

Salman Khan vs The State on 1 April, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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+ BAIL APPLN. 1786/2023
SALMAN KHAN

THE STATE

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+ W.P.(CRL) 1667/2023
SALMAN KHAN

STATE OF NCT OF DELHI AND ANR

Through: Mr. Sanjay Lao, S
(Crl.) for State with SI A
R-2/Complainant in person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

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W.P.(CRL) 1667/2023

1. This petition has been filed on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India read with Section 482 Cr.P.C.

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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 02/04/2024 at 01:36:43 seeking quashing of FIR No.96/2023 dated 03.02.2023 Sections 420/506 IPC registered at PS: Bhajan Pura, predicated on a compromise/settlement between Petitioner and Respondent

No.2/Complainant. Subsequently, Sections 467/468/471/34 IPC were added.

2. Present FIR was registered on the complaint of Ms. Raheesa Begum on 03.02.2023, wherein she alleged that she had entered into an Agreement to purchase property bearing No. C-12/123, 1st floor, Yamuna Vihar, Delhi on 28.05.2022 with the Petitioner for a total sale consideration of Rs. 45 lacs and registration was to be done on or before 28.08.2022. Complainant gave Rs.5 lacs as earnest money to the Petitioner and a further sum of Rs.10 lacs was agreed to be paid on 06.06.2022, at the time of registration. Petitioner expressed urgent need for money and therefore, Complainant gave a further sum of Rs. 5 lacs in two instalments of Rs.2.50 lacs each on 05.06.2022 and 06.06.2022. Petitioner assured that he would demand the balance money once the loan sought by the Complainant was sanctioned. Part payment of the remaining amount was transferred by the Complainant in the bank account of the Petitioner, after the loan was sanctioned. Complainant alleged that at the time of entering into the agreement, Petitioner assured that the property was free from all kind of encumbrances but on 24.06.2022, when she visited the property, she found that two other persons were present there, who claimed to be lessees of the property. A complaint was made to the Police and present FIR was registered.

3. It is stated in the status report that upon registration of the case, investigation was initiated and it was found that there were discrepancies in the Sale Purchase Agreement and a subsequent lease deed was found to have been executed by the Petitioner in favour of Mehboob Aalam. Applicant was This is a digitally signed order.

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4. During the pendency of the criminal proceedings, Settlement Agreement was executed between the brother of the Petitioner and the Complainant on 04.05.2023 and it was agreed that a sum of Rs.10 lacs will be paid to the Complainant within one month from the date of grant of bail, in full and final settlement of all her claims. Copy of the Settlement Agreement was filed along with the petition.

5. On 31.05.2023, this Court recorded that the matter had been settled between the Petitioner and the Complainant for a total amount of Rs.10 lacs, out of which Rs.3 lacs was to be paid at the time of quashing of the FIR and Rs.7 lacs was payable in two months. Premised on this, Court issued notice to Respondent No. 2 for confirming the said position and production warrants were issued to the Petitioner, through Jail Superintendent, to be produced for hearing through video conferencing. Pursuant to the said order, Respondent No. 2 appeared in Court on 01.06.2023 and Rs.3 lacs were tendered to her by way of two demand drafts, which she accepted. For paying the balance amount of Rs.7 lacs, Respondent No. 2 agreed that Petitioner be released on interim bail for one month in order to make arrangements for the money. On this basis, interim bail was granted to the Petitioner, which was extended from time to time. However, Petitioner only paid Rs.4 lacs over a period of several months and by a detailed order on 22.02.2024, Court declined to extend the interim bail, as

Petitioner had defaulted in paying the balance amount of Rs.3 lacs. Petitioner was directed to surrender forthwith, which he did not do and he was arrested on 21.03.2024.

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6. When the petition was listed on 28.03.2024, brother/pairokar of the Petitioner offered to pay the balance amount and the petition was adjourned for today directing the IO to intimate the Complainant of the hearing and the offer on behalf of the Petitioner to clear the outstanding amount.

