

\$~75

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: February 18, 2015

+ **CRL.M.C. 594/2015**

M/S D D INFOTECH & ORS Petitioners
Through: Mr. Dhananjay Kumar, Advocate

versus

STATE (NCT OF DELHI) & ANRRespondents
Through: Mr. Navin Sharma, Additional
Public Prosecutor for respondent-
State with ASI Om Parkash
Mr. Rakesh Singh, AR of
respondent No.2 in person

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

Crl.M.A.2311/2015 (Exemption)

Allowed subject to all just exceptions.

Crl.M.A.2312/2015 (for condonation of delay)

There is delay of 20 days' in re-filing the accompanying petition.

For the reasons stated in the application, it is allowed and the delay is condoned.

The application is accordingly disposed of.

CRL.M.C. 594/2015 & Crl.M.A.2310/2015 (Stay)

Quashing of FIR No.193/2012, under Section 420 of IPC

registered at police station Hauz Khas, Delhi is sought on the strength of amicable resolution of the dispute between the parties vide *Mediated Settlement* of 2nd December, 2014 (*Annexure P-2*).

Notice.

Mr. Navin Sharma, learned Additional Public Prosecutor for respondent-State accepts notice and submits that Mr. Rakesh Singh, is the Authorized Representative of respondent No.2-company, present in the Court, is the complainant/first-informant of the FIR in question and has been identified to be so by ASI Om Parkash on the basis of identity proof produced by him.

Mr. Rakesh Singh, Authorized Representative of respondent No.2-company, present in the Court, submits that the dispute between the parties has been amicably resolved vide aforesaid *Mediated Settlement*.

Learned counsel for petitioners submits that a post-dated cheque bearing No.628742 dated 25th February, 2015 for ₹1 lac has been handed over to AR of respondent No.2 and that it would be encashed and that if it is not encashed, then the proceedings arising out of the FIR may continue.

Authorized Representative of respondent No.2-company submits that the terms of aforesaid *Mediated Settlement* would be fully acted upon once the cheque in question stands encashed. Respondent No.2 affirms the contents of aforesaid *Mediated Settlement* and of his affidavit of 11th February, 2015 supporting this petition and submits that now no dispute with petitioners survives and so, the proceedings arising out of the FIR in question be brought to an end provided the aforesaid cheque is duly encashed.

In '*Gian Singh Vs. State of Punjab*' (2012) 10 SCC 303, Apex

Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

“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 aforesaid dictum stands reiterated by the Apex Court in a recent judgment in *Narinder Singh v. State of Punjab* (2014) 6 SCC 466. The pertinent observations of the Apex Court in *Narinder Singh (Supra)* are as under:-

29. *In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:*

29.1 *Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No*

doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet

has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

In the facts and circumstances of this case and in view of the aforesaid *Mediated Settlement* and the fact that the subject matter of this FIR is a commercial dispute, which now stands mutually and amicably settled between parties, I find that continuance of proceedings arising out of the FIR in question would be an exercise in futility.

Accordingly, this petition is allowed subject to cost of ₹10,000/- to be deposited by petitioners with *Prime Minister's Relief Fund* within two weeks from today. Upon encashment of aforesaid cheque and after placing on record the receipt of cost, FIR No.193/2012, under Section

420 of *IPC* registered at police station Hauz Khas, Delhi and the proceedings emanating therefrom shall stand quashed *qua* petitioners.

This petition and the application are accordingly disposed of.

Dasti.

(SUNIL GAUR)
JUDGE

FEBRUARY 18, 2015

S