High Court

Date of Decision: Oct. 16, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 320, 482
Hindu Marriage Act, 1955 â€” Section 13(1)(ia)
Penal Code, 1860 (IPC) â€” Section 307, 34, 406, 498A

Hon'ble Judges: Sudershan Kumar Misra, J

Bench: Single Bench

Advocate: Peeush Kulshreshtha, Advocate for the Appellant; P.K. Mishra, APP, Satbir Singh, SI and K.K. Gambhir, Advocate for the Respondent

Judgement

Sudershan Kumar Misra, J.

This petition has been moved under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing

of FIR No. 334/2005 registered under Sections 498-A/ 406/ 34 IPC at Police Station Gandhi Nagar, on the ground that the matter has been

settled between the parties.

2. Issue notice.

3. Counsel for the State, as well as counsel for the complainant, who is arrayed as the second respondent herein, enter appearance and accept

notice. The Investigating Officer, Sub-Inspector Satbir Singh, Police Station Gandhi Nagar, also identifies the petitioners, as well as the

complainant.

4. It is stated that the aforesaid FIR came to be lodged at the instance of the complainant due to certain domestic and matrimonial disputes that

have arisen between the parties pursuant to the marriage of the complainant with the first petitioner on 12.12.2002.

After the FIR came to be

registered, the complainant also moved the Family Court seeking divorce from the first petitioner under Section 13(1)(i-a) and (i-b) of the Hindu

Marriage Act in HMA No. 221/06/05. The said petition was ultimately allowed and the marriage of the complainant with the said petitioner was

ultimately dissolved by a decree of divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act on 17.04.2007. A copy

of the said decree is also annexed to this petition.

5. Ultimately, on 10.02.2014, a settlement was recorded between the parties setting down the terms which envisage payment of Rs. 1,50,000/- to

the complainant/second respondent. Out of this, a sum of Rs. 50,000/- is stated to have been already paid and the remaining outstanding amount

of Rs. 1 Lac has been handed over to the complainant today by way of Demand Draft No. 568463 dated 26.08.2014 drawn on Punjab National

Bank.

6. The complainant approbates the aforesaid settlement and states that with the receipt of the aforesaid amount of Rs. 1 Lac, nothing further is due

to her from the petitioners and further that she is not interested in continuing with the proceedings any more, and that the matter be closed.

7. Counsel for the State submits that looking to the overall circumstances, where the matter pertains to the domestic and matrimonial dispute and

the parties have settled the matter amicably, no useful purpose would be served in continuing with the proceedings particularly where the

complainant is no longer interested in supporting the prosecution.

8. Looking to the decisions of the Supreme Court in 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 ground of a settlement agreement 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 considered opinion that the matter deserves to be given a quietus since the parties have arrived at a mutually acceptable settlement in

the matter, which has arisen out of a domestic and matrimonial dispute where the complainant is no longer interested in supporting the prosecution

thereby reducing the chances of its success.

9. Consequently, the petition is allowed, and the FIR No. 334/2005 registered under Sections 498-A/ 406/ 34 IPC at Police Station Gandhi

Nagar, and all the proceedings emanating therefrom, are hereby quashed.

10. The petition stands disposed off.