

Shyam Kumar & Ors. vs State & Anr. on 27 September, 2022

Author: Talwant Singh

Bench: Talwant Singh

NEUTRAL CITATION NO: 2022/DHC/004104

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 4953/2022 & CRL.M.A. 19812/2022
SHYAM KUMAR & ORS.

Through:

..... Petition
Mr. Ayush Mittal, Adv. with
petitioners in person.

versus

STATE & ANR.

Through:

..... Respondent
Mr. Ritesh Kumar Bahri, APP for
State with PAI Bindapur.
Respondent no.2 in person.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% 27.09.2022 CRL.M.A. 19812/2022 (Exemption)

1. Allowed, subject to all just exceptions.

2. This petition under Section 482 Cr.P.C. has been filed for quashing of FIR No.29/2018 for offences under Sections 498A/406/354/377/34 IPC, registered at PS Bindapur and the proceedings emanating therefrom.

3. The principal ground on which the petition has been filed is that the respondent No.2/complainant has settled all her disputes amicably with the petitioners. The settlement was arrived at between the parties on 20.11.2021. Copy of the settlement before the Delhi Mediation Centre, Rohini District Court, Delhi dated 20.11.2021 is annexed with the petition (Annexure P-3, This is a digitally signed Judgement.

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4. As per the settlement dated 20.11.2021, it is mutually settled between the parties that complainant/wife and petitioner no.1 shall dissolve their marriage by decree of divorce by mutual

consent without levelling allegations and counter allegations against each other in accordance with law before the Court of competent jurisdiction at Delhi. 4.1 It is settled that the petitioner no.1/husband shall pay a total sum of Rs.2,75,000/- (Rupees Two Lakhs Severity Five Thousand Only) to the complainant/wife qua all claims of the complainant/wife (past, present and future) arising out of the marriage with petitioner no.1/husband, which shall include permanent alimony, Istridhan, maintenance of complainant/wife and all other miscellaneous expenses. The amount of Rs. 2,00,000/- has already been paid to complainant/wife and today remaining amount of Rs. 75,000/- has been paid to her by way of demand bearing no. 423056 dated 29.08.2022 issued by Bank of Baroda, Dwarka Morh, New Delhi -110059. 4.2 Both the parties also undertake not to interfere in the life of each other in future.

4.3 The complainant wife shall withdraw the present case from the concerned court after the first motion.

4.4 After compliance of terms of this settlement, there shall remain no complaint/case/claim/dispute due between the parties and that none of the parties shall file any civil or criminal proceedings against each other in future qua the same cause of action and that if any other case/petition/complaint etc. between the parties is pending in any Court or Authority either against the parties or against their respective family members, the same shall be withdrawn/got disposed of by the respective This is a digitally signed Judgement.

NEUTRAL CITATION NO: 2022/DHC/004104 party the same shall be withdrawn/got disposed of by the respective party.

5. It is to be noted here that apart from usual Sections invoked in matrimonial disputes, i.e., Sections 498A/406/34 IPC but in the present FIR, Section 377 and Section 354 IPC have also been invoked. Now the matter has been settled between the parties and this Court has to take a call as to whether the FIR in question can be quashed. A co-ordinate bench presided over by HMJ Subramonium Prasad in CRL.M.C. No. 599/2021 tilted 'Rifakat Ali & Ors Vs. State & Anr.' decided on 26.02.2021 has taken the following view on a quashing petition filed under the similar circumstances:

"The power of the High Courts to quash FIRs while exercising its powers under Section 482 CrPC even for offences which are not compoundable under Cr.PC has been settled in a number of judgments. In Gian Singh v. State of Punjab & Anr. reported as (2012) 10 SCC 303, the Supreme Court has observed as under:

"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 This is a digitally signed Judgement.

NEUTRAL CITATION NO: 2022/DHC/004104 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 predominately 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 that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

After relying on Gian Singh (supra), this position has been laid down in Narinder Singh & Ors. v. State of Punjab & Anr. reported as (2014) 6 SCC 466, wherein the Supreme Court has observed as under:

"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 This is a digitally signed Judgement.

