

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

+ **W.P.(Crl.) No.928/2007**

Date of Decision : 24.08.2011

K.K.PILANIA & ORS.

..... Petitioners

Through: Mr.Ramakant Gaur, Adv.

Versus

STATE & ANR.

..... Respondents

Through: Mr.Naveen Sharma, APP
Mr. Rakesh Makhija, Adv. for the
complainant.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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| 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 |

V.K. SHALI, J.

1. This is a petition filed by the petitioners under Section 482 Cr.P.C. for quashing of FIR No.52/2006, under

Section 406/420 IPC registered by P.S. Preet Vihar, Delhi.

2. The petitioner nos.1 and 2 and the complainant one Hari Mohan Bansal, were the Directors of a company by the name of HMD Technology Ltd. There were some disputes, regarding management and the financial issues, between the complainant and the petitioners. This resulted in registration of the aforesaid FIR. Subsequent thereto, the petitioners (Second party) and the complainant (First party) have arrived at a settlement on 21.2.2007. In terms of the said amicable and peaceful settlement, all the past, present disputes /litigation were agreed to be settled on the following terms and conditions:-

"1) That the second party agrees to pay to the first party (First party is the complainant and the Second party is the petitioners) an amount of ₹30,00,000/- (Rupees Thirty Lacs) in favour of M/s HMD Technologies Ltd., in full and final settlement of all dues and liabilities that may have arisen against the second party. It is hereby agreed that henceforth, after having received the amount above amount of ₹30,00,000/-, the first part shall have no

claim charge, lien and/or demand against the second party. The abovesaid amount of ₹30,00,000/- will be paid to the first party as follows:-

A) Rs.10 Lacs by way of cheque within 20 days from the date of present agreement.

B) Rs.20 lacs in five installments of Rs.4 lacs each falling due on 20th of each month starting from April 2007. Details of the cheques issued by the second party is given in annexure 'A' to this agreement. The second party undertakes that all the cheques issued by them will be honoured on presentation for encashment by the first party.

2. That, second party agrees to transfer their entire share holdings of HMD Technologies Ltd. held by second party in the name of M/s Shanti Deep Constructions Pvt. Ltd. and M/s Raf Steels pvt. Ltd. to the first party at the time of signing of this agreement and the amount of consideration in respect of share purchase agreement is set off or adjusted within the settled amount amicably arrived at between both the party. The second party will set off the unsecured loan ₹8,04,168/- in the name of M/s Shri Hans Energy System Pvt. Ltd. and share application money of ₹13,18,770/- in the name of M/s Shanti Deep Constructions Pvt. Ltd., ₹5,00,000/- in the name of M/s Akanksha Telecommunication and ₹10,00,000/- in the name of Bsskay Communication i.e. total amounting of ₹36,85,938/- stands

adjusted/setoff. The set off so affected shall be full and final settlement of the dues against the unsecured loan and share application money of the second party shown as outstanding in the books of accounts of M/s HMD Technologies Ltd. The second party shall not claim any amount from M/s HMD Technologies Ltd. for the aforesaid unsecured loan and share application money at any point of time in future.

3. The HMD Technologies Ltd. had availed a financial assistance, from the State Bank of Bikaner and Jaipur, Safdarjung Enclave Branch, New Delhi and the first and the second parties had furnished a personal guarantee against the working capital loan and term loan or any other financial assistance for and on behalf of the company as security for the financial aid so received from the said bank or any other bank. It is now hereby agreed between the parties hereto that after encashing all the cheques details of which is given in annexure 'A' the totaling of ₹30 lacs, and assured by the first party, that the first party undertakes to approach the said bank to have the personal guarantee, furnished by the second party be released. Further during the pendency of installments if any liability arises against the second party the first party indemnifies to resolve the same.

