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

% Judgment Delivered on : August 30th 2011

+ **CRL.M.C. 2878/2011**

PRAVEEN OBEROI & ORS Petitioners
Through : Mr.Siddharth Luthra, Sr Adv
with Mr.N.S. Dalal, & Mr. D. P. Singh,
Advs.

versus

STATE & ANR Respondent
Through : Ms.Rajdipa Behura, APP for
State/R-1.
Mr.Rajesh Gupta and Mr.Harpreet Singh,
Advs for R-2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the 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

SURESH KAIT, J. (Oral)

1. Mr.Siddharth Luthra, Id.Senior Advocate with Mr.N.S. Dalal, Advocate for the petitioners submit that the case under Section 420/468/471/120B of Indian Penal Code, 1860

was registered vide FIR No.119/2011, on the complaint of respondent No.2, against the petitioners at police station Dwarka-North, New Delhi.

2. Learned Senior counsel further submits that the petitioners filed the civil suit qua the property in question against the respondent No.2. The same has been settled, and this Court has allowed the withdrawal of the suit to petitioners and further directed to handover the original records of the same to the respective departments.

3. Respondent No.2/Darshan Singh who is personally present in the Court submits that he has settled all the disputes qua the aforesaid FIR and he does not want to pursue the case anymore.

4. Ms.Rajdipa Behura, learned APP for State submits that in the present case a scam is involved by forging of the documents of the post office, in connivance with the officers of the post office, whereby, the petitioners tried to cheat the respondent No.2, therefore, in this case the FIR in question does not deserve to be quashed.

5. Learned APP for the State has referred the judgment of ***State of Haryana & Ors Vs. Bhajan Lal, 1992 AIR 604*** and submits that the principles laid down are as under:-

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [305D-H; 306A-E]”

6. Learned APP further submitted that the present case does not fall in any of the category mentioned above.

7. Learned APP further relied upon the judgment of Hon’ble Supreme Court in ***State of A. P. Vs. Gourishetty Mahesh & Anr Criminal Appeal No.1252/2010 decided on 15.07.2010***, whereby the offences of not compoundable nature were not allowed to be quashed.

8. Further, in ***R. P. Kapur Vs. State of Punjab, AIR 1960 SC 866*** has also been referred and in para No.12, the Supreme Court observed as under:-

“12. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should

be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal

proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482."

9. Further, learned APP has relied upon the decision of ***Rumi Dhar Vs. State of West Bengal & Anr*** decided in ***Criminal Appeal No.661/2009 on 08.04.2009*** wherein the Supreme Court has taken the similar view.

10. Learned APP further submitted that recently in ***Sushil Suri Vs. CBI & Anr*** decided in ***Criminal Appeal No.1109/2011 on 06.05.2011*** wherein the Supreme Court

has observed as under:-

"10. Before embarking on an evaluation of the rival submissions, it would be instructive to briefly notice the scope and ambit of the inherent powers of the High Court under Section 482 of the Cr.P.C.

11. Section 482 of the Cr.P.C. itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely: (i) to give effect to an order under the Cr.P.C.; (ii) to prevent an abuse of the process of Court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, this Court has laid down certain broad principles which may be borne in mind while exercising

jurisdiction under Section 482 of the Cr.P.C. 6 (2010) 9 SCC 368.

Though it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but, the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the Complaint or Charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged.

12. In one of the earlier cases in R.P. Kapur Vs. State of Punjab this Court had culled out some of the categories of cases where the inherent powers under Section 482 of the Cr.P.C. could be exercised by the High Court to quash criminal proceedings against the accused. These are:-

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at their face value and accepted in their

entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge’.”

11. It is submitted by learned APP that, it is observed by the Supreme Court in the aforesaid pronouncements that, the view taken by the High Court in the matter cannot be flawed and deserves to be affirmed. It is manifest from a bare reading of the charge-sheet, placed on the record, that the gravamen of the allegations against the appellant and the co-accused is that the company acting through its directors in concert with the Chartered Accountants and some other persons; (i) conceived a criminal conspiracy and executed it by forging and fabricating a number of documents, like photographs of old machines, purchase orders and invoices showing purchase of machinery in order to support their claim to avail hire purchase loan from PSB; (ii) on the strength of these false documents; PSB parted with the money by issuing pay orders'; demand drafts in favour of the company and (iii)

the accused opened six fictitious accounts in the banks to encash the pay orders/bank drafts issued by PSB in favour of the suppliers of the machines, thereby directly rotating back the loan amount to the borrower from these fictitious accounts.

