IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : INDIAN PENAL CODE

W.P.(Crl.) 250/2007

RESERVED ON: 12.07.2007

DATE OF DECISION: 07.11.2007

KARAN GANDHI .....Petitioner
through: Mr.K.K.Manan with Mr.Rishikesh Chaudhary and Mr.Anwesh Madhukar, Advocates.

VERSUS

THE STATE, NCT OF DELHI and ANR. .....Respondents
through: Ms.Mukta Gupta, Standing Consel for the State with the Investigating Officer SI Sunil Kumar.

REVA KHETRAPAL, J.

1. Preeti Goyal, a married woman with a 12 year old son, Gautam went to purchase a bicycle for her son from the shop of the petitioner, Karan Gandhi at Tilak Nagar. This casual meeting resulted in a friendship between the two and frequent meetings ensued, which abruptly came to an end on 10th June, 2006 at around 5 P.M., when Preeti and Karan were discovered together by Karan's father, mother and uncle. The outcome of the said chance encounter was that both were beaten up and abused in filthy language by Karan's relatives. Preeti Goyal was pressurized into writing a note in her hand, with her address and phone number, that she was a married woman and she would not meet Karan in future. After a subsequent discussion on the telephone on 11th June, 2006 both decided to meet at

Rajouri Garden, from where they took an auto for a park in Dwarka. In the park, having come to the conclusion that they did not have a future together, they formed a part for dying together. Karan produced a gun which he had brought with him and Preeti shot herself with the gun on her forehead and handed over the gun to Karan. The latter then shot himself on the head and thereafter shot Preeti on her head. Three pellets were recovered, one from the head of the petitioner Karan Gandhi and two from the head of Preeti Goyal. Preeti was rendered unconscious and when she came to her senses, she found herself in a nursing home. On her statement made to Sub-Inspector Sunil Kumar, First Information Report No.518/2006 was registered against the petitioner and her under Sections 307/309/34 IPC at Police Station Dwarka.

2. As fate would have it, the petitioner Karan Gandhi and Preeti Goyal (the latter is arrayed as respondent No.2 in the present petition) are both alive and have filed the present petition seeking quashing of the above- mentioned First Information Report. It is averred that both have compromised the matter. Even at the time of grant of bail to the present petitioner, an affidavit was filed in the Court of learned Addl. Sessions Judge to state that the parties had compromised the matter, which was got verified by the learned trial Judge through the Investigating Officer of the case. On the basis of the said affidavit, bail was granted to the petitioner on 5th July, 2006.

3. In this Court also, the respondent No.2 has filed an affidavit praying for the exercise of the inherent jurisdiction of this Court under Section 482 Cr.P.C. for quashing of the First Information Report registered against the petitioner, wherein it is affirmed that she had filed a similar affidavit at the time of grant of bail to the petitioner by the learned Addl. Sessions Judge.

4. Notice of the petition was issued to the respondent No.1/State. Counsel for the State has affirmed the factual position as set out above, including the fact that the respondent No.2, Preeti Goyal does not want to prosecute the matter.

5. It is, however, pointed out by counsel for the State that the offences are non-compoundable in nature. Indubitably, this is so, but it cannot be lost sight of that in the absence of any express provision to the contrary, all criminal courts possess wide inherent jurisdiction to quash a criminal proceeding to enable them to render real and substantial justice. The caveat

is that the said inherent jurisdiction of the criminal courts has to be necessarily exercised with caution.

6. In Daulat Zia vs. Govt. of N.C.T. of Delhi and Ors. 74 (1998) DLT 259 (DB), a Division Bench of this Court, relying upon the two decisions of the Hon'ble Supreme Court in Devinder Kumar Versus State of Andhra Pradesh JT 1987 (2) SC 361 and Mahesh Chand and Anr. Vs. State of Rajasthan AIR 1988 SC 2111 = 1990 (Supp.) SCC 681, granted permission for the quashing of the First Information Report under Section 307 of the Penal Code on the ground that the parties who were Afghan nationals had settled their differences and wanted to live in peace, without any ill-will or bad blood.

7. The question whether mere amicable settlement was no ground for compounding of a non-compoundable offence was referred to a Full Bench of this Court in Ramesh Kumar Vs. State 2003 (IV) Apex Decisions (Delhi) 377. The Full Bench, in view of the decision of the Apex Court in B.S.Joshi and Others Vs. State of Haryana II(2003) SLT 689 and after overruling the decision of a Single Judge in Gurcharan Singh vs. State and Anr. 74 (1998) DLT 308, answered the reference by holding that, the High Court in exercise of its inherent powers can quash criminal proceedings of FIR or complaint, and Section 320 of the Code does not limit or affect the powers of the High Court under Section 482 of the Code.

