

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

% Date of decision: 15th September, 2014

+ **CRL.M.C. No.3671/2013**

PRAMOD KUMAR GUPTA Petitioner

Through: Mr. Shiv Charan Garg, Advocate.

versus

STATE & ANR. Respondents

Through: Mr. M.P. Singh, APP for the State
with SI Pushendra Saroha, P.S.
Kashmere Gate.

Respondent No.2 in person.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J. (ORAL)

1. This is a petition filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') seeking quashing of FIR No.192/2000 under Section 324 IPC registered at P.S. Kashmere Gate, Delhi on the ground of settlement.

2. Learned counsel for the petitioner submits that the petitioner and respondent No.2 are real brothers, several cases are pending between the parties and the parties have settled all the disputes before Mediation Centre, Tis Hazari Courts, Delhi on 26.03.2012. He also submits that the respondent No.2 had withdrawn civil suit filed by him.

3. Learned APP for the State submits that FIR No.192/2000 under Section 324 IPC was registered against the petitioner in the year 2000. During investigation, the offence under Section 307 IPC was added.

After completion of investigation, charge-sheet was filed and charge under Section 307 IPC was framed. He also submits that after conclusion of the trial, the petitioner was convicted for the offence under Section 307 IPC by learned Additional Sessions Judge, Delhi. The petitioner has preferred an appeal bearing Criminal Appeal No.387/2009, which is pending before this Court.

4. Learned APP for the State also urges that the petitioner has already been convicted for the offence under Section 307 IPC by learned Additional Sessions Judge, Tis Hazari Courts, Delhi. The petitioner has challenged the judgment of conviction by filing the appeal, which is pending. According to learned APP for the State, the present petition for quashing of FIR is not maintainable.

5. Respondent No.2, who is present in Court today, submits that petitioner had settled the matter before the Mediation Centre, Tis Hazari Courts, Delhi on 26.03.2012. At the time of settlement, a piece of land situated at Panipat was given to him and his brother, Manoj Kumar Gupta. He also submits that the said land had already been mortgaged on 29.09.1976 and the respondent has not received any property. Respondent No.2 further submits that both the parties have undivided 1/3rd share in property bearing No.21/35, Shakti Nagar to be equally divided amongst Smt. Darshan Devi, Mr. Vinod Kumar Gupta, Shri Pramod Kumar Gupta and Mr. Manoj Kumar Gupta, but the said property has not been sold till date.

6. Respondent No.2 also submits that the petitioner had failed to fulfil the terms and conditions of the settlement and had revived the suits, which were withdrawn by him.

7. I have heard learned counsel for the parties at great length and given my thoughtful consideration to the arguments advanced by them.

8. While having a look at the sweep of the powers under Section 482 Cr.P.C., it can be observed that no legislative enactment dealing with procedure can provide for all cases that may possibly arise. The Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. In exercise of powers Court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

9. Having so understood the sweep of the powers under Section 482 Cr.P.C., I need only mention that the powers under Articles 226/ 227 of the Constitution of India are co-extensive if not wider in its sweep. The powers under Section 482 Cr.P.C. as also Articles 226/ 227 of the Constitution of India are available with the Court to do justice in a given case when the conscience of the Court is satisfied that the powers must be invoked.

10. The precedents galore to indicate the sweep, width and amplitude of the inherent powers of this Court under Section 482 Cr.P.C. Section 482 Cr.P.C. does not really confer any power on the High Court exercising criminal jurisdiction. It only saves the inherent powers of the High Court, which was always there. *Ex debito justitiae* such powers can be invoked and such powers were always available with the Court. The width and amplitude of such powers must necessarily instill in the mind of the Court the need to be circumspect.

11. Before advertng to the facts of the present case, it is necessary to discuss the purpose and rationale underlying Section 320(5) of Cr.P.C., it appears to me, is only that during the pendency of the proceedings composition of even an offence under Section 320(1) of Cr.P.C. should not be arrived at without the knowledge of the Court before which such proceedings are pending. Section 320(5) of Cr.P.C. is applicable to an offence falling within the sweep of Section 320(1) of Cr.P.C. also and the purpose can only be to apprise the Court of such composition. There is nothing in Section 320 of Cr.P.C., which makes a post revision composition impermissible if the offence would fall within Section 320(1) of Cr.P.C. Section 320(5) of Cr.P.C. speaks of the event of conviction and pendency of an appeal or revision and it does not deal with the liberty or option of the parties to compound the offence after trial/ appeal/ revision. By the same reasons, it must hence be possible for the parties to enter into a composition even after the verdict of guilty, conviction and sentence have become final and no proceedings are pending before any Court. Going by the plain language of Section 320(1) of Cr.P.C., no time limit appears to have been fixed before which the composition must necessarily take place, though for composition during the pendency of appellate or revisional proceedings leave of the Court must be sought under Section 320(5) of Cr.P.C. But then, such a conclusion also creates further problems. If the verdict of guilty, conviction and sentence have become final, which Court would accept the same so as to avoid execution of the sentence, which has become final.

12. In the present case, the petitioner was tried for the offence under Section 307 IPC, which is punishable with imprisonment of either

description for a term which may extend to ten years, and shall also be liable to fine and it is non-compoundable.

13. Moreover, the petitioner was convicted for the offence under Section 307 IPC and he has preferred an appeal bearing Criminal Appeal No.387/2009, which is pending before this Court. The petitioner has, however, filed a separate petition invoking the powers under Section 482 of Cr.P.C.

14. Further, respondent No.2 has stated that the petitioner had failed to comply with the terms and conditions of settlement and therefore the settlement has failed. As such the civil suits filed by respondent No. 2 have been revived.

15. The upshot of aforesaid discussion is that it is not a fit case to invoke the inherent powers under Section 482 of Cr.P.C.

16. Accordingly, the petition is dismissed.

(VED PRAKASH VAISH)
JUDGE

SEPTEMBER 15, 2014

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