

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

+ **Crl.M.C. No.2856/2008**

Date of Decision : September 29, 2008

Dhanpat Bothra

.....Petitioner

Through : Mr. R.S. Mor,
& Mr. Nitin Ahlawat,
Advocates

Versus

State of Delhi
Govt. of N.C.T. of Delhi & Anr.

.....Respondents

Through : Mr. Jaideep Malik,
Advocate for the State

CORAM :

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be
allowed to see the judgment? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported
in the Digest ? Yes

SUDERSHAN KUMAR MISRA, J

1. This petitioner has moved this Court under Section 482 of the Code of Criminal Procedure. He prays that FIR No.81/2008, u/s 406 IPC, registered at Police Station Chandni Chowk, Delhi and the proceedings initiated therefrom, be quashed.

2. Sh. Hansraj Kochar, who is arrayed as respondent No. 2, is a businessman. He deals in jewellery at Vaidwara, Chandni Chowk, Delhi. The petitioner, Mr. Dhanpat Bothra, was

working for him. He used to sell Mr. Kochar's diamond jewellery on his behalf. For this, he was paid a commission by Mr. Kochar. Since the nature of business as well as the arrangement between the two required a high degree of trust, the petitioner always remained in touch with and available to Mr. Kochar. However, on the last occasion, after the petitioner was entrusted with jewellery to sell, he failed to contact Mr. Kochar for nearly 20/25 days, and Mr. Kochar was unable to trace him. Consequently, on 6.6.2008 on the petitioner's complaint, the police registered the impugned FIR No.81/2008 at Police Station Chandni Chowk/ Town Hall. The said FIR which has been recorded in Hindi and English states, inter alia, that, it appears to the complainant that Mr. Dhanpat Bothra has misappropriated his goods worth Rs.13,00,000/- with a mala fide intention.

3. Ultimately, on 17.6.2008, the petitioner, Dhanpat Bothra was arrested by the police. He was produced before the court and was sent to judicial custody. It is claimed that thereafter by a compromise deed dated 16.7.2008 the petitioner, Dhanpat Bothra and the complainant, Mr. Hansraj Kochar, second respondent herein, have resolved their disputes amicably. Mr. Bothra therefore wants the aforesaid FIR registered against him to be quashed by this Court.

4. The Counsel for the petitioner contends that the said FIR was registered due to, "certain misunderstandings", between the petitioner and the second respondent, which have now

been sorted out and as the second respondent does not want to pursue the impugned FIR any more and has also filed his affidavit to that effect, the impugned FIR be quashed as in fact no offence at all has been committed. It is also contended that although the matter cannot be compounded under Section 320 Cr.PC because value of the subject matter in question exceeds Rs.2,000/-, however, since the parties have compromised the matter, the impugned FIR should be quashed by this Court. It is contended by counsel that the effect of the decisions of the Supreme Court and this Court is that the Court ought to quash proceedings in all such cases for the asking.

5. On the other hand, counsel for the State has handed over a copy of one more FIR bearing No.138/2008 which was registered at Police Station Sarai Rohilla on 30th May, 2008 against the petitioner. This FIR has been registered on the complaint of one Ms. Kavita Lunia. This also records a complaint regarding misappropriation of jewellery by the petitioner in collusion with one Sh. Sunil Singhvi. The allegations there are substantially similar to those in the impugned FIR. It states, inter alia, that the petitioner had introduced the said Sunil Singhvi to the complainant and the complainant had entrusted the jewellery worth Rs.17,86,900/- to Mr. Sunil Singhvi because of the petitioner's reference. It further states that Mr. Singhvi has been absconding ever since 27th May, 2008 with the property entrusted to him, and that the address furnished by Mr. Singhvi was found to be

incorrect. It also states that both Mr. Sunil Singhvi and the petitioner are absconding since 27th May, 2008, and that all the complainant's jewellery is in their possession.