12. Thus, the present case are also of the same type of forgery as is enumerated in the FIR No.119/2011 dated 28.05.2011 against the petitioners.

13. Learned APP for State has drawn the attention of this Court to the FIR and it is revealed that on 02.07.2010, he had informed the police that on 28.06.2010, he had received an envelope at his residence, which was sent by Delhi Development Authority through postal authority in respect of alternate plot being allotted to him by DDA under the Alternative Allotment Scheme. On receipt of the envelop, he had opened the same in front of the post office staff and was shocked to note that the envelop contained coloured photocopy of the allotment letter in respect of alternate plot allotted him to being plot No.63, Block B, Pocket – 7, Sector –

23, Dwarka Residential Scheme Dwarka, New Delhi. On 28.06.2011 itself he had lodged a complaint to police control room at PA-100. Therefore, he had learnt from DDA that Sh.Praveen Oberoi son of late Shri A. R. Oberoi R/o B-11, Flat No.8162, Vasant Kunj, New Delhi has filed a false and frivolous suit against him in the High Court of Delhi as CS(OS) No.1473/2010, *inter alia* claiming that he entered into an agreement to sell with him in respect of plot as stated above. The pleadings in that suit clearly show that the person who had illegally intercepted the official letter addressed to him by the DDA as has been referred to by him in his earlier complaint dated 02.07.2010 was in fact intercepted by the said Shri Praveen Oberoi illegally in connivance with the post office staff and he is now using the said letter intercepted by him in a wrong manner to cheat him and to deprive him of his plot. The falsehood of the case lodged by Sh.Praveen Oberoi would also be corroborated from the fact that prior to the execution of alleged agreement to sell dated 28.06.2010, he had already deposited the entire sale consideration amount of ₹39,31,500/- with DDA in respect of said alternate plot allotted to him after

28.06.2010 vide demand drafts.

14. Learned Senior Advocate for petitioners submits that firstly in the present case, there is no loss to the exchequer; therefore, the offence in the FIR in question is not against the society. Petitioners have filed the suit as discussed above and same has been withdrawn on 26.08.2011 on the basis of the fact that matter being compromised with the respondent No.2.

15. Learned Senior Advocate for petitioners further submits that on earlier occasions, this Court has also quashed the FIRs in the case of ***Bijender & Anr Vs State & Anr, Criminal M.C. No.2572/2011*** decided on 09.08.2011 and ***Dalbir Singh Vs. State & Ors. Criminal M.C. No.1852/2011*** decided on 23.08.2011.

16. Here, learned APP for the State has clarified that the FIR in the case of ***Dalbir Singh (supra)*** was quashed because of the fact that the matter was settled before the Mediation and Conciliation Centre at Tis Hazari Courts which has binding effect, therefore, this case has no consequence as

the issue in hand and the case of ***Bijender & Anr (supra)*** as mentioned above was allowed in a peculiar circumstance, whereas, the circumstance are not identical in the present case.

17. Learned Senior Advocate for the petitioners has relied upon ***Ramesh Kumar Vs. State 106 (2003) DLT 534(SB)*** and has referred para No.3 of the same which reads as under:-

"3. This bench is not required to discuss the matter in detail as in an identical case the Supreme Court has very recently pronounced a judgment on the question whether the parties can be permitted to compound a matrimonial offence which is non-compoundable under Section 320 of the Code. In case of B.S. Joshi and Ors. v. State of Haryana, : 2003CriLJ2028 , the Apex Court in Para 15 has held as under:-

"In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings of F.I.R. or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code".

