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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 07th October 2024

\+ CRL.M.C. 7401/2024

ABHISHEK @ ABHISHEK NAGAR & ORS. .....Petitioners

Through: Mr. Ajay Singh and Mr. Abhishek Rana, Advocates with petitioners in-person.

versus

THE STATE OF NCT OF DELHI & ANR. .....Respondents

Through: Ms. Shubhi Gupta, APP for the State. Ms. Jyoti, Advocate for R-2 along with R-2.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

By way of the present petition filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioners seek quashing of case FIR No. 282/2024 dated 18.05.2024 registered under sections 342/307/506/34 of the Indian Penal Code, 1860 ('IPC') at P.S.: New Ashok Nagar, Delhi.

2. The petitioners' plea for quashing of the subject FIR is premised on Settlement Agreement (*samjhauta nama)* dated 22.05.2024 ('settlement agreement'); and Affidavit dated 09.09.2024 ('affidavit') filed by the complainant/respondent No.2 by which he has supported the petitioners' prayer for quashing of the subject FIR.

3. The court has heard Mr. Ajay Singh, learned counsel for the petitioners; Ms. Shubhi Gupta, learned APP appearing for the State; Ms. Jyoti, learned counsel on behalf of respondent No.2, as well as respondent No. 2 who is present in court alongwith his mother.

4. Since the allegations in the subject FIR included an allegation under section 307 of the IPC, *vide* order dated 19.09.2024 this court had directed the State to place on record a copy of the MLC of the victim. Though a copy of the MLC has not been placed on record, learned APP has produced the original police file of the matter, which contains the MLC as well as the other papers relating to the investigation in the matter, which investigation is still on-going.

5. In view of the circumstances obtaining in the case, the court has taken-up the matter for disposal at the stage of issuance of notice itself.

6. Mr. Singh submits, that in the settlement agreement (*samjhauta nama)* as well as in his affidavit filed in support of present petition, respondent No.2 has clearly said that he had sustained 'minor injuries' at the hands of the petitioners; and that he had received an electric-shock since he had inadvertently stepped onto a live, naked electricity wire at a construction site that was next-door to the shop where respondent No.2 used to work for the petitioners.

7. Learned counsel for the petitioners points-out, that respondent No. 2 had made the same statement even at the time when the petitioners' bail plea was being considered by the learned Sessions Court, Karkardooma District Courts, Delhi; which statement has been recorded in the orders dated 01.06.2024 granting bail to petitioners

Nos.1 and 3 and in order dated 03.06.2024 granting bail to petitioner No.2.

8. Mr. Singh has also placed reliance on the decision of the Supreme Court in ***Narinder Singh vs. State of Punjab***,[1] to argue that one of the aspects highlighted by the Supreme Court in that case is that the timing of a settlement plays a crucial role when a court is deciding whether to exercise its inherent powers under section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.') (now section 528 of the BNSS) to quash a matter involving an allegation under section 307 of the IPC. Counsel has drawn attention to the following portion of *Narinder Singh* (supra) in this behalf :

> *"29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for*

[1] (2014) 6 SCC 466

the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

"29.7. ***While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above****. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."*

(emphasis supplied)

9. It is argued that in the present case, the settlement was arrived at on 22.05.2024, which was soon after the subject FIR was registered on 18.05.2024; and that therefore the petitioners have acted *bona-fide*.

Learned counsel also argues that in *Narinder Singh* (supra), the Supreme Court has said that where the settlement is arrived at soon after the alleged commission of an offence; and the matter is still under investigation, the High Court may take a liberal view and accept the settlement and quash the criminal proceedings.

10. In light of the above circumstances and the law laid down by the Supreme Court in *Narinder Singh* (supra), Mr. Singh prays, that the subject FIR be quashed.

11. On the other hand, learned APP has vehemently opposed the quashing of the subject FIR, submitting that three aspects of the matter require to be appreciated – *one*, that respondent No.2 was 'minor', being only about 17 years old at the time of the incident; *two*, that the dispute between respondent No.2 and the petitioners arose from respondent No. 2 merely having demanded his salary from them, which impelled the petitioners to unleash *gruesome violence* upon respondent No. 2; and *three*, that it is a matter of record, as evidenced *inter-alia* in his MLC, that respondent No. 2 was locked in a room and *was administered electric shocks* by the petitioners.

12. Ms. Gupta submits, that the heinousness of the petitioners' actions is evident from the fact that they not only held respondent No.2 captive in a room but also administered electric shocks to him, *only* because he had demanded his salary for services that he had rendered to the petitioners. This, it is argued, shows that the petitioners had intended to kill respondent No.2. In this behalf, learned APP draws attention to the contents of the subject FIR, to argue that the investigating agency should be permitted to investigate what respondent No.2 had said by

way of 'first information' thoroughly; and the evidence gathered in the course of investigation must be put through a trial, for the court to arrive at the truth, instead of *ignoring the first information* given by respondent No. 2 to the police and *accepting the so-called settlement* arrived at by respondent No. 2 with the petitioners.

