

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 9188 of 2023

Petitioner :- Dinesh Chandra Jaiswal And Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Lko. And Others

Counsel for Petitioner :- Shailendra Kumar Tiwari

Counsel for Respondent :- G.A., S N Singh Gaherwar

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Ajai Kumar Srivastava-I, J.

1. Heard learned counsel for the petitioners, learned A.G.A. for the State as well as learned counsel for private respondent and perused the record.

2. The present writ petition has been filed with the following main reliefs :-

(a) Issue a writ, order or direction in the nature of certiorari thereby quashing the impugned first information dated 7.10.2023, vide case crime no. 546 of 2023 under Section 420, 406, 506 I.P.C., lodged at Police Station- Sushant Golf City, District- Lucknow as contained in Annexure-1 to this writ petition.

(b) Issue a writ, order or direction in the nature of mandamus commanding the opposite party no 3 not to harass, detain or prosecute the petitioner in pursuance of the impugned F.I.R.

3. We have perused the Mediation Center's Report dated 08.01.2024 and the settlement agreement enclosed along with it. From perusal of the same, it appears that Mediation has become successful and a Settlement Agreement has been arrived at between Dinesh Chandra Jaiswal, Kaushilya Devi, Suresh Kumar Tiwari and Ramakant Tiwari on the one hand and Vimal Pratap Singh and Vandana Singh on the other.

4. Dinesh Chandra Jaiswal entered into a sale agreement with Vandana Singh on 16.10.2019 for a plot measuring 1090 square feet, part of Khasra No. 403 and some part of the sale consideration was also paid as an advance. Kaushilya Devi also entered into a sale agreement with Vandana Singh on the same day for a plot measuring 1090 square feet of Khasra No. 403, and some part of the sale consideration was paid as an advance. Similarly, Suresh Kumar Tiwari had entered into a sale agreement with Vandana Singh for a plot measuring 790 sq ft of Khasra No. 403, and some part of the sale consideration was also paid as an advance. Ramakant Tiwari had entered into a sale agreement with Vandana Singh for a plot measuring 790 sq ft of Khasra No. 403, and

some part of the sale consideration was paid as an advance. However, sale deed could not be executed between the parties as a dispute arose, leading to the lodging of the impugned F.I.R.

5. The parties have settled their dispute with regard to the aforesaid sale of plots situated at Khasra No.403 at Ahmamau, Lucknow. Payment of Rs.600000/-, by means of four demand drafts, has been made to the informant, Vandana Singh on 08.01.2024. The informant has agreed that she shall not claim any amount in future. The parties have also agreed that they would have not any objection if this Court decides writ petition no.9188 of 2023, accordingly.

6. Aggrieved by the above F.I.R., petitioners approached this Court and filed the present writ petition seeking relief for quashing the impugned F.I.R. by way of a writ of certiorari.

7. Since the matter relates to commercial dispute on a minor issue, therefore, parties have decided to settle their dispute by way of a settlement agreement. Accordingly, a settlement agreement has been executed between the parties on 08.01.2024, which has been annexed as Annexure- E to the writ petition.

8. According to the terms & conditions of settlement agreement, both the parties have withdrawn all the cases and complaints filed by them against each other. Learned counsel further submitted that since the parties have settled their dispute, hence, it is necessary to quash the impugned First Information Report.

9. Learned counsel for the petitioners further stated that the dispute was commercial in nature and both the parties have settled their dispute by way of settlement agreement, hence, it is necessary in the interest of justice that the impugned F.I.R. be quashed.

10. Learned counsel for the petitioner says that he had deposited Rs.50000/- in the Mediation and Conciliation Centre of this Court which was subjected to disposal of the writ petition and it is not part of the final settlement/payment of Rs.600000/- that has been made by the first party to the second party.

11. Learned counsel for the private respondent did not dispute the contention rather he conceded that matter between the parties has amicably been settled and further parties have no grievance with each other.

12. Learned A.G.A. has also not disputed the argument advanced by learned counsel for the parties.

13. The parties to the commercial dispute have arrived at a compromise. In such a situation, the Court has inherent jurisdiction to pass a suitable

order as may be necessary to prevent the abuse of process of law to secure the ends of justice.

14. The co-ordinate Bench of this Court had occasioned to discuss the power of the Court in the case of **Nazmul Hasan and Ors. Vs. State of U.P. & Ors. [2018 (7) ADJ 245]** in which it has held in paras 15 which read as under :

"15. Considering the compromise arrived at between the parties on 7.5.2018, as extracted above in paragraph 5 and the categorical stand of the opposite party No. 3 before this Court, we are of the considered opinion that no useful purpose would be served in continuation of criminal proceedings in pursuance of the impugned First Information Report lodged by opposite party No. 3. Accordingly, it would be appropriate, in the facts and circumstances of the case, to quash the impugned First Information Report as continuation of the proceedings of the First Information Report would be a futile exercise."

