

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

**Criminal Misc. No. M-41417 of 2015**

**Date of Decision:-09.05.2016**

Naresh Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

**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. Ashok Tyagi, Advocate  
for the petitioner.

Ms. Shaveta Sanghi, AAG Haryana.

**HARI PAL VERMA J.(Oral)**

Prayer in the present petition is for quashing of FIR No.44 dated 16.2.2012, under Sections 420 and 120-B IPC as well as under Section 2(c) & 4 of Prize Chit & Money Circulation Schemes (Banking) Act, 1978, registered at Police Station SGM Nagar, Faridabad (Annexure P-1) along with all consequential proceedings arising therefrom on the basis of compromise/affidavit.

Vide order dated 08.12.2015, this Court had directed

the parties to appear before the Illaqa Magistrate/trial Court to get their statements recorded and the learned Magistrate was directed to forward a report about the genuineness of the compromise to this Court.

On March 04, 2016, this Court had adjourned the case for today and directed the parties to appear before the Illaqa Magistrate/ trial Court on 18.3.2016 or any other date convenient to the Court to get the statements recorded on the plea of the petitioner that the parties could not appear before the trial Court to get their statements recorded in terms of order dated 8.12.2015. Learned counsel for the petitioner contends that despite execution of affidavit dated 10.11.2012, the complainant is not coming forward to get his statement recorded in support of the said affidavit. Relevant para Nos.1 to 4 of the affidavit reads as under :-

- “1. That the deponent/complainant has lodged FIR No.44 dated 16.2.2012, under Sections 420, 34 IPC, and 2(c)/4 P.C. Act & HCS(P) Act, P.S. SGM Nagar, Faridabad.
2. That I have arrived at a compromise with Naresh Kumar son of Sh. Ram Parkash, R/O H.No.3284, Street No.6, Block-A, S.G.M. Nagar, NIT, Faridabad.
3. That I have received a demand draft of Rs.55,000/- No.958752 dated 5.11.2012 drawn at Indian Overseas Bank, NIT Faridabad and Rs.37,000/- in cash as full

and final settlement with the Naresh Kumar s/o Sh. Ram Parkash only for bail purpose.

4. That nothing is due towards Naresh Kumar and I do not want to pursue the FIR No.44 dated 16.2.2012 against Naresh Kumar only and I have no objection if the bail be granted to Naresh Kumar and I have no any dispute with the members of the Naresh Kumar in any manner.”

He further states that in support of the affidavit, respondent No.2-complainant has made a statement before the learned Additional Sessions Judge, Faridabad on 10.11.2012 reiterating the fact that he has compromised the matter with the petitioner and has no objection if the petitioner is released on bail. He further argued that despite there being a direction by this Court to appear before the Illaqa Magistrate/Trial Court to get their statements recorded in the light of affidavit dated 10.11.2012, the respondent No.2-complainant is not coming forward to get his statement recorded. Efforts were made by the petitioner to bring the complainant Dilip Kumar Upadhaya before the trial Court for making his statement regarding the compromise but he has not turned up. Therefore, statement of the complainant could not be recorded pursuant to orders dated 08.12.2015 and 4.3.2016.

Learned trial Court has forwarded the report dated 30.4.2016 along with the certified copy of the affidavit and the

statement of the complainant made in support of the affidavit dated 10.11.2012.

Learned counsel for the petitioner has further argued that in the similar circumstances, this Court in Criminal Misc. No. M-2601 of 2013 titled 'Deepak Arora vs. State of Haryana and another', decided on 29.7.2015, has quashed the FIR qua petitioner Deepak Arora.

Today no one has put in appearance on behalf of respondent No.2-complainant.

However, learned State counsel states that so far as the statement of the complainant in support of the affidavit is concerned, the same was made in context of bail only.

I have heard learned counsel for the parties.

The report forwarded by learned Magistrate refers to the fact that in the present FIR three accused namely Deepak Arora, Rajesh Kumar and Naresh Kumar have been charge-sheeted. Though other co-accused namely Kedar Nath was declared proclaimed person by the police.

This Court in the case of petitioner Deepak Arora (in CRM-M-2601 of 2013) has quashed the FIR qua petitioner by relying upon the judgment of this Court in the case of **Ram Lal and others vs. State of Haryana and another 2008(2) RCR (Criminal) 823**. In **Ram Lal's** case (supra) it was held that when the parties have entered into a compromise but the complainant

has backed out from the same, the FIR is liable to be quashed.

The relevant paragraph of the said judgment reads as under :-

*"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.”*

Therefore, having regard to the judgment passed in **Ram Lal's** case (supra), the complainant has no right to back out from the compromise particularly when he has received the total consideration towards full and final settlement and he has made the statement in the affidavit that he has no dispute with the petitioner in any manner. This term in any manner not to be read in narrow sense rather it includes the quashing of FIR as well. By not coming forward to make statement in support of the affidavit, the complainant intends to take extra benefit without there being any right whatsoever. This act on the part of respondent No.2 backing out from the compromise shows his greediness.

Accordingly, on the basis of affidavit dated 10.11.2012 (Annexure P-2), the present petition is allowed and the FIR No.44 dated 16.2.2012, under Sections 420 and 120-B IPC as well as under Section 2(c) & 4 of Prize Chit & Money Circulation Schemes

(Banking) Act, 1978, registered at Police Station SGM Nagar, Faridabad and the consequential proceedings arising therefrom are hereby quashed qua the petitioner.

May 09, 2016  
Vijay Asija

**( HARI PAL VERMA )**  
**JUDGE**