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

+ CRL.M.C. 2425/2011

VAKIL AHMED & ORS

..... Petitioners

Through Mr. Abdul Sattar, Adv.

versus

STATE

..... Respondent

Through Ms. Rajdipa Behura, APP

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

O R D E R

% **23.08.2011**

1. On the complaint of respondent No.2 Yogesh Garg, FIR No.756 dated 26.08.2006 under Sections 323/34/342/506 Indian Penal Code, 1860 was registered against the petitioners at PS O.I. Estate. Ld.APP submits that Section 308 was added subsequently during the investigation. Accordingly, the charge-sheet under Sections 323/34/342/506/308 Indian Penal Code, 1860 has been filed against the petitioners.

2. Ld. counsel for the petitioner submits that both the parties have arrived at a settlement vide MOU dated Nil. As per the said MOU, on 25.08.2006 a dispute had risen between the parties

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regarding use of toilets which resulted in a quarrel, as a result of which, both the parties sustained injuries. Cross FIR No.756/2006 dated 26.08.2006 and FIR No.758/2006 was lodged on the instance of petitioner No.1 and respondent No.2 under Section 323/342/506/34 IPC at PS O.I. Estate.

3. Learned counsel for the petitioner submits that since these two are cross cases against each other, therefore, with the intervention of a common friend and people of the locality where they both reside, have settled their grievances and arrived at a settlement with their free will and without any pressure. In this manner both parties do not want any action to be taken against each other in their respective FIRs. Further, they aim to co-operate with each other in respect to quashing the FIR against which case is presently pending before the trial court.

4. Ld. APP for State has referred the judgment of Hon'ble Supreme Court in the case of ***Manoj Sharma vs. State & Ors.*** CrI.A.1619/2008 decided on 16.10.2008 and submits that vide this judgment the Division Bench of both the lordships Hon'ble Justice



Altamas Kabir and Hon'ble Justice Markandey Katju have written dissenting views, whereby, it has been observed as under:-

"10. A perusal of Section 320 shows that offences under Section 468, 471, 34 and 120-B IPC (with are mentioned in the FIR in question) cannot even be compounded with the permission of the Court. In fact, Section 320(9) Cr.P.C. expressly states that no offence shall be compounded except as provided by this Section. It apparently follows, therefore, that except for Section 420 IPC, which can be compounded with the permission of the Court in view of Section 320(2), the other provisions mentioned in the FIR in question, could not be compounded even with the permission of the Court. It, prima facie, seems to follow that the offences mentioned in the FIR were not compoundable except in relation to the allegations about Section 420 IPC.

11. There are other provisions in the IPC e.g. Section 498A which apparently cannot be compounded even with the permission of the Court in view of Section 320 (9) Cr.P.C.

12. However, this was creating a lot of difficulty and hardship to the public and hence a way out was found by this Court in B.S. Joshi and others vs. State of Haryana 2003 (4) SCC 675 [JT 2003 (3) SC 277, AIR

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2003 SC 1386]. In that decision this Court referred to its own earlier decision in Madhu Limaye vs. State of Maharashtra 1977 (4) SCC 551 in which it was held (vide para 8) that the power under Section 482 should not be exercised when there is an express bar in some other provision of the Code. The Court in B.S. Joshi's case (supra) also referred to the decision in Surendra Nath Mohanty vs. State of Orissa AIR 1999 SC 2181 which held that since the offence under Section 326 IPC is not compoundable the High Court cannot compound the offence.

13. Despite the above decisions this Court in B.S. Joshi's case (supra) relying on its own decision in State of Karnataka vs. L. Muniswamy 1977 (2) SCC 699 observed that the High Court under Section 482 Cr.P.C. can quash the criminal proceedings if it comes to the conclusion that the ends of justice so requires e.g. where there would almost be no chance of conviction. In a case under Section 498A IPC if the parties enter into a compromise the chances of an ultimate conviction are bleak and hence no useful purpose would be served by allowing the criminal proceedings to continue. They should, therefore, be quashed by exercising power under Section 482 Cr.P.C. The Court also relied on the decisions in Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre 1988 1 SCC

692, *G.V. Rao vs. L.H.V. Prasad* (2000) 3 SCC 693 for taking the same view.

14. In *B.S. Joshi's* case (*supra*) this Court devised a creative solution to the problem and quashed the proceedings in exercise of its power under Section 482 Cr.P.C. The said decision was followed by this Court in *Nikhil Merchant vs. Central Bureau of Investigation & another* JT 2008 (9) SC 192.

15. *Shri B.B. Singh*, learned counsel for the respondent submitted that the High Court or even this Court would not be justified in giving directions to quash a criminal proceeding in view of the compromise between the parties when the offence has been expressly made non-compoundable by Section 320 Cr.P.C. He urged that the Court cannot ignore any substantive statutory provision dealing with the subject and cannot issue a writ or a direction in violation of the statute.