4. That after encashing all the cheques details of which is given in annexure 'A' the totaling of ₹30 lacs, the first party

undertakes to make a no objection statement to quashing of FIR no.52/2006 P.S. Preet Vihar which will be filed by the second party by way of a petition u/S 482 Cr.P.C. and the first party shall forfeit its right to prosecute the second party in the FIR. In case this agreement fails, the first party shall take appropriate course of the law to prosecute the second party.

5. That after the receipt of ₹30 lacs, the first party shall take necessary steps, indemnify and shall fully co-ordinate and co-operate with the second party for discharging the second party from the various criminal complaints filed under section 138 of the Negotiable Instruments Act by creditors of M/s HMD Technologies Ltd.

6. That the first party shall issue a discharge certificate i.e. discharge from all liabilities past and future of the company i.e. M/s HMD Technologies Ltd. in favour of second party.

7. That the first party on signing of this agreement shall appear before the Hon'ble High Court of Delhi and apprise the court about the settlement of agreement among them. The first party shall make appropriate statement for the grant of permanent bail of the second party and Mrs. Leela Pilania in the captioned FIR. The first party shall assist the second party subject to the fulfillment of this agreement. In case the agreement fails the first party

reserve its right to approach the Hon'ble High Court for the cancellation of the bail.

8. That the second party on signing of this agreement shall withdraw the Arbitration Petition No.OMP434/2006 and AA No.477/2006 pending before the Hon'ble High Court of Delhi at New Delhi. In case this agreement fails the second party reserve its right to continue with the arbitration application or any other legal recourse.

9. That upon signing of this agreement Mr.K.K.Pilania, Mr.A.K.Pilania, Mr.Nishant Pilania and Mr.Saurabh Pilania will resign from the post of Directors and as well as whole time Directors of the company i.e. M/s HMD Technologies Ltd., these resignation shall take effect from the date of signing of the agreement. The first party undertakes to file form 32 with the Registrar of Companies in regard of above said resignations. The second party will supply their DIN No. to the first party for filing Form 32 to the ROC.

12. That on execution of this agreement the share holding agreement of dated 15.11.2002 stand terminated between the parties."

3. After the settlement was signed, the petitioners were granted anticipatory bail by the Court on 23.2.2007.

4. It is averred in the petition that after the settlement having been arrived at, the petitioners had paid a sum of ₹30,00,000/- by way of cheque to the respondent no.2/complainant and also transferred the shares of worth ₹36 lacs in his favour and so far as the respondent no.2/complainant is concerned, he had withdrawn a Civil suit including arbitration application which was pending in the High Court.
5. It was contended by the learned counsel for the petitioners that after having received the entire benefit in terms of the said settlement, the respondent /complainant has not come forward to get the FIR and the consequent proceedings quashed on the ground that the petitioners had not complied with the remaining terms and conditions of the settlement.
6. It has been contended by the learned counsel for the petitioners that this Court vide order dated 27.4.2010 had noted down the objection of the respondent no.2/complainant to the effect that the petitioners had allegedly not resigned as the Directors of the company in

question and had also not taken necessary steps to inform the Registrar of companies so as to complete the documentation with regard to the other remaining part of their obligation.

7. It has been noticed in the said order that if that was the objection on behalf of the respondent no.2/complainant then he ought to have filed an application bringing it to the notice of the Court that the petitioners have not complied with the necessary part of their obligation in terms of the settlement. This has not been done.
8. The learned counsel for the petitioners has now contended that despite having received the entire benefit in terms of the settlement dated 21.2.2007, the respondent no.2/complainant is not coming forward to get the FIR quashed and is not co-operating with the petitioners, consequently resulting in the gross abuse of the processes of law.
9. So far as the question of the present petitioners having resigned from the Directorship of the company in question is concerned, it has been stated by the learned

counsel that necessary forms including Form no.32, duly signed by the petitioners in order to resign from the company in question, were handed over to the respondent no.2/complainant and it was he who was required to complete the necessary formalities of filing form no.32 with the Registrar of Companies, in terms of clause 9 of the settlement agreement.