6. Mr. Malik, who appears for the State, points out that the allegations in the instant FIR, which has been lodged by a different dealer in jewellery, are similar. He states that both these FIRs are under investigation and, under the circumstances, this is not a case where the impugned FIR deserves to be quashed. On the other hand, the petitioner's counsel states that since the second FIR is registered against his client at Police Station Sarai Rohilla, the same is a separate FIR and has no connection with the impugned FIR. He says that these two FIRs are, "that way independent". Presumably, he means that the existence of the second FIR can have no bearing on the decision of this Court to quash the impugned FIR since the complainant in this FIR has settled the matter with the accused petitioner. In addition, counsel for the petitioner has contended that the impugned FIR came to be lodged by the complainant on what was, according to him, "merely a misapprehension" and to that extent, it was not really a complaint of misappropriation, therefore also, once the complainant has executed a compromise deed on 16.7.2008 acknowledging that the said FIR was registered, "due to certain misunderstanding", which has now been resolved "with the intervention of respectable persons of the society and common friends of both sides", the said FIR

deserves to be quashed.

7. I do not agree with the contentions of learned counsel for the petitioner. To my mind, the proposition that even in cases where the offence is not compoundable under Section 320 of the Cr.PC, once the complainant and accused had arrived at a settlement, the Court ought to quash the FIR for the asking, is not sustainable in law for a number of reasons. Section 320, Cr.PC, which deals with compounding of offences, envisages three types of offences – the first are those which are compoundable by the person mentioned in column 3 of Section 320(1); the second are those that are compoundable by the person mentioned in column 3 of Section 320(2) with the permission of the Court; the third category consists of the remaining offences which do not fall either under Section 320(1) or Section 320(2) of the Cr.PC. This third category is the subject matter of clause (9) of Section 320 Cr.PC which states that, “No offence shall be compounded except as provided by this section.” An offence under Section 406 of the IPC, as in the instant case, has been made compoundable with the permission of the Court under Section 320(1), Cr.PC, provided the amount involved is less than Rs.2000/-. In this case, since the amount is Rs.13,00,000/-, which is far greater, it falls under the third category mentioned above and therefore the same is not compoundable under Section 320 even with the permission of the Court. To thereafter hold that merely because both the complainant and the accused have

settled the matter amongst themselves, the Court must, in all such cases, quash the FIR or other proceedings for the asking, amounts to placing all such cases, as an additional group, in the first category under Section 320(1). Looking to the unambiguous language of Section 320(9) of the Cr.PC, this could never have been intended by the Legislature. In fact such an approach, as contended by counsel for the petitioner, would be clearly contrary to the legislature intent, and must therefore be rejected. I might add that no decision has been cited by counsel at the bar in support of his proposition. Indeed I think there is none.

8. Over the years, courts in India have been exercising their inherent powers to quash proceedings in some non-compoundable matters, provided they are satisfied that it is necessary to do so in the interest of justice where they feel that to permit proceedings to continue would be an abuse of the process of the Court and a travesty of justice. This has long been recognized as an exceptional power to be exercised sparingly and with great caution and circumspection. In this context, the scope and amplitude of this Court's power of quashing under Section 482, Cr.PC has been enunciated by this Court in the case of ***Satnam Kaur & Ors Vs. State 2006 (135) DLT 84*** held that:

“7..... Section 320(1) of the Cr.P.C. provides that offences mentioned in the table there under can be compounded by the persons mentioned in the Column No. 2 of the table. Further, Sub-section (2) provides that offences mentioned in

the table could be compounded by victim with the permission of the Court. No doubt, even in respect of non-compoundable offences, the High Court can exercise the power and quash criminal proceedings if for the purpose of securing ends of justice, quashing of those proceedings becomes necessary. Judgment of the Hon'ble Supreme Court in the case of B.S. Joshi and Ors. v. State of Haryana and Anr. (2003) 4 SCC 675, acts as guide for the High Court to determine whether to exercise the powers under Section 482, Cr.P.C. in a given case or not. The Court held in that matter that there was no general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 or extraordinary power under Article 226 of the Constitution of India. Therefore, if for the purpose of securing the ends of justice, quashing of FIR becomes necessary section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.

8. Thus, it is clear that while exercising the inherent power for quashing under Section 482, Cr.P.C, it is for this Court to consider whether it is expedient and in the interest of justice to permit the prosecution to continue.