18. Further he has relied upon the judgment of Full Bench of this Court in case of ***Court on its own Motion Vs. Jai Prakash Prasad & Ors*** in ***Criminal Contempt Reference No.2/2009 and WP (Crl) No.802/2010*** which was decided on 03.06.2010 wherein it was held that the Additional District Judge sent his complaint dated 08.07.2009 to this Court on which the contempt proceedings were initiated and also got the FIR No.373 registered under Section 147, 149, 186, 353, 332 & 341 IPC read with Section 3 of the Prevention of Damages to Public Property Act, 1984 at police station Prashant Vihar, New Delhi on certain conditions.

19. In para No.4 of the above judgment, it is observed that so far as the Criminal proceedings arising out of the aforesaid FIR are concerned, matter is still pending for trial. No doubt, investigation is complete as per the status report dated 24.05.2010 filed by the SHO, police station Prashant Vihar, Delhi. Fact remains that charge-sheet has not been filed till date. Obviously, therefore, no charge has been framed so far.

20. The Full Bench of this Court has opined that the basis of the principle for quashing of the FIRs are laid down in ***Madan Mohan Abbot Vs State of Punjab, 2008 (4) SCC 582, Jagdish Channa Vs State of Haryana, 2008 (4) SCALE 411; and Nikhil Merchant Vs. CBI, AIR 2009 SC 428.*** As is observed by the Full Bench that in case of ***Ramesh Kumar Vs State 2003 (iv) AD (Delhi) 377***, a five Judges Bench of this Court has followed the decision of the Supreme Court in ***B.S. Joshi Vs. State of Haryana 2003 (4) SCC 675*** and held that the power to quash the proceedings can be exercised by the High Court under Section 482 Cr. P. C. to meet the ends of justice. Thus, the FIR in that case was quashed.

21. Admittedly, there is no loss to the Government Exchequer in the present case, however, it cannot be said that the present case does not come under the purview of the offences against the society. All the offences enumerated in IPC, has affect, one way or the other, on the society. Ultimately, in all the cases, the society has to suffer.

22. Learned APP for State has referred the case of Hon'ble Supreme Court in **Gian Singh Vs. State of Punjab & Anr.** in **SLP (Crl.) No.8989/2010** wherein the Division Bench of the Supreme Court has referred three earlier decisions viz, **B.S. Joshi V. State of Haryana (2003) 4 SCC 675, Nikhil Merchant v. Central Bureau of Investigation and Anr. (2008) 9 SCC 677 and Manoj Sharma Vs, State & Ors. (2008) 16 SCC 1** to the larger Bench for re-consideration whether the abovesaid three decisions were decided correctly or not.

23. Previously, I have taken the view on the basis of the judgment of the Division Bench of Mumbai High Court in **Nari Motiram Hira Vs. Avinash Balkrishnan & Anr.** in **Crl.W.P.No.995/2010 decided on 03.02.2011** whereby the Division Bench of Mumbai High Court has permitted for compounding of the offences under Section 452/324 of Indian Penal Code which were of 'non-compoundable' category as per Section 320 Cr. P.C. and the FIR No.50/2010 registered at Amboli Police Station, Andheri dated 06.02.2010, was

quashed. Therefore, I feel unless and until, the decisions which have been referred above, are altered, all these referred cases hold the field.

24. Keeping the aforesaid discussion into view, in the interest of justice, I hereby quash the FIR No.119/2011 registered at police station Dwarka-North, New Delhi under Section 420/468/ 471/120B Indian Penal Code, 1860 against the petitioners.

25. At this stage, learned APP for State submits that in the present case, the lot of exercise had been done by the police while investigating the case, and precious time of the Courts also consumed, therefore, heavy costs should be imposed upon the petitioners.

26. Learned Senior Counsel, on instructions submits that the petitioners want to donate some amount for the purpose of welfare scheme. I appreciate this gesture. Therefore, I direct all the petitioners to deposit a sum of ₹ 1lac each as costs.

27. Accordingly, total sum of ₹ 4lacs shall be deposited in favour of Superintendent, '*Nirmal Chaya*', *Tihar Jail, Hari Nagar, New Delhi* to be used for the welfare of the destitute women, within two weeks from today and proof thereof be placed on the record.

28. In view of above, Criminal M.C.No.2878/2011 is allowed.

29. Copy of order *dasti* under signature of the Court Master.

SURESH KAIT, J

AUGUST 30, 2011

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