Kapil Gupta vs State Of Nct Of Delhi on 10 August, 2022

Author: B.R. Gavai

Bench: Pamidighantam Sri Narasimha, B.R. Gavai

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1217 OF 2022
(@ SLP (CRL.) NO.5806 OF 2022)

KAPIL GUPTA APPELLANT(S)

VERSUS

STATE OF NCT OF DELHI & ANR. RESPONDENT(S)

JUDGMENT

B.R. GAVAI,J.

1. Leave granted.

2. The appeal challenges the judgment and order dated 28.09.2021 passed by the learned single judge of the High Court of Delhi, thereby dismissing Criminal M.C. No. 1567 of 2021 vide which the application filed by the respondent for quashing the proceedings under Section 376 of the Indian Penal Code ('IPC') came to be rejected.

3. First Information Report ('FIR') No.569 of 2020 came to be registered on 25.08.2020 at the instance of Respondent No.2 herein. It is stated in the FIR that in February, 2020, she met with an accident and sustained injuries on her thigh and ankle. It is stated that she was helpless and financially disturbed. It was further stated that she was interested in joining a multinational company for future security and was in search of a job. In her search, the complainant came to know that the appellant was looking for a personal assistant. It is further the prosecution case that there was an exchange of messages between the Respondent No.2 and the appellant. Thereafter, the Respondent No.2 sent her location to the appellant and the appellant went to her house. Thereafter, the incident of rape is alleged to have taken place.

4. It appears that after the aforesaid FIR was lodged, another FIR came to be lodged by the present appellant against Respondent No.2 making allegations of extortion.

5. In both the cases, arising out of FIR No.824 of 2020 registered at Police Station Mehrauli, chargesheet has already been filed.

6. It further appears that subsequently, in the case arising out of Section 376 of the IPC, that is, FIR No.569 of 2020, the matter was amicably settled and therefore, the petition for quashing the proceedings under Section 482 of the Cr.P.C. came to be filed. By the impugned order, the High Court has dismissed the said petition.

7. Taking into consideration the peculiar facts and circumstances of the case, vide order dated 14.07.2022, we had directed both the appellant as well as Respondent No.2 to personally remain present in the Court.

8. Pursuant to the aforesaid order, the appellant as well as Respondent No.2 are personally present in the Court.

9. In the morning session, when the matter was argued at length, we had heard Dr. N. Pradeep Sharma, learned counsel for the appellant and Mr. Vikramjeet Banerjee, learned Additional Solicitor General ("learned ASG" for short) for Respondent No.1. Mr. Banerjee, learned ASG submitted that the present crime is a heinous crime and is against the society at large. He submitted that it is a settled law that in serious and heinous crime, the Court should not permit quashing of the proceedings even if there is consent between the parties.

10. Since, none appeared for Respondent No.2, we requested Mr. Rauf Rahim, learned counsel to act as an Amicus Curiae and also appear for her. We had also requested the learned ASG and Mr. Rauf Rahim, learned counsel to speak to Respondent No.2 to find out as to whether the consent for putting an end to this proceeding is out of her own will or under duress or coercion. We had posted the matter to be heard in the afternoon session.

11. When the matter was called out in the afternoon session, learned ASG as well as Mr. Rauf Rahim informed us that they had spoken to Respondent No.2. They stated that from the conversation they had with Respondent No.2, it was apparent that the consent given by Respondent No.2 was voluntarily and without any coercion and duress. It was informed that the Respondent No.2, in order to live in peace, wants to bring an end to the criminal proceedings.

12. No doubt that the learned ASG is right in relying on various judgments of this Court which reiterate the legal position that in heinous and serious offences like murder or rape, the Court should not quash the proceedings. It will be relevant to refer to paragraph 29.5 to 29.7 of the judgment of this Court in the case of Narender Singh versus State of Punjab1, which read thus:

> "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 IPC would fall in the category of heinous and serious 1 (2014) 6 SCC 466 offences and therefore are 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 IPC 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 IPC 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 IPC. 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 latter 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 IPC 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 IPC 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."

13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not

foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.

15. The facts and circumstances as stated hereinabove are peculiar in the present case. Respondent No.2 is a young lady of 23 years. She feels that going through trial in one case, where she is a complainant and in the other case, wherein she is the accused would rob the prime of her youth. She feels that if she is made to face the trial rather than getting any relief, she would be faced with agony of undergoing the trial.

16. In both the cases, though the charge sheets have been filed, the charges are yet to be framed and as such, the trial has not yet commenced. It is further to be noted that since the respondent No.2 herself is not supporting the prosecution case, even if the criminal trial is permitted to go ahead, it will end in nothing else than an acquittal. If the request of the parties is denied, it will be amounting to only adding one more criminal case to the already overburdened criminal courts.

17. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succour to Respondent No. 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.

18. In that view of the matter, the appeal is allowed and proceedings in the criminal cases arising out of following FIRs are quashed and set aside:

1. FIR No.569/2020 registered at Police Station, Mehrauli, New Delhi (Rape)

2. FIR No.824/2020, registered at Police Station, Mehrauli, New Delhi (Extortion)

19. We are grateful to the learned ASG and Mr. Rauf Rahim in going out of their way and acting as a friend of the Court so as to find out about the genuineness of the consent given by the respondent No.2.

20. Pending application(s), if any, shall stand disposed of.

.....J. (B.R. GAVAI) .....J. (PAMIDIGHANTAM SRI NARASIMHA) NEW DELHI;

10th AUGUST, 2022