7. Complainant is present in Court and is identified by the Investigating Officer SI Akash, PS: Bhajan Pura. She states that balance amount of Rs.3 lacs has been paid to her by the brother of the Petitioner by Demand Draft bearing No.522520 dated 18.03.2024 drawn on ICICI Bank and additionally a sum of Rs.20,000/- has been given to her on account of belated payment. Complainant further states that she has no objection to the quashing of the FIR. Learned APP also submits that the State has no objection to the quashing of the FIR, as settlement terms have been complied with by the Petitioner but the Court may only quash the FIR qua the Petitioner as the co-accused has not approached the Court for quashing.

8. The Supreme Court in *Gian Singh v. State of Punjab and Another*, (2012) 10 SCC 303, observed that while exercising inherent powers under Section 482 Cr.P.C. in respect of quashing of an FIR where parties have entered into amicable resolution of the disputes, one of the considerations would be whether it would be unfair or contrary to the interest of justice to continue the criminal proceedings despite the compromise and if the answer to the question is in the affirmative, the High Court would be well within its jurisdiction to quash the criminal proceedings, in order to ensure that the disputes are put to an end and peace is restored as securing the ends of justice is the ultimate guiding factor. This was of-course with a caveat that heinous and serious offences of mental depravity or offences like murder, dacoity etc. cannot be fittingly quashed even though the victim or the 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 02/04/2024 at 01:36:44 victim's family settles the disputes with the offender. Relevant paragraphs of the judgment are as follows:-

"55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing

unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

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58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. 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 This is a digitally signed order.

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61. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate This is a digitally signed order.

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9. In a later judgment in the case of Narinder Singh and Others v. State of Punjab and Another, (2014) 6 SCC 466, the Supreme Court reiterated the proposition and relevant paragraphs are as

follows:-

"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 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."

10. It is a settled law that inherent powers under Section 482 Cr.P.C. are required to be exercised to secure the ends of justice and/or prevent abuse of the process of the Court. The Supreme Court in the case of Nikhil Merchant This is a digitally signed order.

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amicable settlement between the parties.

11. From the conspectus of the aforesaid judgments, some of the principles that can be succinctly culled out for exercise of inherent powers under Section 482 Cr.P.C. are that the inherent jurisdiction is to prevent abuse of process of Court or to secure ends of justice as ends of justice are higher than ends of mere law, premised on the principle that inherent powers have been vested to do real, complete and substantial justice. This is of course not without a caveat that the Courts must steer clear of intervention in cases which involve heinous or serious offences involving mental depravity or economic offences and those which fall in the category of offences relating to murder, extortion, dacoity, cases under the Arms Act, 1959 etc.

12. Petitioner and the Complainant had settled their disputes and executed a Settlement Agreement whereby a total sum of Rs.10 lacs was to be paid to the Complainant. Rs.7 lacs was paid and balance Rs.3 lacs remained to be paid. Complainant acknowledges having received the balance amount in addition to Rs.20,000/- for delayed payment and states that she does not wish to pursue the complaint. In these facts, chances of conviction are bleak This is a digitally signed order.

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13. Accordingly, FIR No.96/2023 dated 03.02.2023 registered at PS: Bhajan Pura is hereby quashed along with the Charge Sheet and proceedings emanating therefrom, qua the Petitioner herein.

14. Petition stands disposed of.

BAIL APPLN. 1786/2023 & CRL.M.A. 15423/2023

15. This is an application preferred on behalf of the Applicant Salman Khan S/o Late Kasim Ali under Section 439 Cr.P.C. seeking regular bail in case FIR No.96/2023 dated 03.02.2023 under Sections 420/506 IPC registered at PS: Bhajan Pura. Subsequently, Sections 467/468/471/34 IPC were added.

16. In view of the order passed in W.P.(CRL) 1667/2023 whereby FIR No.96/2023 has been quashed predicated on a settlement between the Petitioner and the Complainant, it is directed that the Applicant shall be released from Central Jail No. 12, Mandoli, Delhi.

17. Applications stand disposed of.

18. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

JYOTI SINGH, J APRIL 01, 2024/kks/shivam This is a digitally signed order.

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