

Court No. - 53

Case :- APPLICATION U/S 482 No. - 18576 of 2018

Applicant :- Anil Jain And 2 Ors

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Shashi Dhar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir,J.

Heard Sri Shashi Dhar Pandey, learned counsel for the applicants, Sri Ashutosh Kumar Misra, Advocate who has put in appearance on behalf of opposite party no.2 and Sri DPS Gaud, learned AGA appearing for the State.

This application has been filed under Section 482 CrPC seeking to quash the proceedings in Criminal Case No.942 of 2016 as well as cognizance order dated 17.03.2016 and to quash the order dated 09.10.2017 passed by the learned Additional Sessions Judge, Court No.3, Firozabad in Criminal Revision No.55 of 2017 arising out of Case Crime No.6A of 2015 (State Vs. Anil Kumar Jain), under Sections 147, 148, 323, 308, 504, 506 IPC, PS Tundla, District Firozabad.

The submission of the learned counsel for the applicants is that the parties to the dispute have filed a compromise application dated 09.10.2017 under Section 320 CrPC on ground that the dispute between the parties was on account of a flare up of ego followed by physical altercation in which some injuries were sustained but with the intervention of respectable persons of the community both sides have acknowledged their follies and do not wish to pursue the matter. The application has come to be rejected by an order dated 09.10.2017 passed by the learned Additional Sessions Judge, (seized of the matter on a revision from an order of cognizance by the Magistrate) on ground that one of the offences charged being an offence under Section 308 IPC, is not compoundable.

The attention of the Court has been invited by the learned AGA to the injuries sustained of which one of the injuries is on the frontal aspect/frontal bone of the left side of skull just 2.5 c.m. above the left eye-brow reddish in colour. This injury is a contusion of the dimensions of 06 x 3.5 c.m. He has pointed out that a radiology report thereafter undertaken, which is a CT Scan of the brain, shows a linear fracture to the frontal bone on left side besides mild extra axial bleeding seen alongwith the interior falx and bilateral tentorium. Learned AGA submits that looking to the gravity of the injuries proceedings cannot be

quashed.

On the other hand learned counsel for the applicants has relied on the decision of the Hon'ble Supreme Court in **Narendra Singh & Ors. Vs. State of Punjab & Anr. (2014) 6 SCC 466**, he has drawn attention of the Court to paragraph nos.34 & 35 which read as under:

"34. We find from the impugned order that the sole reason which weighed with the High Court in refusing to accept the settlement between the parties was the nature of injuries. If we go by that factor alone, normally we would tend to agree with the High Court's approach. However, as pointed out hereinafter, some other attendant and inseparable circumstances also need to be kept in mind which compel us to take a different view.

35. We have gone through the FIR as well which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute etc. is not stated in detail. However, a very pertinent statement appears on record viz., "respectable persons have been trying for a compromise up till now, which could not be finalized". This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings. We, taking all these factors into consideration cumulatively, are of the opinion that the compromise between the parties be accepted and the criminal proceedings arising out of FIR No.121 dated 14.7.2010 registered with Police Station LOPOKE, District Amritsar Rural be quashed. We order accordingly."

(Emphasized by Court)

It is submitted by the learned counsel for opposite party no.2 who is present and submits that they do not want to pursue the prosecution. The likelihood is that it will be difficult to establish who caused this injury even if the injuries are proved by the State by examining the doctor alone and, therefore, permitting this prosecution to continue in the end would be a wastage of public time and money and an abuse of process of Court.

Matter requires consideration.

Issue notice to opposite party no.2 returnable on 16.07.2018.

List on 16.07.2018.

Sri Ashutosh Misra who appears for opposite party no.2 may file a counter affidavit by 16.07.2018.

Until 16.07.2018, further proceedings in Criminal Case No.942 of 2016 (arising out of Case Crime No.6A of 2015) State Vs. Anil Kumar Jain, under Sections 147, 148, 323, 308, 504, 506 IPC, PS Tundla, District Firozabad shall remain stayed.

Order Date :- 25.5.2018

Shahroz