13. Learned APP further submits, that since respondent No.2 was an employee of the petitioners, they were in a position of dominance over him, which is also the reason they thought they could get-away with unleashing brutality upon him. It is submitted, that by reason of the dominant position enjoyed by the petitioners, the subsequent statements made by respondent No.2 before the learned Sessions Court and the stand taken by him before this court may not have been volitional, and most likely respondent No.2 has been pressurized by the petitioners into doing so.

14. who unleashed brutality upon him, the subsequent statement made by respondent No.2 before the learned Sessions Court and the stand taken by him before this court, does not appear to have been taken by respondent No. 2 of his own free will or volition; and he appears to have been pressurised by the petitioners into doing so.

15. Ms. Gupta also points out, that it is noteworthy that *outside of the terms of settlement*, the petitioners have agreed to pay to respondent No. 2 the sum of Rs.1,00,000/-, of which Rs.50,000/- has already been paid and the petitioners are willing to pay the remaining Rs.50,000/-. Contradicting this submission however, Mr. Singh, learned counsel for the petitioners submits, that the money paid and

promised to be paid to respondent No. 2 has no connection with the settlement that he has arrived at with the petitioners.

16. Ms. Gupta also seeks to rebut the reliance placed by the petitioners on the Supreme Court decision in *Narinder Singh* (supra) to argue, that the position in *Narinder Singh* (supra) stands clarified by a subsequent decision of a 03-Judge Bench of the Supreme Court in the ***State of M.P. vs. Laxmi Narayan***[2], the relevant portion of which reads as under :

> *"15.4. Offences under Section 307 IPC and the Arms Act, etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act, etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision.* ***It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paras 29.6 and 29.7 of the decision of this***

[2] (2019) 5 SCC 688

Court in Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove*;*

"15.5 [Ed.: Para 15.5 corrected vide Official Corrigendum No. F.3/Ed.B.J./22/2019 dated 3-4-2019.] ***While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc.****"*

(emphasis supplied)

17. Based on the above, learned APP argues, that the court while exercising its inherent powers under section 482 of the Cr.P.C. to quash an FIR alleging an offence under section 307 must also examine the *"... .... nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used ... ..."* along with *"... ... the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise ... ..."*.

18. Apart from hearing learned counsel for the parties, the court has also interacted with respondent No.2; and though he still appears to say that he had sustained an electric-shock since he had stepped onto a naked, electric wire lying at a construction site next to the shop where

he used to work, that statement of respondent No. 2 *does not inspire confidence*.

19. Upon a conspectus of the facts and circumstances of the case, considering the submissions made and precedents cited at the Bar, what weighs with the court is the following :

19.1. A perusal of the MLC of respondent No.2 shows that the *'entry point of the electric-shock was on the dorsal side of both his feet'*, that is to say on *the upper side of both feet*, which appears *highly unlikely* if respondent No.2 had only *stepped onto* a live, naked electric wire lying at a construction site. The court however restrains itself from making any further observations, lest it should prejudice the investigation or trial of the matter;

19.2. What is quite evident is that the petitioners enjoyed a dominant position over respondent No.2; and what is evident from the MLC of respondent No.2 is the barbarity of the acts alleged against the petitioners, namely of having administered electric-shocks to a 17-year-old boy who was working at their shop, while he was held captive in a room, only because he had asked for payment of his salary;

19.3. Though a settlement is generally encouraged by courts of law, since we consider overall peace and harmony in society as a higher and more laudable objective than subjecting parties to prolonged and draining litigation, in the opinion of this court quashing of criminal proceedings *can never be a matter of right*; and despite a settlement between an accused and a victim, quashing must be permitted *only* where the conscience

of the court is satisfied that the settlement is right, just and fair, apart from being volitional. This principle also derives from the what the Supreme Court has said in *Narinder Singh* (supra) as clarified by *Laxmi Narayan* (supra);

19.4. In the present case however, the judicial conscience is *not satisfied* that the settlement is either voluntary on the part of respondent No.2; nor, that quashing a criminal case involving allegations as heinous as referred to above, is in the larger interests of peace and harmony in the society.

20. As a sequitur to the above, and relying on the principles laid down in *Narinder Singh* (supra) and *Laxmi Narayan* (supra), this court is of the view that the present case *does not* warrant the exercise of the court's inherent powers under section 528 of the BNSS to quash the subject FIR.

21. As a result, this court is *not* persuaded to accept the prayer in the petition, which is accordingly dismissed, at the stage of issuance of notice itself.

22. The petition stands disposed-of.

23. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J.

OCTOBER 7, 2024
HJ/ak/*V.Rawat*