

Sh. Gaurav Sachdeva And Others vs State Nct Of Delhi And Anr on 5 January, 2023

\$~37 & 43

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 7142/2022
SH. GAURAV SACHDEVA AND OTHERS

..... Petitioners

Through: Mr. Dhan Mohana,
Ms. Tanu Mishra, Mr.
Ravi Mishra, Ms. Tanisha
Arora & Mr. Neeraj
Kumar Singh, Advs. with
P1 in person

versus

STATE NCT OF DELHI AND ANR.

..... Resp

Through: Mr. Mukesh Kumar,
for State
Mr. Praveen Laroia
for R2 with R2 in

+ CRL.M.C. 5/2023
GAURAV SACHDEVA AND ORS

..... Pet

Through: Mr. Dhan Mo
Ms. Tanu Mishra, M
Ravi Mishra, Ms. T
Arora & Mr. Neeraj
Kumar Singh, Advs.
P1 in person

versus

STAE NCT OF DELHI AND ANR

..... Res

Through: Ms. Priyanka Dalal
for State
Mr. Praveen Laroia
for R2 with R2 in

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN
ORDER

% 05.01.2023 CRL.M.A. 24/2023 in CRL.M.C. 5/2023 (exemption from filing certified copies of the annexures)

1. Exemptions allowed, subject to all just exceptions.

2. The application is disposed of.

CRL.M.C. 7142/2022 & CRL.M.C. 5/2023

3. The present petitions have been filed for quashing FIR No. 52/2018, dated 08.03.2018, under Sections 498A/406/354/354A/34 of Indian Penal Code, 1860 ("IPC") at Police Station South Rohini and FIR No. 209/2018 dated 25.04.2018, under Sections 323/354/354B/506/509/34 of IPC, at Police Station Prashant Vihar.

4. FIR No. 52/2018 in CRL.M.C. 7142/2022 and FIR No. 209/2018 in CRL.M.C. 5/2023 were registered on a complaint by Respondent No. 2.

5. It is averred that marriage between Petitioner No. 1 and Respondent No. 2, was solemnized on 17.04.2016 as per Hindu rites and ceremonies. No child was born out of the said wedlock.

6. Owing to some misunderstanding and temperamental differences, Petitioner No. 1 and Respondent No. 2 started living separately.

7. The Respondent No.2 made a complaint against the petitioner and his family members, which later culminated into registration of present FIRs bearing nos. 52/2018 and 209/2018. The charge sheet has already been filed in both the cases.

8. The present petition has been filed on the ground that the parties have with the intervention of family and friends amicably resolved their disputes of their own free will and volition, without any pressure, coercion, undue influence or duress of any nature. Pursuant to the settlement the parties have already obtained the decree of divorce and they want to live their future lives peacefully.

9. In terms of settlement dated 30.09.2021, the decree of divorce has already been obtained. An amount of 6,00,000/- (Six Lakhs) already stands paid to Respondent No. 2 and balance settlement amount of Rs 2,00,000/- (Two Lakhs) is handed over in Court today by way of Demand Draft No. 503554 dated 05.01.2023 drawn on ICICI Bank, Azadpur in the name of complainant/ Respondent No. 2.

10. The parties except Petitioner No.1 and Respondent No.2 were exempted from appearance by order dated 23.12.2022. Petitioner No.1 and Respondent No.2 are present in court and are duly identified by IO.

11. The parties have agreed that the settlement arrived at between them will not affect the rights of the minor child.

12. Offence under section 498A of IPC is non-compoundable whereas offence under Section 406 of IPC is compoundable.

13. It is well settled that the High Court while exercising its powers under Section 482 CrPC can compound offences which are non-compoundable under the Code on the ground that there is a compromise between the accused and the complainant. The Hon'ble Apex Court has laid down

parameters and guidelines for High Court while accepting settlement and quashing the proceedings. In *Narinder Singh & Ors. V. State of Punjab & Anr.* reported as (2014) 6 SCC 466, the Supreme Court has observed as under :-

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

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 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."

14. Similarly, in *Parbatbhai Aahir & Ors v. State of Gujarat & Anr.* reported as (2017) 9 SCC 641, the Supreme Court has observed as under :-

"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 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. 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 Digitally Signed 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."

15. Keeping in view the aforesaid principle and the nature of dispute and the fact that the parties have amicably entered into a settlement, this Court feels that no useful purpose would be served by keeping the dispute alive and continuance of the proceedings would amount to abuse of the process of Court. I am of the considered opinion that it is a fit case where discretionary jurisdiction can be exercised and the proceedings are quashed.

16. Thus, keeping in mind the nature of allegations, the settlement between the parties, pre-existing relationship between the parties and the law laid down by the Hon'ble Apex Court from time to time, FIRs bearing No. 52/2018 and 209/2018 and the proceedings arising there from are quashed.

AMIT MAHAJAN, J JANUARY 5, 2023 "SS"