9. The edifice of criminal law is based on the principle that crime committed against the particular person is the crime against the society as well. Though in that particular case, the immediate victim may be the person who is affected by the said crime. This is the genesis beyond Section 320, Cr.P.C. which makes only trivial crimes as compoundable treating those offences as the ones which can be settled between the parties. But other offences, which are non-compoundable, are treated as crimes against society and, therefore, normally the consent of the victim to compound those offences may not be of

any use. Balance is sought to be maintained by the judgment of the Supreme Court in *B.S. Joshi and Ors. v. State of Haryana and Anr.* (supra) by giving the power to the High Court even in such cases but with rider that there are special features which may be present in a particular case and may warrant in the interest of justice and as a rule of expediency to give quietus to those proceedings. Therefore, in the facts and circumstances of a given case, High Court has to come to a conclusion that whether it is expedient or in the interest of justice to quash the proceedings in view of the settlement between the parties, notwithstanding, a general rule that it is an offence against the society."

9. Similarly the Kerala High Court in the case of ***Rajan Vs. Little House Marketing Pvt. Ltd. 2005 (4) KLT 595*** held that:

"9. I must, at the outset, state that this argument does not at all appeal to me. The dictum in *B.S. Joshi v. State of Haryana* or in *Ittoop v. Kunhikannan* cannot lead a court to the perverse conclusion that distinction between compoundable and noncompoundable offences is obliterated now and every request for composition of noncompoundable offences can straight-away be accepted by this Court while exercising powers under Section 482 Cr.P.C. That according to me is not the law at all. The law zealously recognises the distinction between compoundable and non compoundable offences. One has to look at the fundamentals. Criminal offences are at least fictionally, assumed to be not merely offences against personally aggrieved persons. Crimes are offences against the Society at large. The mere fact that private individuals are willing to compound the offences will not persuade the courts to discontinue the proceedings initiated on the basis of the complaints emanating

from such victims. It is true that in B.S. Joshi and Ittoop, courts have chosen to quash proceedings when report of such composition is made. But that is done, not merely because the parties have compounded the offences but because the courts perceived that in the interests of justice, powers under Section 482 Cr.P.C. deserve to be invoked in those cases. Composition by aggrieved individuals is not the be all and end all while considering invocation of powers under Section 482 Cr.P.C. The distinction between compoundable and non-compoundable offences does very much exist even when invocation of powers under Section 482 Cr.P.C. to quash criminal proceedings are requested. The primary and paramount consideration is and can only be whether the interests of justice demand the invocation of the powers.”

10. In ***Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre (1988) 1 SCC 692*** the Supreme Court held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue.

11. In the case of ***Bankat and Anr. Vs. State of Maharashtra (2005) 1 SCC 343***, the Supreme Court held that;

“In our view, the submission of the learned Counsel for the respondent requires to be accepted. For compounding of the offences punishable under IPC, a complete scheme is provided under Section 320 of the Code. Sub-section (1) of Section 320 provides that the offences mentioned in the table provided there under can be compounded by the persons

mentioned in column 3 of the said table. Further, Sub-section (2) provides that the offences mentioned in the table could be compounded by the victim with the permission of the court. As against this, Sub-section (9) specifically provides that 'no offence shall be compounded except as provided by this section'. In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 as stated above can be compounded and the rest of the offences punishable under IPC could not be compounded."

12. Recently in the case of ***Devender Singh Vs. State & Anr. CRL.M.C. No.1304/2004*** decided on ***23.5.2008***, this Court discussed the scope of Section 482 and after analyzing a number of cases held that:

"6.5 There can be no doubt therefore that the scope of the power of the High Court under Section 482 Cr.PC is wide enough to pass orders which would subserve the ends of justice. However, it has been repeatedly urged that this power must be exercised sparingly. The question in each case where such powers are invoked is whether on the facts and in the circumstances of the case, such power such be exercised to quash the criminal proceedings."

13. Quite clearly therefore, what is to be determined is whether in the instant case, the impugned FIR deserved to be quashed in the exercise of this Court's inherent power under Section 482 of the Code. In this case, two FIRs have been lodged against the petitioner. The impugned FIR in the instant case was lodged on 6.6.2008 and the other FIR, a copy of which has been placed on the record by the counsel for the State, was lodged earlier on, 30.05.2008. It is apparent that

within a period of seven days, two FIRs came to be lodged against the petitioner, with similar allegations, by different complainants, with whom the petitioner was working on a commission basis. This raises more than a suspicion against the conduct of the petitioner. Also, both the FIRs are under investigation. Furthermore, although the dispute can be termed as, 'private' in nature but as held in ***Satnam Kaur & Ors.*** (supra) offences, which are non-compoundable, are treated as crimes against society and, therefore, normally the consent of the victim to compound those offences may not be of any use.