16. Ordinarily we would have agreed with *Mr. B.B. Singh*. The doctrine of judicial restraint which has been emphasized repeatedly by this Court e.g. in *Divisional Manager, Aravali Golf Club & another vs. Chander Hass & another* JT 2008(3) SC 221, *Government of Andhra Pradesh & others vs. Smt. P.Laxmi Devi* JT 2008 (2) SC 639 restricts the power of the Court and does not permit the Court to ordinarily encroach into the legislative or executive domain. As observed by this

Court in the above decisions, there is a broad separation of powers in the Constitution and it would not be proper for one organ of the State to encroach into the domain of another organ.

17. Since Section 320 Cr.P.C. has clearly stated which offences are compoundable and which are not, the High Court or even this Court would not ordinarily be justified in doing something indirectly which could not be done directly. Even otherwise, it ordinarily would not be a legitimate exercise of judicial power under Article 226 of the Constitution or under Section 482 Cr.P.C. to direct doing something which the Cr.P.C. has expressly prohibited. Section 320 (9) Cr.P.C. expressly states that no offence shall be compounded except as provided by that Section. Hence, in my opinion, it would ordinarily not be a legitimate exercise of judicial power to direct compounding of a non-compoundable offence.

18. However, it has to be pointed out that Section 320 Cr.P.C. cannot be read in isolation. It has to be read along with the other provisions in the Cr.P.C. One such other provision is Section 482 Cr.P.C. which reads: "Saving of inherent power of High Court. - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under

this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice”.

19. The words “Nothing in this Code” used in Section 482 is a non obstante clause, and gives it overriding effect over other provisions in the Cr.P.C. The words “or otherwise to secure the ends of justice” in Section 482 implies that to secure the interest of justice sometimes (though only in very rare cases) the High Court can pass an order in violation of a provision in the Cr.P.C.

20. It is true that in certain decisions of this Court it has been observed that the power under Section 482 Cr.P.C. cannot be exercised to do something which is expressly barred under the Code vide Mosst. Simrikhia vs. Dolley Mukherjee AIR 1990 SC 1605 (vide paras 2 & 4), R.P. Kapur vs. State of Punjab AIR 1960 SC 866 (vide para 6), Sooraj Devi vs. Pyare Lal & another AIR 1981 SC 736 (vide para 5) etc.

21. However, in my opinion these judgments cannot be read as a Euclid's formula since it is well settled that judgments of a Court cannot be read mechanically and like a Euclid's theorem vide Dr. Rajbir Singh Dalal vs. Chaudhari Devi Lal University 2008 (8) JT 621, Bharat Petroleum Corporation Ltd. & another vs. N.R. Vairamani and another AIR 2004 SC 4778. In rare and exceptional cases a departure can be made from the principle laid down in the decisions referred to in para

20, as observed in B.S. Joshi's case (supra), which has also been followed in other decisions e.g. Nikhil Merchant's case (supra). Even in the judgment of this Court in Divisional Manager Aravalli Golf Club (supra) where emphasis has been laid on judicial restraint it has been mentioned that sometimes judicial activism can be resorted to by the Court where the situation forcefully requires it in the interest of the country or society (vide para 39 of the said judgment). Judicial activism was rightly resorted to by the U.S. Supreme Court in Brown vs. Board of Education 347 U.S. 483, Miranda vs. Arizona 384 U.S. 436, Roe vs. Wade 410 U.S. 113, etc. and by Lord Denning in England in several of his decisions".

5. On the other hand Hon'ble Justice Markandey Katju, though has agreed with Hon'ble Justice Altamas Kabir, in furtherance to which he has observed in para 23 as under:-

"23. There can be no doubt that a case under Section 302 IPC or other serious offences like those under Sections 395, 307 or 304B cannot be compounded and hence proceedings in those provisions cannot be quashed by the High Court in exercise of its power under Section 482 Cr.P.C. or in writ jurisdiction on the basis of compromise. However, in some other cases, (like those akin to a civil nature) the proceedings can

be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable. Where a line is to be drawn will have to be decided in some later decisions of this Court, preferably by a larger bench (so as to make it more authoritative). Some guidelines will have to be evolved in this connection and the matter cannot be left at the sole unguided discretion of Judges, otherwise there may be conflicting decisions and judicial anarchy. A judicial discretion has to be exercised on some objective guiding principles and criteria, and not on the whims and fancies of individual Judges. Discretion, after all, cannot be the Chancellor's foot."

6. Here in this case both parties belong to the lower strata of society and this is evident from the fact that the dispute arose between the parties on a petty issue of the using of toilet. This Court has quashed the FIR against one party vide order dated 29.07.2011. In view of the facts of the case, it would be in the interest of justice that the aforesaid FIR is quashed. The parties have settled the matter and have agreed for the quashing.

7. Respondent No.2 is present in person in the court and is identified by SI Sanjeev.

8. Thus, CRL.M.C. 2425/2011 is allowed accordingly.
9. Keeping in view the financial position of the petitioners I defer imposing cost on the petitioners.
10. Dasti.



SURESH KAIT, J

AUGUST 23, 2011

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