

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 549 of 2015

- Prashant Mittal S/o Prakash Chand Mittal Aged About 39 years R/o Va-10, Sector-1, Shankar Nagar, Raipur, Police Station Shankar Nagar, Tah. And District Raipur Chhattisgarh.

---- **Petitioner**

Versus

1. State Of Chhattisgarh, through The Police Station House Officer, Police Station Saraswati Nagar, Raipur, Tahsil and District Raipur Chhattisgarh.
2. Dr. Jawahar Agrawal S/o Late Moti Lal Agrawal Lifeworth Super Speciality Hospital, Samta Colony, Police Station Saraswati Nagar, Raipur, District Raipur Chhattisgarh.

---- **Respondents**

For Petitioner	:	Mr. Ashish Surana, Advocate
For Respondent No.1	:	Mr. Arvind Shukla, Panel Lawyer.
For Respondent No.2	:	Mr. Raja Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Judgment /Order on Board

22.07.2015

1. This is a petition under Section 482 of the Code of Criminal Procedure interalia stating that the petitioner had filed a complaint on 26.9.2011 under section 138 of the Negotiable Instruments Act, 1881 (for short N.I. Act) before the Court of learned Judicial Magistrate First Class, Raipur for alleged dishonour of cheque of Rs. 10 lakhs bearing No.247455 dated 20.08.2011 on account of a loan taken by respondent No.2 in discharge of liability.
2. Respondent no.2 in the meanwhile filed a complaint u/s 156(3) Cr.P.C. before the Court of JMFC, Raipur stating that Dr. Jawahar Agrawal had obtained loan of Rs.20 lakhs from Anil Baradia (co-accused) and issued the promissory note and two blank cheques as security to Mr. Anil Baradia. It is further submitted that he has repaid

the entire loan amount of Rs.20 lakhs but co-accused Anil Baradia did not return the cheques and promissory note and misused the cheques by getting it dishonoured through the petitioner as also co-accused Bhavin Mehta. Initially an application was preferred under Section 156(3) of Cr.P.C., to investigate and register the crime under sections 420, 407, 468 & 471 read with Section 34 of IPC. On such application, by order dated 19.03.2012, the Police Station Saraswati Nagar was directed to investigate the complaint. Thereafter the complaint was investigated and a charge sheet u/ss 420, 467, 468 & 471/34 of IPC was filed against the petitioner Prashant Mittal as also co-accused Bhavin Mehta and Anil Baradia. It is submitted by the parties that in the meanwhile, the petitioner and respondent No.2 Dr. Jawahar Agrawal have resolved their disputes and as such arrived at an amicable settlement in the matter and consequently an application was filed under Section 320(2) of Cr.P.C. before the JMFC vide Annexure P-4 to compound the offences. Subsequently, the trial Court by order dated 27.6.2014 allowed the application u/s 320(2) compounding the offence only to the extent of section 420 IPC. Therefore, the offences u/s 467, 468 & 471 read with Section 34 IPC still continue as the Court was denuded of its power to compound the said offences

3. Counsel for Respondent No.2 submits that his written consent was accorded and an affidavit is also filed to the effect that the dispute has been settled and they do not want to pursue the proceedings any further. During the course of hearing, it is submitted that the other co-accused are absconding. Thereafter, on the basis of settlement the petitioner Prashant Mittal filed an application u/s 257 for withdrawal of the complaint filed u/s 138 of the N.I.Act, before the JMFC and on due consideration, the same was allowed by the trial Court on 23.11.2013 vide Annexure P-6 whereby respondent No.2 was acquitted in such complaint.

4. Learned counsel for both the parties would submit that the petitioner and respondent no.2 have entered into compromise to settle the dispute and therefore, both the parties jointly submit that after quashment of the impugned proceeding, no grievance would be existing against each of them as the *inter-se* dispute has been compounded.
5. Counsel for respondent No.2 has placed on record the affidavit of Mr. Jawahar Agrawal. He submits that he has gone through the relief's clause in the instant petition seeking quashment of Criminal Case No.1585/2013 and the compromise having been arrived at, respondent No.2 do not want to continue the criminal case against the petitioner Prashant Mittal. The affidavit filed by respondent No.2 has supported the prayer made in the petition for quashment of the criminal case No.1585/2013 against the petitioner on the basis of mutual consent and compromise.
6. The Supreme Court in case of ***Gian Singh Vs. State of Punjab and (2012)10 SCC 303 : 2012 Cri.L.J4934*** laid down guidelines for quashing of the non-compoundable offences in the event of compromise being entered into between the parties. Para 49, 50 53, 54 are relevant here and quoted below:

“49. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, ‘nothing in this Code’ which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to

secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

50. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

53. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although 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 wrong doing that seriously endangers and threatens well-being of 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 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 Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and 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 victim and the offender and 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 F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of 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.”

7. Reading of the above quoted paragraphs would show that Hon'ble Supreme Court has held that where certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions where the wrong is basically to the victim and the offender and the victim have settled all the disputes *inter-se* amicably, then irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent powers, quash the criminal proceeding or criminal complaint or F.I.R., if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.
8. By application of the aforesaid principles to the instant case, since the

complainant/respondent No.1 has stated on oath by filing affidavit as also before the Court that the complainant and petitioner have amicably settled the dispute and considering that the dispute arises out of monetary transaction and is of civil nature, this Court is satisfied that there is hardly any likelihood of the offender being convicted in the teeth of submission made by the complainant.

9. Therefore, considering the gravity of crime and nature of the dispute and since the parties have entered into compromise and the complainant/respondent No.2 does not want to continue the criminal proceedings against the petitioner any longer, I deem it expedient to exercise the inherent power conferred under section 482 Cr.P.C., in the instant case. Accordingly, the proceedings of Criminal Case No.1585/2013 (*State of C.G. v. Prashant Mittal*), registered for the offences punishable under Sections 467, 468, 471 read with Section 34 of IPC pending in the Court of learned JMFC, Raipur arising out of charge sheet filed by Police of P.S. Saraswati Nagar, Raipur, in Crime No.96/2012 against the present petitioner are quashed. Consequently, this petition is allowed.

**Sd/-
GOUTAM BHADURI
JUDGE**