

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

Reserved on: 09th September, 2014
Date of Decision: 24th September, 2014

+ CRL. M.C. 4071/2012

IRMEET SINGH AND ORS. Petitioners

Through: Mr. Rajiv Kr. Garg, Advocate

versus

STATE & ORS. Respondents

**Through: Mr. Navin Sharma, APP for the
State with SI Pritam Singh, PS
Connaught Place**

**CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH**

JUDGMENT

1. This is a petition under Section 482 of the Code of Criminal Procedure (Cr.P.C. for short) seeking quashing of F.I.R. No.72 of 2004 under Sections 341/448 IPC registered at P.S. Connaught Place pending in the court of Learned MM, Patiala House Courts, New Delhi and all proceedings arising therefrom.

2. Status report filed on behalf of State is on record.

3. Brief facts of the case as set out in the petition are that petitioners herein are joint owners of the aforesaid commercial flat bearing no. 3, IInd Floor, Scindia House, Janpath, New Delhi. On 25.04.1993 the petitioners vide registered deed leased out the aforesaid property to M/S Bharat Stock & Share Broker Limited for a period of 3 years w.e.f.

25.04.1993 till 24.04.1996 on a monthly rent of Rs.1,00,000/- which could be extended further for a period of three years subject to increase in rent by 20% from the last paid rent. This lease extended w.e.f. 1.05.1996 till 30.04.1999 in terms of the above clause and rent was increased to @ Rs.1,20,000/- p.m. On 15.10.1996 the petitioner herein received a letter from the tenants that tenant company has suffered heavy losses, therefore, would like to amicably settle arrears of rent. On 27.05.1997, one M/s Pheasant Securities & Finance Ltd. filed a company petition bearing C.P. No. 206/1997 against one M/S NRI Financial Services Ltd. for winding up on the ground that it has failed to pay a sum of Rs 3,25,000/- and total amount payable was Rs.6,25,000/-. Vide board resolution dated 15.02.1999 M/s Bharat Stock & Share Broker Limited i.e. the tenant company appointed one of its Directorate Shri Ishwar Dayal Kansal to settle all the issues including handing over possession of the tenanted premises as the tenure of the lease was expiring on 30.04.1999, but on account of heavy loss he wanted to vacate the premises on or before 31.03.1999 i.e. one month prior to the expiry of terms of lease. However, on 27.02.1999 the aforesaid tenant vacated and handed over peaceful possession of the tenanted premises. The same was extensively damaged and therefore had to undertake renovation. Thereafter, this court vide order dated 22.02.2001, appointed an Official Liquidator (hereafter referred to as 'OL') as the provisional liquidator in respect of NRI Financial Services Ltd.

4. On 02.08.2003, after renovation of the entire tenanted premises petitioners executed a fresh registered lease deed and inducted a limited company, M/s Allianz Security Limited as a new tenant in the aforesaid property of which possession was handed over to the said new tenant at a

monthly rent of Rs 95,000/-. However, on 28.01.2004 Shri Ishwar Dayal Kansal after 5 years of handing over possession made a statement before the Hon'ble Company Judge in the above mentioned winding up petition that the landlord has trespassed into the tenanted premises. Thereafter, on 03.02.2004 Shri Ishwar Dayal Kansal gave a written complaint to the learned OL admitting that the premises was taken on rent by M/s Bharat Stock and Share Brokers Limited, however, registered office of M/s NRI Financial Services Limited was also situated there. He further stated that all the assets were lying there and both the companies had closed operation on 31.3.1996. However, no details of any assets were given.

5. On 11.02.2004 pursuant to the investigation of the OL, the father of the petitioner herein i.e. S.Balbir Singh informed the OL that there was no tenant in the aforesaid premises ever with the name of M/s NRI Financial Services till today and no stock/books account furniture and fixture or any assets belonging to the said company is lying in the said premises. Thereafter, On 12.02.2004, learned OL vide his communication to the SHO, Sansad Marg, Connaught Place, New Delhi, requested him to register an FIR on the basis of statement dated 28.01.2004 of Ishwar Daya Kansal, Ex- Director wherein he stated that company (in liquidation) has continued its function from the premises bearing No. 3, Scindia House, IInd Floor, Janpath, uptill 31.03.1996 and that this premises was on rent and books of account computers worth Rs.60,00,000 were lying in the above mentioned premises. The Landlord Sh. Irmeet Singh and Brothers committed tresspass and sealed the premises for non-payment of rent in 1998-99. So subsequently an FIR No. 72 of 2004 vide Diary No. 13A u/s 341 and 448 IPC was thereby registered against the petitioners herein. The petitioners vide letter dated

23.03.2004 brought to the notice of the concerned IO that the said property was leased to M/s Bharat Stock and Share Broker Ltd. who handed over the possession back to the petitioners on 02.07.1999. The statements of the neighbours were also recorded as per which since 1998 they have not witnessed anybody removing any kind of property nor any kind of dispute arose in relation to the said property.

