

Mohd. Saleman vs The State (Gnct Of Delhi) And Anr on 4 November, 2022

Author: Anoop Kumar Mendiratta

Bench: Anoop Kumar Mendiratta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 1208/2022

MOHD. SALEMAN

..... Petitioner

Through: Mr. Lohit Ganguly, Mr. A
and Ms. Reeta Puniya, Ad

versus

THE STATE (GNCT OF DELHI) AND ANR. Respond

Through: Mr. Aman Usman, APP for State wit
respondent No.2 in-person.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% 04.11.2022

1. Petition has been preferred on behalf of the petitioner under Section 482 Cr.P.C. for quashing of FIR No. 289/2017, under Sections 356/379/34 IPC registered at Police Station Timarpur.

2. In brief, as per the case of the prosecution, on 28.06.2017 a PCR call, vide DD No.21A, was received at PS Timarpur which was marked to SI Amit Bhardwaj for enquiry. Complainant/respondent No.2 alleged that on 28.06.2017 at about 10:30 PM, when she reached in front of the gate of her office, one motorcycle Bajaj Discover, No. DL 7685 (incomplete) stopped on the road. The pillion rider got down from the motorcycle and started walking ahead of the complainant towards the said gate while the other boy kept standing near the motorcycle. Thereafter, the boy walking with the complainant / respondent No.2 snatched her gold chain and a locket weighing about 20 gms, after which the both boys fled from the spot. She further specified that the boy riding the bike was wearing a pink shirt and the boy who snatched the gold chain was wearing green t-shirt and blue jeans.

3. It is further the case of the prosecution that during the course of investigation on 04.07.2017, the complainant / respondent No.2 called the police and informed that the person who had snatched her gold chain was present at Power House. Thereafter, the Investigating Officer reached the spot and the complainant/respondent No.2 pointed out towards the petitioner, who was working at Power House, as the person who had snatched her gold chain. Further, petitioner (Mohd. Saleman) was interrogated and he denied having snatched the gold chain of the complainant/ respondent No.2. Investigation was conducted but neither the gold chain could be recovered nor the co-accused could be found.

4. During investigation, a number of persons using motorcycle bearing the last four digits DL-7685 were interrogated but could not be connected with the case in any manner. As such, the motorcycle used in the offence could not be connected/identified. The chargesheet was filed under Sections 356/379/34 IPC, and the charge stands framed against the petitioner. Further, in the examination in chief, the complainant/ respondent No.2 confirmed that petitioner was the same person who snatched her gold chain and the matter is pending for cross-examination of the complainant/ respondent No.2.

5. Learned counsel for the petitioner submits that with the intervention of friends, relatives and other persons of the society, petitioner and respondent No.2/complainant have mutually and amicably resolved their disputes and respondent No.2, no longer has any grievance against the petitioner.

It is further urged that during the course of investigation, the police seized the attendance register and CDRs and after conclusion of the investigation, found nothing incriminating against the petitioner. Reference is also made to the affidavit filed on behalf of respondent No.2, wherein settlement/compromise arrived at between the parties is admitted.

Reliance is also placed by learned counsel for petitioner on 'Himanshu Gosain vs. The State (NCT of Delhi) & Anr.' CRL.M.C.3868/2015, 'Satbir Singh Chahal & Anr. vs. State of Delhi & Anr.' CRL.M.C.1962/2016, 'Rohit Yadav @ Sunny vs. Shakuntala @ Babli & Ors.' CRL.M.C.3145/2014, 'Sh. Roshan @ Rohan Kumar & Anr. vs. State & Anr.' CRL.M.C.2483/2020, 'Ashish Sehrawat & Others vs. State (Govt. NCT of Delhi) & Ors.' 2018 (1) JCC 235, 'Amarjeet Dhankar & Ors. vs. The State NCT of Delhi & Anr.' W.P.(CRL.)2190/2017, 'Pushkar Khanduja & Anr. vs. State (Govt. NCT of Delhi) & Anr.' CRL.M.C.2994/2015, 'Ranbir Sharma & Ors. vs. The State (Govt. of NCT) & Anr.' CRL.M.C.2985/2008, 'Sunil Tomar vs. The State of NCT of Delhi & Anr.' CRL.M.C.1741/2021 and 'Lovely Salhotra & Anr. vs. State, NCT of Delhi' AIR 2017 SC 2595.

