

Deepu Bhagel & Anr vs The State (Nct Of Delhi) & Anr on 20 February, 2024

Author: Navin Chawla

Bench: Navin Chawla

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 1391/2024
DEEPU BHAGEL & ANR. Petitioners
Through: Mr.Raghav Saluja, Adv.

versus

THE STATE (NCT OF DELHI) & ANR. Respondents
Through: Ms.Priyanka Dalal, APP with
SI Satyapreet.
Ms.Tanisha Verma, Adv.
2.
Complainant in person.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
ORDER

% 20.02.2024 CRL.M.A. 5500/2024 (exemption)

1. Allowed, subject to all just exceptions.

2. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of FIR No.647/2020 registered at Police Station: Jait Pur, South- East District, Delhi, under Sections 377/506/34 of the Indian Penal Code, 1860 (in short, 'IPC'), along with all other proceedings arising therefrom, on the basis of settlement.

3. Issue notice.

4. Notice is accepted by Ms.Priyanka Dalal, learned APP for the State and Ms. Tanisha Verma, learned counsel for the respondent no.2.

5. The learned counsel for the petitioner submits that the petitioners This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/02/2024 at 22:20:43 and the respondent no.2 have been residing in Delhi for the last 5 years and work together in a sweet shop. The dispute arose out of some misunderstanding between the parties, which led to the filing of the above FIR.

6. The learned counsel for the petitioners has also pointed out that though a final report was filed on 27.02.2021, till date, charges have not been framed against the petitioners by the learned Trial Court. He further draws my attention to the MLC of the respondent no.2 which inter alia records that 'there are no signs suggestive of involvement of forceful penetration to anal orifice and mouth is noted'.

7. The learned counsel for the petitioners submits that the parties have amicably settled their inter se disputes and have entered into a Settlement Agreement dated 08.02.2024.

8. On the other hand, the learned APP submits that the offence for which the petitioners are charged is grave; chargesheet already stands filed and, therefore, there is no reason why the present proceedings emanating from the above FIR be quashed only on the ground of a compromise being arrived at with the respondent no.2.

9. The respondent no.2, who is present in Court and has been duly identified by the Investigating Officer (IO), reaffirms the settlement and states that he has settled all the disputes with the petitioners of his own free will and without any coercion. The respondent no.2 submits that the FIR was filed as a result of some misunderstanding with the petitioners and, in fact, the This is a digitally signed order.

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petitioners are his friends. He submits that the present FIR be quashed.

10. I have perused the contents of the FIR and also the settlement between parties.

11. Keeping in view the fact that parties are the co-workers and are stated to be friends; the submissions of the learned counsel for the petitioner recorded hereinabove; the respondent no.2 does not wish to pursue his complaint any further; as also the Settlement arrived at between the parties, I find that no useful purpose shall be served in continuing with the proceedings of the present FIR as the chances of its success will be rather minuscule and it would rather create further acrimony between the parties and will be an unnecessary burden on the State exchequer.

12. In Kapil Gupta v. State (NCT of Delhi), 2022 SCC OnLine SC 1030, the Supreme Court has held as under:

"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. ...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 This is a digitally signed order.

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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."

13. In *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466, the Supreme Court has explained the principles governing the power of the High Court to quash or refuse to quash the proceedings on the basis of a settlement in cases of non-compoundable offence, as under:

"29. In view of the aforesaid discussion, we sum up and lay down the following principles This is a digitally signed order.

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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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/02/2024 at 22:20:44 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 IPC would fall in the category of heinous and serious 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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/02/2024 at 22:20:44 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 to 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."

14. Guided by the principles enunciated by the Supreme Court in its This is a digitally signed order.

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15. Accordingly, the petition is allowed. FIR No.647/2020 registered at Police Station: Jait Pur, South-East District, Delhi, under Sections 377/506/34 of the IPC and all consequential proceedings emanating therefrom against the petitioners are quashed.

NAVIN CHAWLA, J FEBRUARY 20, 2024 RN/AS Click here to check corrigendum, if any This is a digitally signed order.

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