8. In the case of G.Udayan Dravid 7 Ors. Vs. State and Ors. 2007 I AD (Delhi) 376, a learned Single Judge of this Court (Hon'ble Mr.Justice Badar Durrez Ahmed) summed up the law as follows:- “17. In this view of the matter, it is for the court to examine in each case as to whether the power should be exercised or not. There may be various reasons why the High Court may think it proper to exercise that power or to refuse the same. No strait-jacket formula can be laid down for it. However, if the High Court is of the view that the continuance of criminal proceedings would be an exercise in futility and would be mere wastage of public money and public time and time of the court, then it would be appropriate for the High Court to entertain a petition under Section 482 of the Code and quash the proceedings. The learned counsel for the State referred to the Supreme Court decision in Union Carbide (supra) and Awadh Kishore Gupta (supra) to submit that offences which are not compoundable ought not to be quashed under Section 482 of the Code. But, do these decisions say so” In Union Carbide (supra), as would be apparent from contention D set out in paragraph 55 thereof, the orders terminating criminal proceedings were

challenged on three grounds that: (i) if the orders were to be construed as permitting compounding of offences, they ran in the teeth of the statutory prohibition contained in Section 320 (9) of the Code; (ii) if the orders were construed as permitting a withdrawal of the prosecution under section 321 of the Code, they would, again, be bad as being violative of settled principles guiding withdrawal of prosecutions; and (iii) if the orders amounted to a quashing of the proceedings under section 482 of the Code, grounds for such quashing did not obtain in the case. With regard to the first ground, there is no manner of doubt that, in view of the prohibition contained in Section 320 (9) of the Code, no court can compound an offence which is not compoundable. But, this is not what the petitioners are seeking. The second ground also does not arise in the present case. And, the third ground taken is not that the proceedings could not have been quashed under Section 482 of the Code but that "the grounds for such quashing did not obtain in the case." So, the Supreme Court decision in Union Carbide (supra) does not hold that offences which are not compoundable ought not to be quashed in exercise of the powers under Section 482 of the Code. 18. An examination of the Supreme Court decision in Awadh Kishore (supra), R.P. Kapur (supra) and Bhajan Lal (supra) also does not disclose any finding or conclusion that a criminal proceeding involving a non-compoundable offence cannot be quashed by the High Court in exercise of its inherent powers which have been saved by Section 482 of the Code. In R.P. Kapur (supra) as well as in Bhajan Lal (supra), the Supreme Court set out illustrative cases/instances where the inherent power could and should be exercised. These were illustrative cases/instances and not exhaustive. In fact, the wide amplitude of the inherent powers of the High Court have been recognized in all these cases as well as in Awadh Kishore (supra) wherein, with reference to Section 482 of the Code, it was observed:- "8. Exercise of power under Section 482 of the Code in a case of this nature is an exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which

finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist....." It was also held:- "11. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage...." 19. Thus, the powers exercised by the High Court are very wide. It is true that in exercising such powers the High Court has to be cautious and circumspect. There is no gainsaying that the degree of power varies proportionately with the degree of caution and care that is needed for its exercise. It is one thing to suggest that care must be taken in exercise of a power and it is quite another to say that the court has no power. None of the decisions sought to be relied upon by the learned counsel for the State lay down the proposition that a criminal proceeding involving a non-compoundable offence cannot, under any circumstance, be quashed by the High Court in exercise of the powers saved by Section 482 of the Code."

9. Whether the present case is a fit case for the exercise of inherent powers remains to be considered. It is a classic case of love affair having gone away. A young man at the threshold of his life having fallen for a married woman,

and his family having made it clear in no uncertain terms that if they persisted their relationship would be exposed to the world and, in particular, to the spouse of the lady, it was decided between them to end their existence rather than to end their relationship. As fate would have it, they were destined to live and justify their action, which, it cannot be denied, was a clear deviation from the societal norms. They have thus lived to regret the day and to face the consequences of their mutual decision of putting an end to their lives.

10. Counsel appearing for the petitioner vehemently contended that the injuries sustained by the respondent No.2 do not come within the ambit of Section 307 IPC and, in fact, the same come within the purview of Section 323 of the Penal Code. This is disputed by the counsel for the State, who submits that the injuries sustained by Smt.Preeti were grievous in nature. Be that as it may, this is a sordid story, the spill over of which is likely to affect many other lives including the lives, of husband of the respondent No.2 and her minor son, apart from the family of the petitioner.

11. It is, accordingly, not difficult for this Court to come to the conclusion that this is a proper case for the exercise of the inherent jurisdiction of this Court to quash the First Information Report and all proceedings connected therewith, more so as the petitioner and the respondent No.2 are in a sense both victims who are willing to forgive and more than willing to forget this interlude in their lives. Continuing the proceedings can only result in prolongation of their misery and, in any event, no useful purpose is likely to be served. Consequently, FIR No.518/2006, under Sections 307/309/34 IPC, registered at Police Station Dwarka and all proceedings emanating therefrom are hereby quashed.

12. W.P.(Crl.) No.250/2007 stands disposed of in the above terms, leaving the parties to bear their own costs. Copy of this order be given dasti to counsel for the parties as prayed.

Sd/-
REVA KHETRAPAL, J.