

Aftab Khan @ Bhura vs The State & Anr on 19 February, 2024

Author: Navin Chawla

Bench: Navin Chawla

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 1245/2022
AFTAB KHAN @ BHURA

..... Petit

Through: Mr.Alamgir, Adv.

versus

THE STATE & ANR.

Through:

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
ORDER

% 19.02.2024

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of the FIR No.0408/2018 registered at Police Station: Jamia Nagar, South- East District, New Delhi under Sections 386/195- A/191/193/420/468/471 of the Indian Penal Code, 1860 (in short, 'IPC'), along with all other proceedings arising therefrom, on the basis of a settlement.

2. The learned counsel for the petitioner submits that the petitioner and respondent no.2 have amicably settled their inter se disputes and have executed a Memorandum of Understanding (in short, 'MoU') This is a digitally signed order.

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3. The above petition is opposed by the learned APP by submitting that there are serious allegations made against the petitioner, which are not only private in nature but also affects the public at large.

He submits that the subject FIR was registered on a complaint by the respondent no.2 stating that he was being threatened to pay Rs.20 lakhs to him, failing which his family would be eliminated. During the course of investigation, efforts to arrest the petitioner did not fructify and even NBWs could not be executed, forcing the proceedings under Section 82 of the Cr.P.C. to be initiated.

4. While the investigation was pending, an eye witness, namely, Mr.Sahab Hussain, made a complaint that the petitioner was threatening him that in case he deposes against the petitioner, he shall be eliminated. The statement of Mr.Sahab Hussain was recorded under Section 164 of the Cr.P.C. and based thereon, Section 195A of the IPC was added.

5. The petitioner moved an application before the learned Trial Court stating that on the date and the time of the first incident, he was not present in Delhi and was, infact, in Uttar Pradesh to attend the marriage of one of his knowns. In support of the above application, he produced copies of nikah nama, photographs, invitation cards, etc.. These documents on verification were, however, found to be forged and fabricated and, therefore, Sections 191/193/420/468/471 of the IPC were added. Charge-sheet has also been filed.

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6. The learned counsel for the petitioner submits that the FIR has been filed on false allegations as he has made complaints against unauthorized construction in the area. He submits that the Police forced the witnesses to depose falsely against the petitioner with respect to the marriage ceremony in Uttar Pradesh.

7. I have considered the submissions made by the learned counsels for the parties.

8. In State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, the Supreme Court has held as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie

constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the This is a digitally signed order.

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(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR 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 21/02/2024 at 21:13:52 complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

9. In *Gian Singh v. State of Punjab*, (2012) 10 SCC 303, the Supreme Court has held as under:

"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 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 21/02/2024 at 21:13:52 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. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed."

10. In *Parbatbhai Aahir v. State of Gujarat*, (2017) 9 SCC 641, a three judge Bench of the Supreme Court has held that where serious and grave offences are involved, the quashing of FIR cannot be allowed on the basis of a compromise. The Supreme Court laid down the following principles to quash FIR or the criminal proceedings:

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the

High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of 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 21/02/2024 at 21:13:52 Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or

(ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

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16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and 16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

11. In the present case, the allegations against the petitioner are rather severe and serious. The petitioner is alleged to have not only first made an attempt to extort money from the respondent no.2, but thereafter, threaten the eye witness and produced forged and fabricated documents before the learned Trial Court. Such serious allegations cannot be quashed merely because the petitioner has now This is a digitally signed order.

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12. In view of the principles enunciated by the Supreme Court in the above judgements and considering the facts and circumstances of the present case, I find no ground being made out for quashing of the subject FIR on the basis of MoU entered into between the parties.

13. Accordingly, I find no merit in the present petition. The same is dismissed.

NAVIN CHAWLA, J FEBRUARY 19, 2024/rv/ss Click here to check corrigendum, if any This is a digitally signed order.

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