6. Meanwhile, vide order dated 27.07.2005 this High Court disposed of the Company petition out of which the aforesaid complaint was registered on the ground that the same has been settled by the director and money has been paid to the creditors. Pursuant to the aforesaid order dated 29.07.2005 the aforesaid company petition was disposed of being settled and the OL was withdrawn after the payment of required fee for the same. Thereafter, the criminal case instituted by the complainant was kept pending before the Ld. Magistrate and it didn't proceed as neither the OL nor the complainant appeared.

7. Vide order dated 06.08.2012, learned trial court passed an order for framing charges under Section 451 IPC. Feeling aggrieved by said order the petitioners have filed present petition.

8. Learned counsel for petitioners submitted that the petitioner are the owners of the above mentioned property and have let out the same to a Limited Company namely, M/s Bharat Stocks and Share Brokers Ltd only, vide registered lease deed. Under the said lease deed only transfer that was allowed was that to a subsidiary and/or sister concern, whereas M/s NRI Financial Services Ltd., is neither a subsidiary nor a sister concern of M/s Bharat Stocks and Share Brokers Ltd. He submitted that in the year 2004 when such a trespass has been alleged by the

complainant, the property in question was already in possession of a limited company i.e. M/s Allianz Security Limited which is still in occupation and the same fact was duly verified by the OL.

9. As per the Status report filed on behalf of state, in view of the facts established by the petitioner, there is insufficient evidence against the landlord for prosecution charge in the case.

10. The present case was registered on 12.02.2004 on the complaint of Shri. Raj Pal Singh, Assistant Official Liquidator, High court of Delhi. On questioning Ishwar Dayal Kansal he could not answer the questions put to him about his company, employee, and the assets of the company. Moreover, he could not produce his sole employee namely Sanjay or his address for the purpose of the investigation and could not explain as to why he had not lodged any report with the police with respect to the alleged criminal trespass by the landlords. The investigating officer submitted untraced report before trial court on 14.11.2004.

11. I have given my thoughtful consideration to the submissions made by the counsel for the petitioners and learned APP for the State. I have also gone through the status report filed on behalf of State.

12. It has come to the knowledge of this court that as per statements recorded during police investigation none of the witnesses who were examined have raised an alarm against the petitioners forcing a trespass into the above mentioned property in question. During investigation the investigating officer recorded statement of Mr. Vijay Kumar, Mr. Satbir Singh, Mr. Surender Kumar Narula, Mr. Kirpa Bhattacharya, Mr. Anoop Ganguly and Mr. Vishnu Chander Gautam under Section 161 of Cr.P.C.

and they have stated that they have never heard or seen any theft or any kind of hindrance caused by NRI Financial Services Ltd.

13. Moreover, the OL has filed a status report along with a written affidavit on 29.07.2013, wherein he has stated that:

“During liquidation proceedings, as the claim in the petition was settled and after the reimbursement of Liquidation expenses, the Hon’ble High Court of Delhi vide order dated 29.07.2005 ordered to recall the Company and the appointment of Provisional Liquidator was also recalled. In pursuance of the above said order dated 29.07.2005, the FIR No. 72/2004 u/s 341/448 IPC is deemed to be withdrawn”.

14. In **Gian Singh vs. State of Punjab** (2012) 10 SCC 303, it was held:-

“61..... 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 proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the 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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

15. Recently, the Apex Court in case ‘**Narinder Singh & Ors. v. State of Punjab & ors.**’ *Criminal Appeal No. 686/2014*, (arising out of SLP (Criminal) No.9547/2013), decided on 27.03.2014, observed as under: -

“31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or
- (ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to

whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still

at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime”.

16. Reasonable doubt has been created as to whether the allegations made by the complainant are true or had they been concocted to escape the process of winding up of the company. It is hard to believe that that a criminal trespass was duly executed, locks were broken, belongings were thrown out and all this happened while no one who in or around the building saw these occurrences taking place. Thereafter, complainant taking 5-6 years to mention about an alleged criminal trespass to the OL is in itself doubt worthy as the complainant should have reported such occurrences as soon as they happened.

17. In my view, the OL should have not have taken the liberty to get an FIR registered by relying upon information provided by Sh. Ishwar Dayal Kansal. The concerned OL should have brought this to the attention of the petitioners and should have had reasonable reasons to believe as to why such an FIR should be filed. Why did he choose not to do the same is beyond the understanding of this court. Since neither the OL nor the complainant have appeared before this court or have given a conclusive answer as to why should this court form a view not diverging to their observations, no useful purpose would be served in continuing the proceedings against petitioners who are facing trial for the last about 18 years.

18. For the foregoing reasons, the petition is allowed. Consequently, FIR No.72 of 2004 under Sections 341/448 IPC registered at P.S. Connaught Place, New Delhi and the proceedings emanating therefrom are hereby quashed.

Crl.M.A.No.19314/2012

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

SEPTEMBER 24th, 2014
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