

HIGH COURT OF DELHI AT NEW DELHI

WP (Crl.) No. 585 of 2008

Date of Decision:- 20th August, 2008

Sahara India Commercial Corporation Limited ... Petitioner
Through: Mr. D.C. Mathur Sr. Advocate
with . K.L. Lahiri, Advocate

Versus

The National Capital Territory of Delhi & Anr ... Respondents
Through: Mr. Ranjeet Kapoor, Advocate
Mr. R.K. Vashisht, Advocate

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest? Yes

S. L. BHAYANA, J.

This is a petition u/s 482 Cr. P.C. r/w Article 226 of the Constitution of India for quashing of FIR No. 418/2007, registered at P.S. Patel Nagar, New Delhi, u/s 406/ 420/ 120-B IPC dated 21.7.2007.

2. Adumbrated in brief facts leading to the registration of FIR and filing of present Writ Petition are that a complaint was filed by the

complainant/ respondent No.2, u/s 406/ 420/ 120-B IPC with Economic Offences Wing of Delhi Police.

The sum and substance of the complaint is that petitioner/ accused launched a scheme under Sahara city Home and Rajat Yojana in the year 2003 for the booking and allotment of the plots around village Chauma Gurgaon, Haryana. The complainant believing on the said inducement booked the flats. Details of payment made by them are given below:-

Control No.	Date of opening A/c	A/c holders name	Deposited amount
18389206531	27.12.2003 Sahara Swarn	Darshan Singh Chanana	Rs.1,00,000
18389206532	27.12.2003 Sahara Swarn	Darshan Singh Chanana	Rs.1,00,000
18389200976	31.5.2003 Sahara Rajat	Darshan Singh Chanana	Rs.10,000
18389200982	31.5.2003 Sahara Rajat	Gurjit Kaur	Rs.10,000
		Total amount	Rs.2,20,000

But no plot has been allotted to them even after 2-3 years of booking and payment of money and thereby petitioner/corporation has, by making false representation through print media, induced complainant to part with huge amount and utilized the money entrusted/deposited by the complainant for their own purposes and misappropriated the same. Again Sahara India Pariwar had cheated

them by inducing them to book a plot in the alleged Scheme with a promise of a house/flat without having the requisite license for setting up a residential township from the competent authority.

3. During investigation the complainant and petitioner resolved their disputes and arrived at a compromise. A memorandum of settlement-dated 25.3.2008, copy of which has been placed on record, was executed between the parties. In view of that compromise this petition for quashing of FIR has been filed. Learned counsel for the petitioner submitted that since the matter has been compromised between the parties no useful purpose would be served if the investigation in respect of the FIR is allowed to continue. In view of the settlement, respondent No.2 also affirmed on an affidavit dated march 25, 2008 undertaking to withdraw complaint against the petitioner. The respondent No.2 has been paid a sum of Rs. 1,34,798/- in full and final settlement of all his claims to his satisfaction. In support of the prayer for quashing of FIR learned counsel for the petitioner has placed reliance upon the judgment of Supreme Court in the case of Madan Mohan Abbot vs. State of Punjab, (2008) 4 SCC 582. The relevant para of the judgment is reproduced below:-

“It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the FIR and the other documents on record that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no

public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has, on 11th January 2004, passed away and the possibility of a conviction being recorded has thus to be ruled out. We need to emphasize that it is perhaps advisable that in disputes where the question involved is a purely personal nature the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and benefit of the technicalities of the laws. We see from the impugned order that the learned Judge has confused a compounding of an offence with the quashing of proceedings. The outer limit of Rs. 250/- which has led to the dismissal of the application is an irrelevant factor in the later case. We accordingly allow the appeal and in the peculiar facts of the case, direct that FIR No. 155 dated 17th November 2001 P.S. Kotwali, Amritsar and all proceedings connected therewith shall be deemed to be quashed.”

4. Notice of this petition was given to respondent No.2 and State. Respondent No.2/ complainant entered appearance before Court and stated that he and his wife Smt. Gurjit Kaur were in accordance with clause 8 (d) of the Scheme offered a housing unit at the place of preference no.3 (Gurgaon) or in the alternative to take back their advance amount along with accrued credit value. However they chose to take back/ withdraw a sum of Rs. 1,50,000/- (Rupees One Lac Fifty thousand only) on 14.1.2006 against their advance

amount and upon such withdrawal, they ceased to be bona-fide members of the scheme and he and his wife Smt. Gurjit Kaur do not want to pursue the aforesaid case any further nor submit any further evidence particularly since they do not have any other or further evidence to offer nor desire to prosecute the accused in the aforesaid case as they have received all their money and have voluntarily compromised the matter without any coercion or undue influence.

5. Learned counsel for the State, however, opposed the quashing of FIR on the ground that the allegations against the petitioner are grave in nature and involve public policy.

6. After considering the submissions advanced on behalf of both the parties, I am of the view that both the parties i.e the complainant/ respondent No.2 and the petitioner have amicably settled the matter and the petitioner has paid a sum of Rs 1,34,798/- to the complainant as full and final settlement of all his claims and the complainant now does not want to pursue the complaint any further, there would be hardly any chance of conviction where complainant is not supporting the case of the prosecution. Continuance of such proceedings is nothing but sheer wastage of precious time of court and an exercise in futility. It is well settled that where particular criminal proceedings amounts to an abuse of process, the Court is empowered to refuse to allow the indictment to precede the trial.

7. In a very recent case titled as Hamida Vs Rashid @rasheed **(2008) 1 SCC 474**, the Supreme Court took the view that a procedural code however, exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is a well established principle that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court.

8. In the case of State of Kathataka v. L. Muniswami, **(2002) 3 SCC 89**, the Supreme Court has observed that the ends of justice are higher than ends of mere law, though justice has got to be administered according to the laws made by the legislature yet the Court proceeding ought not to be permitted to degenerate in to a weapon of harassment or persecution.

9. In the case of Shakuntala Sawhney Vs. Kaushalya, **(1980) 1 SCC 63**, the essence of compromise has been summoned up in following words:-

“The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion”.

10. Purpose of criminal law system is not only to enforce penal law and bring discipline in the society but is also to provide an opportunity to litigating parties to rehabilitate themselves in life. Compromise, in a modern society, is the sine qua non of harmony and peace. Both the parties in the instant case have made an attempt in that regard, it requires to be appreciated.

11. I, accordingly, allow the petition and direct that FIR No. 418/2007, registered at P.S. Patel Nagar, Delhi, u/s 406/ 420/120-B IPC shall be quashed.

S. L. BHAYANA, J.

August 20, 2008