

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Misc. No. M-2601 of 2013
Date of Decision: 29.07.2015**

Deepak Arora

...Petitioner(s)

Versus

State of Haryana & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Ram Bilas Gupta, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of FIR No.44 dated 16.2.2012 under Sections 420/34 IPC and Section 2(C)4 of the Prize Chit and Money Circulation Schemes (Banning) Act, 1978 registered at Police Station SGM Nagar, District Faridabad (Annexure P-1) on the basis of affidavit dated 28.9.2012 (Annexure P2) of the complainant-respondent no.2 to the effect that the matter has been compromised between the parties.

On the basis of the complaint made by respondent no.2, the aforesaid FIR was registered against the petitioner with Police Station SGM Nagar, District Faridabad. While the case was pending before the trial Court, the parties entered into a compromise, as per affidavit dated 28.9.2012, as furnished by the complainant-respondent No.2, the contents of which read as under:-

“I, Dilip Kumar Upadhyay son of Shri Vijay Shanker Upadhy Resident of house No.2/213, Block-A, Phase-I, Arvind Puam Sikandra, Agra, do hereby solemnly affirm and declare as under:-

- 1. That I am the complainant in case FIR No.44 dt.16.2.2012 U/s 420/34 IPC, P.S. S.G.M. Nagar.*
- 2. That I have arrived at a compromise with Deepak Arora son of Shri Shyam Lal Arora, Resident of H.No.130, Sector-22, Faridabad.*
- 3. That there is no disputes between complainant and accused Deepak Arora & his family members.*
- 4. That now, I want to withdraw the above noted complaint against Deepak Arora & his family members.*
- 5. That I have no objection if the FIR be quashed against Deepak Arora & his family members.*

*Sd/-
DEPONENT*

Verification:

Verified that the contents of this affidavit are true and correct to the best of my knowledge and belief.

28 SEP 2012

*Sd/-
DEPONENT”*

Learned counsel for the petitioner submits that apart from the aforesaid affidavit dated 28.9.2012, the complainant has also suffered a statement in the Court of Ms. Ritu Y.K. Behl, Additional Sessions Judge, Faridabad on 21.9.2012, which reads as under:-

“Statement of Sh. Dalip Kumar Upadhai son of Sh. Vijay Shankar Upadhai, Age 40 years, Marketing Business, R/o H.No.2/213, A-Block, Phase-1, Arvind Puram, Sikandara, Agra, at present Pushpanjali Ashiyana, H.No.75, Park Avenue, Agra (UP).

On SA

Stated that I am the complainant in FIR No.44/2012. I have arrived at a compromise with Deepak Arora for a sum of Rs.1,00,000/- towards full and final settlement qua him only. I have received an amount of Rs.70,000/- by way of demand draft No.046757 drawn on HDFC Bank, Faridabad dated 20.9.2012 and Rs.30,000/- in compromised the matter with the applicant Deepak Arora only. I undertake to appear for compounding the offence or for quashing of FIR against Deepak Arora as and when required. I have no objection if the bail is granted to Deepak Arora. I also placed on record my affidavit in this regard.

RO & AC

Sd/-

*(Ritu Y.K. Behl)
ADJ/ASJ, Fbd, 21.09.2012”*

Considering the aforesaid affidavit, this Court, vide order dated 30.7.2014, had directed the parties to appear before the Illaqa Magistrate to get their statements recorded on 18.8.2014 or on the date fixed by the Illaqa Magistrate/trial Court regarding the

compromise having been entered between the parties voluntarily.

Pursuant to the aforesaid order dated 30.7.2014, the petitioner appeared before the trial Court but the respondent no.2, who had received an amount of Rs.1,00,000/- from the petitioner towards full and final settlement in the case started avoiding the petitioner to make a statement before the trial Court.

In these circumstances, learned counsel for the petitioner submits that though the instant petition has been filed for quashing of the present FIR on the basis of affidavit/compromise, but taking into consideration the conduct of complainant-respondent no.2, the present FIR deserves to be quashed even if respondent no.2 is not coming forward to record his statement in support of affidavit dated 28.9.2012 before the trial Court despite receiving an amount of Rs.1,00,000/-.

The report of Judicial Magistrate 1st Class, Faridabad dated 16.10.2014 shows that notice was issued to the complainant-respondent no.2 but the same was received back unserved. Thereafter, another notice was issued to respondent no.2 for 10.10.2014, but he has not opted to come forward to depose with regard to his affidavit dated 28.9.2012.

Learned counsel for the petitioner relies upon a judgment of this Court in the case of **Ram Lal & ors. v. State of Haryana & anr. 2008(2)RCR (Criminal) 823** to submit that when the parties have entered into a compromise but the complainant has backed out

from the same, the FIR is liable to be dismissed. The relevant paragraph of the said judgment in **Ram Lal & ors. v. State of Haryana & anr.** (supra) reads thus:-

*“4. Learned counsel for the petitioners by placing reliance upon the judgment of Hon'ble Supreme Court in the case of **Mohd. Shamim v. Smt. Nahid Begum, 2005 (1) RCR (criminal) 697: 2005(1) Apex Criminal 299 (SC)** contends that in view of the compromise having been entered into between the parties and amount having been received by the complainant, the continuation of proceedings is nothing but misuse of the process of the Court. The Hon'ble Supreme Court has been pleased to observe as under:-*

*14. This Court in **Ruchi Agarwal vs. Amit Kumar Agrawal & Ors.** [2004 (8) Supreme 525], in almost a similar situation has quashed a criminal proceeding against the husband, stating :*

"....Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

8. In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue...."

15. In view of the conduct of the First Respondent in entering into the aforementioned settlement, the continuance of the criminal proceeding pending against the Appellants, in our opinion, in this case also, would be an abuse of the process of the court. The Appellant No.1, however, would be entitled to withdraw the sum of Rs.50,000/- which has been deposited in the court. We, therefore, in exercise of our jurisdiction under Article 142 of the Constitution of India direct that the impugned judgment be set aside. The First Information Report lodged against the Appellants is quashed. The Appeal is allowed. However, this order should not be treated as a precedent.”

On the other hand, learned State counsel submits that instead of filing the present petition on the basis of compromise, the petitioner is required to file a fresh petition for quashing of the FIR in question on merits of the case.

Having heard the rival contentions, I find that in view of judgment of this Court in the case of **Ram Lal & ors. v. State of Haryana & anr.** (*supra*), the complainant-respondent no.2 has no right to back out from the compromise particularly when he has received an amount of Rs.1,00,000/- towards full and final settlement and had undertaken to appear for compounding the offence or for quashing of FIR against the petitioner Deepak Arora. As per his statement dated 21.9.2012 made before learned Additional Sessions Judge, the respondent no.2 was required to make statement before

the competent forum in support of the settlement. The act on the part of respondent no.2 of backing out from the compromise shows his greediness in the matter.

Accordingly, on the basis of affidavit dated 28.9.2012 (Annexure P2), the present petition is allowed and the FIR No.44 dated 16.2.2012 under Sections 420/34 IPC and Section 2(C)4 of the Prize Chit and Money Circulation Schemes (Banning) Act, 1978 registered at Police Station SGM Nagar, District Faridabad (Annexure P-1) is quashed *qua* the petitioner.

July 29, 2015
AK

(HARI PAL VERMA)
JUDGE