

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

**Crl. Misc. No. M-51481 of 2007
Date of decision: 15.10.2015**

Kamlesh Sharma

.....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Deepak Sabharwal, Advocate

for the petitioners.

Mr. R.S. Randhawa, Addl. AG, Punjab.

Mr. Rakesh Kumar, Advocate
for respondent no. 3.

ANITA CHAUDHRY, J.

This is a petition under Section 482 Cr.P.C. for quashing FIR No. 161 dated 04.07.2005 registered under Sections 420, 406, 464 IPC, Police Station City Kapurthala, District Kapurthala and the consequent proceedings arising out of the same, on the basis of compromise dated 13.02.2006 (Annexure P-2). The petitioner also seeks quashing of the order dated 23.08.2007 (Annexure P-10), vide which the cancellation report was returned by the Chief Judicial Magistrate, Kapurthala and reinvestigation was ordered.

Some basic facts are necessary; Bimla Joshi - respondent no.3 is the sister of Shakuntla Rani who is the mother-in-law of petitioner. Respondent no.3 is settled abroad. The petitioner had pleaded that due to mis-understanding in the business several cases were filed and 10 FIRs came to be lodged by both the sides and the present FIR Annexure P-1 is an off-shoot of such litigations. It is pleaded that on 13.02.2006, compromise was effected wherein three sets of properties were handed over to respondent no.3 and her husband and one property came to the petitioner. The agreement was signed by three witnesses. Pursuant to this agreement, FIR no.221 dated 27.07.2002 registered under Section 406/420 IPC at Police Station Kapurthala lodged against respondent no.3 and her husband by the petitioner was quashed in CRM No.M-31213-M-2005 on 19.10.2006. It was pleaded that prior there to an order was passed on 24.07.2006 in the same petition, Annexure P-4 and it was agreed that both the parties would withdraw cases lodged against each other.

The petitioner further pleaded that they had filed an affidavit Annexure P-5 on 25.09.2006 and pursuant there to a final order was passed and the FIR was quashed. The petitioner and his family did not file the quashing petition then and were now seeking its quashing. It was pleaded that respondent no.3 and her husband had taken advantage of the compromise and went back to England and on 07.12.2006 got CRM No.M-77181-2006 filed in the Court seeking directions that the police was not taking action in the FIRs registered against the petitioner and her family concealing the fact that FIR

against respondent no.3 had been quashed on the basis of compromise. It was pleaded that respondent no.3 and her husband returned from England and sold the properties which came to them under the compromise on 29.06.2007 and 03.07.2007. Copies of the sale deeds Annexures P-6 and P-7 were appended. The petitioner was praying that the FIR and the subsequent proceedings should be quashed on the basis of the compromise.

Respondent no.3 through the power of attorney alone filed reply pleading that the true facts had not been disclosed and the petitioners had not complied with the terms of the compromise and on earlier occasion when they had sought quashing of FIR no.221 dated 27.07.2002 as it was lodged on wrong facts. It was pleaded that the petitioner was facing number of FIRs for cheating and misappropriation and a compromise deed was executed for settling all disputes but not that compromise and there was no reference to the aforesaid FIR and the petitioner did not fulfill the conditions and the petitioners had not complied with the compromise and had not withdrawn the proceedings before different Courts. It was pleaded that the petitioners had sought disposal of case on merits. It was pleaded that a civil suit was filed by the petitioners which had been decided on 25.01.2008 and was dismissed. It was pleaded that mother-in-law of the petitioner had filed the SLP against the order dated 01.08.2003 and they were playing hide and seek with the Court. It was pleaded that the private respondents had a firm in the name of the petitioner's husband in which husband of respondent no.3 was a partner and they had invested Rs.10 lacs from time to

time and no share had been paid to them and a sum of over Rs.48 lacs was outstanding till 2001 and the petitioner had changed the name of the firm without their permission and the petitioner had no concern with the business and he had filed a civil suit which was dismissed on 25.01.2008. It was pleaded that FIR no. 161 was registered against the petitioner as petitioner has usurped all the investments and profit from Sharma Silk Store through fraudulent means. The respondent had given the details of other FIRs which were pending against the petitioners.

