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

+ **CRL.M.C. 539/2012**

% *Judgment delivered on: 14th February, 2012*

SANJAY GHAI & ORS Petitioners

Through : Mr.B.K. Singh , Adv.

versus

STATE & ANR Respondents

Through : Ms. Rajdipa Behura, APP for
State/R-1.

Mr. Parminder Singh, Adv for R-2 with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Notice issued.
2. Ld. APP accepts notice on behalf of State / respondent no. 1.
3. Mr. Parminder Singh, Adv. accepts notice on behalf of respondent no.2.
4. With the consent of ld. Counsels for parties, instant petition is taken for disposal.
5. Ld. Counsel for the petitioners submits that vide FIR no. 188 dated 26.11.2011, case under Section 420/120B/467/468/471 Indian Penal Code, 1860 was registered against the petitioners on the complaint of respondent no. 2 at PS-Barakhamba Road.

6. It is further submitted that vide MOU dated 09.12.2011, all the disputes qua the aforesaid FIR has been resolved between the petitioners and respondent no. 2 on the following terms:

“The aforesaid amount of Rs.5,00,000/- (Rupees Five Lacs only) shall be paid by the parties to the Second Part to the Party to the First in the following manner:

- a) That an amount of Rs.10,000/- (Rupees Ten Thousand Only) is being paid on the execution of this deed by party to the Second Part to the party to the First Part vide cheque no. 040007 dated 09/12/2011 drawn on P.N.B in the name of the party of the first part and Rs.5000/- per month w.e.f 05/01/2012 towards this maintenance.*
- b) That the remaining amount of Rs.4,90,000/- (Rupees Four Lacs Ninety Thousand Only) shall be paid by the parties to the Second Part to the party of the First Part on quashing of FIR before the Hon’ble High Court of Delhi, where all the parties to this Settlement Deed would file a joint petition seeking quashing of the FIR no. 188, PS-Barakhamba Road, Under Section 420/120B/467/34/468/406/471 Indian Penal Code, 1860 against all the accused persons, and /or before the Ld. Metropolitan Magistrate upon accepting the final report for closure of the aforesaid FIR. The parties to the First part agreed and assured to take all necessary steps and give a statement to concerned Investigating Officer / Court for quashing of the aforesaid FIR and / or closure of the said case”*

7. Additionally, petitioner no.1 shall pay Rs.5,000/- per month to respondent no.2/complainant during his lifetime for maintenance.

8. Ld. Counsel for the petitioners has further submitted that Rs.10,000/- has already been paid to respondent no. 2 at the time of signing of MOU and Rs.4,90,000/- is being paid in the Court vide Pay Order bearing no. 019928 dated 19.12.2011 drawn on Punjab National

Bank in his favour, which was accepted by him without any protest.

9. It is further submitted that since all the issues qua the aforesaid FIR has been resolved between the parties, therefore respondent no. 2 is not interested in pursuing this case any further against the petitioners.

10. Respondent no. 2 is present in person with his Counsel, namely Parminder Singh and IO of the case, SI Balvir Singh, who has duly identified him as respondent no. 2.

11. Ld. Counsel for the respondent no. 2 on instruction has submitted that he has settled all the issues qua the aforesaid FIR and has received the entire amount as was settled vide MOU dated 09.12.2011, therefore, he is not interested to pursue the case against the petitioners and he has no objection if the FIR referred above is quashed.

12. Ld. APP on the other hand submits that investigation is going on and chargesheet has not been filed due to the fact that respondent no. 2 and petitioners have resolved their issues vide the MOU dated 09.12.2011 mentioned above.

13. She has strongly opposed to allow the instant petition and has referred the decision of Hon'ble Supreme Court in ***Gian Singh v. 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 & Anr. (2008) 9 SCC 677*** & ***Manoj Sharma v. State & Ors. (2008) 16 SCC 1*** to the larger Bench for re-consideration whether the abovesaid three decisions were decided

correctly or not. Therefore, she has prayed that till the matter is decided by the larger Bench of the Apex Court, instant petition may be adjourned *sine-die*.

14. The Division Bench of Mumbai High Court in ***Nari Motiram Hira v. Avinash Balkrishnan & Anr.*** in ***Crl.W.P.No.995/2010 decided on 03.02.2011*** has permitted for compounding of the offences of ‘*non-compoundable*’ category as per Section 320 Cr. P.C. even after discussing ***Gian Singh (supra)***.

15. Therefore, I feel that unless and until, the decisions which have been referred above, are set aside or altered, by the larger Bench of the Supreme Court, all the above three decision hold the field and are binding precedents.

16. In addition, the Supreme Court in ***Shiji @ Pappu & Ors. v. Radhika & Anr*** in ***Crl.Appeal No.2064/2011*** decided on ***14.11.2011*** that the cases of *non-compoundable* nature can be compounded, certainly not after the conviction observing as under:-

‘..... That being so, continuance of the prosecution where the complainant is not ready to support the allegations which are now described by her as arising out of some “misunderstanding and misconception”; will be a futile exercise that will serve no purpose. It is noteworthy that the two alleged eye witnesses, who are closely related to the complainant, are also no longer supportive of the prosecution version. The continuance of the proceedings is thus nothing but an empty formality. Section 482 Cr.P.C. could, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the Courts below.’

17. Alternatively, she has prayed that if this court is inclined to quash the FIR, heavy costs should be imposed upon the petitioners, as they have cheated their own father and father-in-law.

18. Keeping in view the MOU dated 09.12.2011 and the Statement of respondent no. 2, who is no more interested to pursue the case further and the fact that the issue in the present case is between a family, as respondent no. 2 is the father of petitioner no. 1, father-in-law of petitioner no. 2 and grandfather of petitioner no. 3, therefore, in the interest of justice, I quash the FIR no. 188/2011 registered at PS-Barakhamba Road.

19. I find force in the submission of Id. APP as in this process Govt. machinery has been pressed into and the petitioners have cheated their own father, father-in-law and grandfather, therefore, while quashing the FIR, I impose a cost of Rs.1 Lac on petitioner no. 1.

20. However, I refrain in imposing cost on petitioner no. 2 who is a housewife and petitioner no. 3, who is pursuing his studies in XIIth Standard.

21. I note, respondent no. 2 is 73 years old aged man who has retired from Children Book Trust (CBT) and he is staying with his younger son at Govardhan (UP) and has suffered trauma and agony in the matter.

22. Therefore, I direct petitioner no. 1 to pay Rs.1 Lac to respondent no. 2 by way of Pay Order / Account Payee Cheque. Proof of the same shall be placed on record.

23. Respondent no. 2 is further directed to keep the aforesaid amount in the form of FDR, initially for a period of 2 years, to be

renewed periodically and interest thereon may be utilized for his expenses.

24. Crl. M.C. 539/2012 is allowed on the above terms.

25. Since the main petition is allowed, Crl. M.A. 1890/2012 (Stay) become infructuous and disposed of as such.

26. *Dasti.*

SURESH KAIT, J

FEBRUARY 14, 2012

jg