15. The Apex Court in the case of **Shiji @ Pappu and Ors. Vs. Radhika and another [2011 CJ (SC) 239]** has scrutinized the legal position in case of compromise in criminal cases in which the dispute was private in nature and continuation of proceeding will be sheer abuse of process of law and in this context the technicality should not be allowed to stand in the way of quashing criminal proceeding. Although the power should be used by the court sparingly. It has been held by Apex Court by referring the previous judgments that :

"11. That brings to the decision of this Court in Madan Mohan Abbot' case (supra) whereby the High Court had declined the prayer for quashing of the prosecution for offences punishable under Sections 379, 406, 409, 418, 506/34 IPC despite a compromise entered into between the complainant and the accused. The High Court had taken the view that since the offence punishable under Section 406 was not compoundable the settlement between the parties could not be recognized nor the pending proceedings quashed. This Court summed up the approach to be adopted in such cases in the following words:

"6. We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.

7. We see from the impugned order that the learned Judge has confused compounding of an offence with the quashing of proceedings. The outer limit of Rs 250 which has led to the dismissal of the application is an irrelevant factor in the later case. We, accordingly, allow the appeal and in the peculiar facts of the case direct that FIR No. 155 dated 17-11-2001 PS Kotwali, Amritsar and all proceedings connected therewith shall be deemed to be quashed."

16. To the same effect is the decision of this Court in **Nikhil Merchant v. CBI : 2008 (9) SCC 677** where relying upon the decision in **B.S. Joshi and others vs. State of Haryana and another, (2003) 4 SCC 675**, this Court took note of the settlement arrived at between the parties and quashed the criminal proceedings for offences punishable under Sections 420, 467, 468 and 471 read with Section 120B of IPC and held that since the criminal proceedings had the overtone of a civil dispute which had been amicably settled between the parties it was a fit case where technicality should not be allowed to stand in the way of quashing of the criminal proceedings since the continuance of the same after the compromise arrived at between the parties would be a futile exercise. We may also at this stage refer to the decision of this Court in **Manoj Sharma v. State and Ors. : (2008) 16 SCC 1**. This Court observed:

"8. In our view, the High Court's refusal to exercise its jurisdiction under Article 226 of the Constitution for quashing the criminal proceedings cannot be supported. The first formation report, which had been lodged by the complainant indicates a dispute between the complainant and the accused which is of a private nature. It is no doubt true that the first information report was the basis of the investigation by the police authorities, but the dispute between the parties remained one of a personal nature. Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter.

9. As we have indicated herein before, the exercise of power under Section 482 Code of Criminal Procedure of Article 226 of the Constitution is discretionary to be exercised in the facts of each case. In the facts of this case we are of the view that continuing with the criminal proceedings would be an exercise in futility."

17. In the case of **Nikhil Merchant Vs. Central Bureau of Investigation [2008 CJ (SC) 1114]** the Apex Court has discussed the scope of compromise where the disputes are private in nature and quashed the criminal proceedings on the basis of mutual compromise.

18. The Hon'ble Apex Court in the case of **Manoj Sharma v. State and Ors. MANU/SC/8122/2008 : (2008) 16 SCC 1** has held that the High Court has ample power under Article 226 of the Constitution of India to exercise the power to quash the first information report where the dispute is private in nature. The High Court should take a pragmatic view in the matter.

19. **Manoj Sharma v. State and Ors. MANU/SC/8122/2008 : (2008) 16 SCC 1** was doubted by a Division Bench of the Supreme Court in **Gian Singh v. State of Punjab, (2010) 15 SCC 118**; the larger Bench of three judges in **Gian Singh v. State of Punjab, (2012) 10 SCC 303** observed in Para 58 and 61 of its judgment as follows :-

"58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its

opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.

61. 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 predominately civil flavour stand on a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the 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."

20. The Hon'ble Apex Court in the case of **Madan Mohan Abbot Vs. State of Punjab (Civil Appeal No. 555 of 2008 (arising out of SLP (Crl.) No. 4579 of 2006) decided on 26.3.2008)** also has discussed that the dispute is purely personal in nature and arose out of extensive business dealing and where there is no public policy involved, the Court should ordinarily accept the terms of compromise.

21. Since, parties of the case have amicably settled their disputes which arose due to a land dispute, in such a situation, it will be futile to engage them in further litigation. After getting relief from legal proceedings the parties may live their life peacefully. In present scenario, the chance of ultimate conviction is also bleak and therefore no useful purpose is likely to be served by allowing criminal proceeding against the petitioners. It may be sheer wastage of valuable time to Court also.

22. Accordingly, the writ petition is **allowed** and the proceedings of impugned First Information Report bearing F.I.R./Case Crime No.0546 of 2023 under Section 420, 406, 506 I.P.C., lodged at Police Station-Sushant Golf City, District- Lucknow, are hereby quashed.

23. The amount of Rs.50000/- lying with the Mediation and Conciliation Centre of this Court shall be released in favour of the petitioners, if an appropriate application be made by them or their counsel.

Order Date :- 2.2.2024

A.Dewal