It would be necessary to reproduce the compromise Annexure P-2 and it reads as under:-

AGREEMENT

“As per witness mentioned below on 13.2.2006, Sh Ved Parkash s/o Charan Dass Joshi r/o 148, Mainer Road, Darbi Hall, Mohalla Malkana, Kapurthala on behalf of himself and his wife Bimla Joshi her power of attorney and her second party Vijay Kumar Sharma s/o Tarsem Lal Sharma r/o 25 Green Avenue, Kapurthala and Smt. Shakuntla w/o Sh Tarsem La I Sharma between them agreement has been executed between both the parties as per term mentioned below:

1. That Plot No. 28 existing in New Dana Mandi Kapurthala Vijay Kumar hand over the possession of the plot to Ved Parkash son of Charan Dass Joshin today itself.

2. That Shop No. 29 was existing in the Dana Mandi and value has been assessed Rs.16,00,000/- and half amount of Rs. 8,000/- will be paid to Ved Parkash Joshin on tomorrow i.e. 14.2.2006 and received of abovesaid amount will be given by Kamlesh Sharma w/o Vijay Kumar

on tomorrow and tomorrow on 14.2.2006 sale deed was executed in favour of Ved Parkash Joshi

3. That the house Kothi No 07 existing in Jagjit Park the Shakuntla Devi w/o Tarsem Lal will hand over the possession of the above said house to Ved Parkash Joshi attorney of Smt Bimla Devi from today itself and the Registry of the abovesaid house has already been executed in favour of Bimla Joshi.

4. That shop of red cross existing in Mall Road, shop No. 3 will totally possessed by the Kamlesh Sharma and Sh. Ved Parkash Joshi and no grievance will be shown by Ved Parkash Joshi qua same.

The above said agreement has been executed without any pressure and as per full mutually consent in the presence of respectable persons and from today the party will be responsible to withdraw civil and criminal cases and in this regard different affidavits will be given after proper verification of the Duty Magistrate will be furnished before police department and in the courts.

- 1. Sd/- Ved Parkash Joshi s/o Charan Dass Joshi*
- 2. Sd/- Smt. Shakuntla Devi Sharma w/o Tarsem Lal*
- 3. Vijay Kumar s/o Tarsem Lal*
- 4. Sd/- Smt. Kamlesh Sharma w/o Vijay Kumar Sharma*

WITNESSES:

- 1. Sh. Rajinder Kaura s/o Sh. Roshan Lal r/o Harnam Nagar, V-22/47, Kapurthala.*
- 2. Jaspal Singh s/o Sh. Hari Singh r/o B-07-131, Lahori Ger, Kapurthala.*
- 3. Sh. Satish Bahal s/o Sh. Sham Sunder, Purani Dana*

Mandi, Kapurthala.”

I have heard both the sides.

Counsel for the petitioner had contended that the parties had settled all their disputes and the compromise Annexure P-2 had been arrived at on 13.02.2006. It was urged that the parties had agreed and the concluding paragraph of the compromise shows that all the disputes had been settled without any pressure and the parties were responsible to withdraw all civil and criminal cases and in this regard affidavits were to be given.

The counsel appearing for respondent no.3 urges that the compromise took place under pressure and the affidavit was taken by force in the presence of the police. It was urged that the compromise had not been acted upon as the petitioner had not withdrawn the suit filed in 2001 and ultimately it was dismissed in 2008.

Responding to the arguments, the submission on behalf of the petitioner was that it appears to be a case of miscommunication and the trial in the civil suit continued and he has instructions to state that they had not filed any appeal against the judgment passed in 2008. It was urged that if the petitioner did not withdraw the suit, the defendants could have brought the factum of compromise to the notice of the Court. It was urged that the petitioners had got the FIR no.221 of 2002 quashed on the basis of the compromise and since respondent no.3 was not supporting them in getting the other FIRs quashed, they had approached the Hon'ble Supreme Court in one case and that matter had been remanded.

I have considered the submissions and have gone through the pleadings.

A compromise had been effected in 2006. The compromise was signed by both the sides and they had agreed to withdraw all cases and they were to file affidavits. One FIR registered against respondent no.3 was quashed on the basis of the same compromise. Respondent no.3 did not join the petitioner with respect to other FIRs. Another FIR was quashed without notice to the complainant and the petitioner approached the Apex Court and the matter has been remanded for decision after notice to the complainant.

Since the parties had agreed to bury the hatchet and the property had been distributed, the property which came in the hands of petitioner and her husband Ved Parkash Joshi has been sold by him vide sale deed Annexure P6, therefore, it would be an abuse of the process of law if the proceedings in the FIR are allowed to go on. It appears that both the parties took a rigid stand for some reasons and therefore, the matter is hanging for last number of years. In the light of this, the FIR and the subsequent proceedings are quashed.

The petition is allowed.

15.10.2015
sunil

(ANITA CHAUDHRY)
JUDGE