

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

**Crl. Misc. No.M-6559 of 2008
Date of decision: 15.10.2015**

Vijay Kumar and another

.....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 of FIR No. 57 dated 14.11.2002 registered under Sections 419, 420, 465, 466, 467, 468, 477, 120-B 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. The petitioner also seeks quashing of the order dated 25.07.2013, vide which charge had been framed against the petitioner by the Chief Judicial Magistrate, Kapurthala.

Some basic facts are necessary; Ved Parkash Joshi - respondent no.3 is the brother-in-law of Shakuntla Rani – petitioner no.2 being married to her sister. Petitioner no.1 is the son of petitioner no.2. 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 between both the sides and the present FIR Annexure P-1 is an off-shoot of such litigations. It was pleaded that on 13.02.2006, a compromise was effected wherein three sets of properties were handed over to respondent no.3 and his wife and one property came to the wife of petitioner no.1. 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 his wife 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 others.

The petitioners further pleads 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 but were now seeking its quashing. It was pleaded that respondent no.3 and his wife 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 petitioners 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 his wife 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 petitioners were praying that the FIR and the subsequent proceedings should be quashed on the basis of the compromise.

Respondent no.3 alone filed the 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 the quashing of FIR no.221 dated 27.07.2002 as it was based on wrong facts and the petitioner was facing number of FIRs for cheating and misappropriation and a compromise deed was executed for settling all disputes. It was pleaded that there was no reference to the aforesaid FIR and the petitioner did not fulfill the conditions and as the petitioners had not complied with the compromise and had not withdrawn the proceedings before different Courts and had sought disposal of cases on the basis of merits. It was pleaded that a civil suit filed by the petitioners had recently been decided on 25.01.2008 which was subsequently dismissed. It was pleaded that petitioner no.2 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 in which 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 has 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. 57 was registered against the petitioners as a sum of Rs.2 lacs has been withdrawn from the account by forgery and the Court had granted anticipatory bail on the condition that Rs.2 lacs would be deposited and the amount was still lying in the bank and the petitioner had not explained as to who would get the amount and without releasing the above amount, the petitioner had no right to seek the quashment of the FIR and he should face prosecution. The respondent had given the details of other FIRs which were pending against the petitioner which are not relevant at the stage.

It would be useful to reproduce the compromise effected between the parties. The compromise Annexure P-2 reads as under:-

AGREEMENT

As per witness mentioned below on 13.2.2006, Sh Ved Parkash s/o Charan Dass Joshi r/o 148, Main 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 Lal 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 had 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 w/o Tarsem Lal

3. Sd/- 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.

Counsel for the petitioners had contended that the parties had settled all their disputes and the compromise Annexure P-2 had been arrived at on 13.02.2006. He urges that the FIR was registered on the allegations that Rs.2 lacs had been withdrawn from the account and the High Court while allowing anticipatory bail to the petitioner had directed them to deposit Rs.2 lacs and the same had been deposited in the Court. It was urged that the parties had agreed and the concluding paragraph reads 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. It was urged that Rs.2 lacs deposited by them may be given to respondent no.3. It was urged that the compromise was handed over to the police and the police had prepared a cancellation report and had sent it to the Court but the Magistrate sent the matter back to the police. The counsel had referred to Annexure R-2 passed in CRM-M-48808-2002 and it was urged that there were directions that the sum of Rs.2 lacs would be deposited in the Court and that amount would be put in a fixed deposit earning the maximum interest and the Court could pass an appropriate order considering the facts and circumstances of the case. It was urged that the amount was deposited and anticipatory bail was allowed and the amount can be withdrawn by respondent no.3.

The counsel appearing for respondent no.3 urges that the compromise had been taken 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 they had filed in 2001 and ultimately it was dismissed in 2008. It was urged that the compromise was effected in February, 2006.

Responding to the arguments, the submission on behalf of the petitioner was that it appears to be a case of miscommunication and the trial to continued and he has instructions to state that they had not filed any appeal against the judgment that was passed in 2008. It was urged that if the petitioner did not withdraw the suit, the defendants could have brought the fact to the notice of the Court. It was urged that the petitioners had got 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 and the matter had been sent back.

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 the cases and they were to file affidavits with the police. The FIR registered against respondent no.3 was quashed on the basis of this very compromise but since respondent no.3 did not support the petitioner with respect to their FIRs, therefore, the petitioner approached the Apex Court and the matter was remanded.

Since the parties had agreed to bury the hatchet and the property had been distributed, the property which came in the hands of Ved Parkash Joshi has been sold by him, therefore, it would be an

abuse of the process of law if the FIR and the subsequent proceedings are not quashed. It appears that both the parties took a rigid stand for some reasons and therefore, the matter kept hanging. It has not been disputed that the properties which came to respondent no.3 - Ved Parkash, had been sold by him. The sale deeds are also available on record. In the light of this, the FIR and the subsequent proceedings are quashed.

15.10.2015

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(ANITA CHAUDHRY)
JUDGE