10. The learned counsel has drawn the attention of the Court to clause 9 of the settlement agreement, wherein it is specifically mentioned that the resignation of the petitioners will take effect from the date of the signing of the agreement and the agreement itself having been signed on 21.2.2007, they are deemed to have resigned from the said date. If at all any action was to be taken, it should have been taken by the respondent no.2/complainant.
11. The learned counsel for the petitioners in support of his contention has placed reliance upon the following judgments:-

“Manoj Sharma Vs. State & Ors. 2008 (16) SCC 1 & Nikhil Merchant Vs. CBI 2008 (9) SCC 677”

12. As against this, the learned counsel for the respondent no.2/complainant has vehemently opposed the quashing of the FIR on the ground that the petitioners have not complied with the terms and conditions of the settlement agreement inasmuch as neither they have signed the resignation letter nor they have signed the other requisite forms and consequently, the petitioners have not fulfilled their obligations under the settlement agreement and therefore, the aforesaid FIR cannot be quashed.
13. In this regard, the learned counsel for the respondent no.2/complainant has placed reliance on the judgment titled **Sushil Suri Vs. CBI and Anr.** AIR 2011 SC 1713 urging since the offence against the petitioners is not only confined to the offence of cheating but also involves the offence u/S 468/471 IPC and the said offences being non-compoundable, the FIR may not be quashed.

14. I have considered the submissions made by the respective sides and gone through the judgments.
15. No doubt, the Supreme Court in case titled **Nikhil Merchant's case (Supra)** and **Manoj Sharma's case (Supra)** has categorically observed that Section 320 Cr.P.C. cannot be read in isolation but has to be read along with the other provisions in Cr.P.C. Words 'nothing in this Code' used in Section 482 Cr.P.C. is non obstante clause and gives it overriding effect over other provisions in Cr.P.C. and therefore, High Court is held to be well within its powers in quashing the FIR, in case, it comes to the conclusion that the circumstances of the case so warrant.
16. In **Nikhil Merchant's case (supra)**, the CBI had filed a charge sheet against 5 accused persons u/S 120B read with Section 420/467/468/471 r/w Sections 5(2) and 5(1) (d) of the Prevention of Corruption Act, 1947 and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988. In this case, the appellant Nikhil Kapoor, Managing Director of a company, the company and three employees of a bank were charged for the offences

detailed above. But as the suit for recovery filed by the bank was settled and an application for discharge was filed by the appellant, Nikhil Merchant before the Trial Court, which did not find favour either with the trial court or the High Court that is the reason the matter reached Supreme Court. Supreme Court quashed the charge sheet holding that the powers of the High Court u/S 482 Cr.P.C. are not circumscribed by Section 320(9) Cr.P.C.

17. Similar is the observation made by the Apex Court in **Manoj Sharma's case (supra)** where the FIR was quashed. It may be pertinent here to mention that in both the judgments of Nikhil Merchant and Manoj Sharma, the Judges of the Bench were the same.
18. In the light of the aforesaid facts, I feel that notwithstanding the fact that the offences under Section 468/471 IPC or for that matter under Section 420 IPC are non compoundable offences, there should be no impediment in quashing the FIR under these sections, if the Court is otherwise satisfied that the facts and circumstances of the case so warrant.

19. In the instant case, as has been urged in the petition and reflected in the Settlement agreement, the petitioners have not only paid an amount of ₹30 lacs by way of cheque to the respondent no.2/complainant but have also transferred, the shares of worth ₹36 lacs, in favour of the respondent no.2/complainant. Thus the respondent no.2 /complainant has already got the benefit of approximately ₹66 lacs in his favour in the year 2007. The petitioners had also in terms of the settlement agreement withdrawn the Arbitration matters which were initiated against the respondent no.2/complainant. After having received the said benefit, it is not open to the respondent no.2/complainant to urge that the FIR may not be quashed on the ground that the offences u/S 468/471 IPC are non-compoundable offences. This clearly shows prima facie, malafides on the part of the complainant that after deriving full benefit, he is wanting to keep the petitioners in limbo and subjecting them to great deal of harassment.