14. In the case of ***Shyam Babu Gupta & Anr. Vs. State (Govt. of NCT) & Another*** reported as ***2008 CriLJ 951***, while dealing with a petition filed under Section 482 Cr. P.C. for quashing of an FIR under Section 406 IPC, this Court negated the contention of the petitioners that since the parties have reached a settlement and money has been paid to the complainant, the compromise should be accepted and the FIR should be quashed. In that case, this court relied on the decision of ***Inspector of Police, CBI Vs. B. Raja Gopal & Ors., (2002) 9 SCC 533*** where it was held that merely because a compromise has been reached between the bank officials and the accused and the accused paid the disputed amount found due to the bank, the High Court was not justified in quashing the trial. This court also relied on the

decision in ***Satnam Kaur & Ors.*** (supra) and dismissed the petition in the following terms :

“9. Keeping in view the principles of law laid down in the above two decisions with regard to quashing of the F.I.R. and the fact that in the case at hand, the act of the petitioner in illegally taking the possession of the three-wheeler was nothing but sheer display of muscle power which cannot be tolerated in any civilized society and thus, it is an offence against the society. Accordingly, no ground is made out for quashing of F.I.R. in question and the present petition is, hereby, dismissed.”

15. In the case of ***C. Nagarju & Anr. Vs. The State NCT & Ors., 2007 (4) JCC 3160***, this Court examined a similar contention that since the matter has been amicably settled, permission to compound the offence should be granted. In that case also, the FIR was also lodged under Section 406 IPC. There also, it was contended by the counsel for the State that since two other cases are also pending against the petitioners, permission to compound should not be granted. There, this Court relied on the decision in ***Satnam Kaur & Ors.*** (supra). It also referred to the decision of the Supreme Court in ***Bankat and Anr. Vs. State of Maharashtra (2005)1 SCC 343*** (supra). Taking into consideration the peculiar facts of the case, this Court held that:

“11. So keeping in view the peculiar facts and circumstances of the case, as the petitioners No.2 and 3, who are the accused, are involved in other criminal cases, I do not find any ground to grant permission to compound the offence under Section 406 IPC and as such the

present petition is not maintainable and the same is hereby dismissed.”

16. Finally, the contention of the petitioner that the statement, which according to the translation of the petitioner means, “We apprehend that he had grab our articles with mala fide intention” in the impugned FIR, indicates that there was merely a misapprehension against the petitioner and nothing more, and so no offence at all has been committed, cannot also not be countenanced at this stage. Whether it was in fact merely a misapprehension or something more, ultimately the trial will show. It is not for this Court to accept this fact at this stage when the investigation into the matter is at a preliminary stage. In this connection, I might notice that even in the compromise deed dated 16th July, 2008 filed by the petitioner, it is stated that the so-called “misunderstanding” has been resolved with the intervention of, “respectable persons of the society and common friends of both sides”. The dispute is stated to be resolved on certain conditions, the first of which is the petitioner, Dhanpat Bothra, “has already reimbursed the losses suffered by the first party as stated by him in his complaint”, and that in view of the above said reimbursement, the complainant does not want to pursue his complaint. By this it is obvious that reimbursements and payments have been made to the complainant by the petitioner/accused after the filing of the FIR in question. Merely because the accused has made good the complainant’s loss after he was caught, does not automatically wipe out the

offence committed. Looking to the fact that there is yet another FIR filed by an independent complainant, alleging that jewellery worth more than Rs.17.5 lakhs has been misappropriated by the complainant along with another person introduced by him to that complainant, does not, in my view, render this a fit case for the exercise of this Court's power under Section 482, Code of Criminal Procedure. In this context, the observations of the Supreme Court in ***State of Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335*** are noteworthy;

“106. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

17. Under the circumstances, and in light of the aforesaid decisions, I do not find any merit in the petition. The same is dismissed.

Sudershan Kumar Misra, J.

September 29, 2008
mb/skw