NEUTRAL CITATION NO: 2022/DHC/004104 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.

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."

In State of M.P. v. Laxmi Narayan & Ors. reported as (2019) 5 SCC 688, the Supreme Court has observed as under :

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of This is a digitally signed Judgement.

NEUTRAL CITATION NO: 2022/DHC/004104 matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves; 15.2. Such power is not to be exercised in those prosecutions which involved 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; 15.3. Similarly, such power is not to be exercised for the offences under the special statutes 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;"

A perusal of the three judgments show that the Supreme Court has consistently held that the power under Section 482 CrPC should not be used for quashing heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. since these offences are not private in nature and have a serious impact in society. An offence under Section 377 IPC is a heinous offence and points to the mental depravity of the accused and hence ought not to be quashed by the High Court on the basis of compromise by exercising its jurisdiction under Section 482 CrPC. The present case arises out of matrimonial dispute and the allegation has been made by the wife against the husband. The parties have decided to part ways and move ahead in their lives without having any acrimony against each other. In the facts and circumstances of the case, this Court is inclined to exercise its powers under Section 482 CrPC even for an offence under Section 377 IPC on the ground that the dispute is private in nature. The learned counsel for the petitioners has placed reliance on orders of this Court in CRL.M.C.830/2019 titled as Dinesh Kumar & Ors. v. State & Anr., CRL.M.C.1613/2019 titled as Anmol Katyal & Ors. v. State (NCT of Delhi) & Anr., CRL.M.C. 5216/2018 titled as Gajender Singh & Ors. v. State (NCT of Delhi) & Ors. and CRL.M.C. 4117/2018 titled as Joginder Singh Bote & Ors. v. NCT of Delhi & Anr. In all these cases wife has levelled allegations on the husband committing an offence under Section 377 IPC. This Court has exercised its jurisdiction under Section 482 CrPC and has quashed the FIRs on the basis of the compromise entered into between the husband and wife.

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NEUTRAL CITATION NO: 2022/DHC/004104 It is made clear that this Court is exercising its powers under Section 482 CrPC to quash an offence of Section 377 IPC on the ground that the parties have compromised the matter with each other only because it arises out of a matrimonial dispute, the allegation has been levelled by wife against her husband of committing an offence under Section 377 IPC and the parties have decided to move ahead in life."

6. So, the view of the co-ordinate bench is that in matrimonial cases, where settlement has taken place, even the offence under Section 377 IPC can be compromised and FIR can be quashed as parties have to move ahead in life. I concur with the said view. Keeping in view the fact that parties have settled all their disputes, hence the offences under Section 377 IPC and Section 354 IPC are also allowed to be quashed to put an end to all bickerings between the parties and allow them to begin a new chapter of their lives.

7. Today, parties are present in the Court and have been identified by the Investigating Officer. The respondent No.2/complainant states that she has settled all her matrimonial disputes with the petitioners out of her own free will, without pressure, coercion or undue influence and states that she does not want to pursue with the present case any further and requests that the present FIR and the proceeding emanating therefrom may be quashed.

8. The parties understand the implication of the present proceedings. In view of the settlement arrived at between the parties, this Court is of the opinion that no useful purpose will be served in continuing with the present proceedings. Resultantly, FIR No.29/2018 for offences under Sections 498A/406/354/377/34 IPC, registered at PS Bindapur and the proceedings emanating therefrom are hereby quashed subject to payment of costs of Rs. 25,000/- with Lawyers' Welfare Fund maintained by Dwarka Bar This is a digitally signed Judgement.

NEUTRAL CITATION NO: 2022/DHC/004104 Association within two weeks and copy of the receipt be handed over to the IO. The parties shall remain bound by the terms of the settlement and the undertakings given to the Court.

9. The petition stands disposed of in above terms.

TALWANT SINGH, J SEPTEMBER 27, 2022/nk Click here to check corrigendum, if any This is a digitally signed Judgement.