20. This, in my opinion, is prima facie gross abuse of the processes of law. Had the intention of the respondent no.2/complaint been clear, in not getting the FIR quashed on the ground that the petitioners had not complied with all their obligations in terms of the settlement, the minimum which was expected from him was that he should have come forward and returned the benefit derived from the settlement in order to show his bonafide. This has not been done.
21. On the contrary, respondent no.2/complainant has taken a flimsy pretext that the resignation letter and form no.32 was not signed by the present petitioners. If one read clause 9 and 12 of the settlement agreement, it clearly lays down that on the date of the signing of the agreement itself, the present petitioners will cease to be the Director.
22. In addition to this, the fact that the learned counsel for the petitioners had allegedly handed over the resignation letter to the respondent/complainant (though denied by the respondent no.2/complainant), clearly show that

whatever was required to be done on the part of the petitioners had been duly performed by them. It was for the respondent/complainant to have approached the Registrar of Companies to get the necessary entries made rather than alleging that the petitioners have not complied with the terms and conditions of the settlement.

23. There is another aspect of the matter which shows the conduct of the respondent no.2/complainant. If one has to believe the bonafides of the respondent no.2/complainant, then he ought to have approached the Court immediately after the Settlement Agreement was signed in order to bring it to the notice of the Court that he has received the financial benefit in terms of the agreement, yet he is not able to go ahead with the quashing of the FIR on the ground that there are certain obligations on the part of the petitioners which are yet to be fulfilled. Since this was not done and almost 4 years have gone by, the plea raised by the complainant in this regard seems to be actuated by ulterior considerations/motives. This aspect of the matter has

also been noticed by my learned Predecessor in order dated 27.4.2010.

24. The learned counsel for the respondent no.2/complainant has relied upon the judgment of the Apex Court in **Sushil Suri's case** (supra) to urge that the FIR u/S 468/471 IPC ought not to be quashed.
25. I have gone through the said judgment. No doubt in Sushil Suri's case, the Apex Court did not approve the quashing of the FIR in respect of an offence under Section 468 and 471 Cr.P.C. but the facts of that case cannot be equated with the facts of the present case for the simple reason that in Sushil Suri's case there were allegations of cheating and forging of documents and using forged documents as genuine qua the financial institution and thus affecting the public funds. While as in the instant case, there was an internal dispute regarding management of a company between the two sets of Directors of a company which had no ramifications so far as the public funds are considered. In Sushil Suri's case, the Apex Court has also observed that change of one fact

in the facts of the two cases can make a difference. That is exactly the difference between the present case and the **Sushil Suri's case** (Supra) namely in the present case no public funds were involved while as in the latter case it was.

26. Therefore, the question of quashing of the FIR in case of non-compoundable offences has to be seen in the light of the fact as to whether the dispute is essentially a private dispute or involves a fraudulent action on the part of a party qua the public funds. In the present case, the dispute was essentially a civil dispute between two parties which has no bearing so far as the public funds are concerned. Moreover, the respondent no.2/complainant has got the substantial benefit on the basis of the settlement and after having taken the said benefit, he cannot be permitted to turn round and deny the settlement.
27. For the forgoing reasons, I feel that the continuation of the present proceedings against the petitioners is a gross abuse of the processes of law as the respondent/

complainant has already received the financial benefit in terms of the Settlement Agreement dated 21.2.2007, yet he objected the quashing of the FIR on a flimsy pretext that the petitioners have not signed the resignation letter or the other documents, which essentially was for the respondent /complainant to take up at the earliest.

28. Accordingly, FIR no.52/2006, u/S 406/420 IPC registered by P.S. Preet Vihar and the consequent proceedings pending in the Court of Sh.Digvinay Singh, ACMM, Rohini Court, Delhi are quashed.

V.K. SHALI, J.

August 24, 2011
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