

\$~40

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

+ W.P.(CRL) 2309/2015 & Crl. M.A.15147/2015

DEEPAK MAVI

..... Petitioner

Through: Mr. Muhul Dhawan, Adv.

versus

STATE OF DELHI & ANR

..... Respondent

Through: Ms.Parul Jamwal, Adv. for Mr.Rajesh  
Mahajan, ASC for the State

SI Bijender Singh, PS Okhla Industrial Area

Mr.Sunil Fernandes, Standing Counsel with

Mr.Deepak Pathak, Adv. for BSES RPL/R-2

**CORAM:**

**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**ORDER**

%

**15.10.2015**

The present petition has been filed seeking quashing of FIR No.146/2015 (P.S. Okhla Industrial Area) instituted for offence under Section 135 of the Electricity Act, 2003.

It has been submitted on behalf of the petitioner that pursuant to an inspection in the premises of the petitioner on 20.8.2014, a case of theft of electrical energy was registered and the assessment bill of the amount of Rs.3,36,901/- was raised.

The petitioner and the respondent No.2, the electric supply company, decided to end the litigation and accordingly an agreement was made

whereby the petitioner was required to pay an amount of Rs.2,19,000/- towards full and final payment of the electrical energy said to have been consumed in an illegal and unauthorised manner.

It appears from the records that thereafter, because of some miscommunication, a further bill of Rs.3,46,000/- was raised and the petitioner was made to understand that unless the amount referred to above is paid, the electric line in the premises of the petitioner would be disconnected.

The petitioner thereafter preferred a complaint before the Consumer Grievance Redressal Forum (CGRF); where the Forum, by order dated 4.3.2015, held that the FIR No.146/2015 (subject FIR) was registered due to miscommunication in the concerned Police Station.

The Consumer Grievance Redressal Forum did not stop at that. Finding that the respondent No.2/electrical company had been irresponsible in subjecting the petitioner to mental and physical harassment, awarded compensation of Rs.10,000/- and litigation expenses quantified at Rs.5,000/- was awarded and it was directed that aforesaid amounts be credited in the Consumer's Electricity Account of the petitioner.

Learned counsel appearing for respondent No.2 submits that pursuant to the settlement between the petitioner and the Electric company (R-2) and payment of the electrical dues, no lis is left to be decided and the company does not intend to prosecute the petitioner any further.

In view of the overall circumstances; and looking to the pronouncements of the Supreme Court in ***Gian Singh Vs. State of Punjab and Another***, which has referred to a number of matters for the proposition that even a non-compoundable offence can also be quashed on the ground of

a settlement agreement between the offender and the victim, if the circumstances so warrant; and also *Narinder Singh & Ors. Vs. State of Punjab & Anr.*, wherein the Supreme Court held as follows:-

*“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 “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.”*

Considering the aforementioned facts and circumstances and the contention of respondent No.2 at whose instance the FIR was instituted, this

Court is inclined to quash the FIR (FIR No.146/2015). FIR No.146/2015 and all the emanating proceedings thereof are hereby quashed.

*Dasti.*

**ASHUTOSH KUMAR, J**

**OCTOBER 15, 2015**

**ns**