6. On the other hand, learned APP for the State vehemently opposes the petition and submits that offence has serious impact on the interest of the society at large.

7. I have given considered thought to the contentions raised.

Reference may be made to principles reiterated by Hon'ble Supreme Court in 'Ramgopal & Anr. vs. The State of Madhya Pradesh' in Criminal Appeal No.1489/2012 decided on 29.09.2021.

"19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences „compoundable within the statutory framework, the extra-ordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society;

(ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; &

(iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations."

8. Petitioner in the present case seeks to invoke the powers under Section 482 of Code of Criminal Procedure. The same are to be used to secure the ends of justice and to prevent the abuse of process of any Court. In which cases, the power to quash the criminal proceedings or the complaint or FIR may be used when the offender as well as victim have settled their dispute, would depend upon the facts and circumstances of each case and no generalised list or categories can be prescribed. However, the Court is required to give due regard to the nature and gravity of the offence and consider the impact on the society.

9. It is imperative to keep in perspective that while exercising jurisdiction under Section 482 of Code of Criminal Procedure, the Court is ordinarily not required to embark upon an inquiry, if the evidence is reliable or not or whether there is reasonable possibility that the accusation would not be sustained. At the same time, the Court must ensure that the criminal prosecution is not used as an instrument for seeking private vendetta or with an ulterior motive. The Court, prior to exercising power under Section 482 Cr.P.C. has to be circumspect and give due regard to the nature and gravity of offence. The offences which are not private in nature and have a serious impact on the society cannot be quashed merely on the basis of a compromise effected by the offender with the complainant or the victim. It is well settled that crimes like murder, rape, burglary, dacoity are neither private nor civil in nature but have been generally regarded as the crimes against the society. Reliance may also be placed upon principles referred in 'Daxaben Vs. The State of Gujarat & Ors.', Criminal Appeal No.....of 2022 {arising out of SLP (Crl.) No.1132-1155 of 2022}.

10. Reverting back to the facts of present case, the factual position reveals that the chargesheet has been filed since the petitioner was identified by the complainant/respondent No.2. The investigation was taken up on the basis of identification by the complainant. It cannot be ignored that the complainant / respondent No.2 never had any enmity with the petitioner and there was no motive for implicating the petitioner. The incident had taken place during the day time at about 10:30 AM and it cannot be said at this stage that the complainant/respondent No.2 was not in a position to identify the petitioner. Moresoever, the complainant/respondent No. 2 supported the identification in her examination in chief as pointed out by learned counsel for the petitioner.

11. In the facts and circumstances, it may send a wrong signal to the society, in case, the offence of such a nature involving daylight snatching of gold chain is permitted to be quashed by this Court. It is imperative to note that even in the affidavit filed on behalf of the complainant/ respondent No.2 on record, it has not been stated by her that she had incorrectly identified the petitioner during her examination in chief. It may not be appropriate for this Court to comment further on the evidentiary value of the identification since the witness is yet to be cross-examined on behalf of the petitioner. At the same time, it may also be noticed that the plea of alibi taken by the petitioner is yet to be proved during the course of evidence, if any, to be led on behalf of the petitioner.

12. A complainant has no right in law to withdraw the complaint in case of a non-compoundable offence which impacts the society, since after filing of FIR, the prosecution is taken over by the State. It is the duty of the State to ensure that the prosecution is taken to a logical end in case the crime is treated as against the society and in order to deter others from committing a similar crime.

13. The authorities cited by learned counsel for the petitioner are distinguishable on facts. For the foregoing reasons, I am not inclined to quash the proceedings in the present FIR.

Nothing stated hereinabove shall tantamount to any expression of opinion on merits of the case.

Petition is accordingly dismissed.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 4, 2022/R