

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

Date of decision: 9th January, 2013

+ **CRL. M.C. 4370/2012**

INDERPAL THUKRAL & ANR

..... Petitioners

Through: Mr. Rajat Aneja with Mr. Viabhav Jairaj,
Advocates

versus

STATE & ANR.

..... Respondents

Through: Ms. Jasbir Kaur, APP for the
State/Respondent No.1.
Mr. Bipin Kumar Sharma, Advocate for
the Respondent No.2 along with
Mr. Pradeep K. Srivastava, Sr. Manager,
Kotak Mahindra Bank.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. This is a Petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) preferred by the Petitioners for quashing of FIR No.362/2005, under Section 420/406/120-B/34 IPC, Police Station Ambedkar Nagar and consequential proceedings arising out of the same.
2. FIR No.362/2005 was recorded in Police Station Ambedkar Nagar with the allegations that the Petitioners along with one Smt. Nirmala Thukral (since expired) approached Citifinancial Consumer Finance (India) Ltd. for grant of loan of ₹33 lakhs. The said loan having been granted to the Petitioners was repayable in certain instalments as mentioned in the FIR. Subsequently, it came to the notice of Citifinancial Consumer Finance

(India) Ltd. that the property which was mortgaged by the Petitioner as collateral security was already mortgaged with the Indian Bank, Chandni Chowk branch, Delhi. The Petitioners defaulted in payment of the instalments. At this stage, the Respondent No.2 came to know that the Petitioners in collusion with Smt. Seema Thukral had cheated Citifinancial Consumer Finance (India) Ltd. Thus, apart from getting a criminal case registered, Citifinancial Consumer Finance (India) Ltd. also initiated arbitration proceedings. In the execution petition Ex.P. No.210/2005 vide a deed of settlement dated 31.05.2006, the Citifinancial Consumer Finance (India) Ltd. assigned the loan amount and all the rights and obligations with regard to the loan in favour of the Respondent No.2 (Kotak Mahindra Bank Ltd.) including the pending litigation. In Ex.P.210/2005, the dispute between the Petitioners and Citifinancial Consumer Finance (India) Ltd. was settled. By virtue of the settlement, a sum of ₹8 lakhs was payable by the Petitioners in full and final settlement of the claim of Citifinancial Consumer Finance (India) Ltd. A sum of ₹2.5 lakhs was paid at the time of the settlement. Rest of the amount was payable in 12 equal monthly instalments beginning from 01.01.2011. It is admitted by the learned counsel for the Respondent No.2 that all 12 instalments stand paid. An affidavit to this effect is also placed on record by the Respondent No.2.

3. The learned APP has pointed out that there was an earlier loan transaction between the Petitioner No.1 and Indian Bank and that the Indian Bank is yet to recover a sum of ₹40 lakhs from the Petitioner No.1. A letter from Indian Bank has also been presented to show that no settlement has been reached by Petitioner No.1/ M/s. Thukral Enterprises with Indian Bank.

4. It is stated by the learned counsel for the Petitioners that the mortgaged property, subject matter of the loan transaction between the Petitioner No.1 and Indian Bank, has already been sold by Indian Bank for a sum of ₹55 lakhs and Indian Bank can have its remedy against its debtor. I am in agreement with the learned counsel in this regard.
5. It goes without saying that the offence punishable under Section 406 IPC is a non compoundable. In the case of *Gian Singh v State of Punjab & Anr. 2012 (9) SCALE 257*, the three Judges Bench of the Supreme Court dealt with the issue of quashing of FIR in non compoundable offences. Para 57 of the report is extracted hereunder:-

“57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim’s family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But

the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

6. In view of the settlement between the Petitioners and the Respondent No.2, the successor of Citifinancial Consumer Finance (India) Ltd., it would be an exercise in futility to proceed further with the prosecution on the basis of FIR No.362/2005 recorded in Police Station Ambedkar Nagar.
7. The FIR No.362/2005, under Section 420/406/120-B/34 IPC of IPC, Police Station Ambedkar Nagar and the proceedings emanating from the FIR against the Petitioners are quashed, subject to payment of ₹50,000/- as costs to the Blind Relief Society, Lodhi Road(Near Oberoi Hotel),

New Delhi within four weeks. Receipt of the deposit be submitted with the Registrar of this Court within six weeks.

8. The original documents seized by the police pursuant to the registration of the criminal case shall be returned to the Petitioner.
9. The Petition is accordingly allowed.
10. Dasti.

(G.P. MITTAL)
JUDGE

JANUARY 09, 2013
pst