

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

+ **CRL.REV.P. 63/2016 & CrI.M.B. No.146/2016**

Date of Decision : March 30th, 2016

RAMESH KUMAR GUPTA Petitioner

Through Mr.Prashant Jain, Adv. with
Mr.Virender Vikram, Adv.

versus

M/S SATYAM FINLEASE PVT. LTD Respondent

Through Mr.Shekhar Gupta, Adv.
Mr.Sunil Batra, Director of
respondent/company in person.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present revision petition under Section 401 r/w Section 482 Cr.P.C. has been filed by the petitioner/revisionist, namely, Sh. Ramesh Kumar Gupta for setting aside and quashing the judgment of conviction passed by Ms. Rekha Rani, District and Sessions Judge, West, Tis Hazari Courts, New Delhi in Criminal Appeal No. 95/2015 and 97/2015 dated 06.01.2016 maintaining the conviction of the revisionist in the judgment dated 13.10.2014 in Complaint no. 4934/2014 (Old no:-265/2013) and 4932/2014 (Old no:-290/2013) passed by Sh. Gaurav Gupta, MM, New Delhi thereby convicting the revisionist under Section 138 N.I. Act, on the basis of the settlement deed arrived at between the petitioner/revisionist and respondent,

namely, M/s Satyam Finlease Pvt. Ltd. through its director, having its office at 107-A, Shilok House-1, Karampura Commercial Complex, New Delhi-110015, on 27.01.2016.

2. Learned Additional Public Prosecutor for respondent-State submitted that Mr. Sunil Batra has been identified to be the director of the respondent-company by his counsel.

3. The factual matrix of the present case is that the present complaint was filed by the respondent-company through its director-Mr. Sunil Batra alleging that the accused had availed a loan of Rs. 5 lacs from the complainant. It has been averred that in order to discharge his liability, the accused issued a post dated cheque bearing No. 760167 dated 05.03.2013 for Rs. 5 lacs drawn on State Bank of Bikaner & Jaipur, in favour of the complainant. On presentation, the said cheque was returned unpaid with remarks 'funds insufficient'. Thereafter, legal notice of demand was sent to the accused. However, despite service of the notice, the accused failed to make the payment against the cheque within fifteen days and consequently the present complaint case was filed.

Thereafter, the Trial Court vide judgment dated 13.10.2014 directed the revisionist to undergo simple imprisonment for a period of six months and to pay to the complainant, compensation amount of RS. 5,10,000/- within a period of 30 days from the date of the judgment in default of which to further undergo simple imprisonment of six months. The revisionist preferred an appeal against the said order of conviction and sentence vide which the said conviction was upheld. After the passing of the judgment by the appellate Court, the

revisionist was taken into custody. After the revisionist was sent to jail, the relatives of the revisionist settled the matter with the respondent.

4. Mr. Sunil Batra present in the Court submitted that the dispute between the parties has been amicably resolved. As per the settlement deed, it is agreed that the respondent has received the total consideration amount of complaint no.:- C.C. 4934/2014 titled as 'M/s Satyam Finlease Pvt. Ltd. vs. Ramesh Gupta' in respect of Cheque bearing no.:- 760167 dated 05.03.2013 for a sum of Rs. 5 Lakhs; complaint no. C.C. 4933/2014 titled as 'M/s Satyam Finlease Pvt. Ltd. vs. Ramesh Gupta' in respect of Cheque bearing no.:- 760171 dated 18.03.2013 for a sum of Rs. 10 Lakhs; complaint no. C.C. 4932/2014 titled as 'M/s Satyam Finlease Pvt. Ltd. vs. Ramesh Gupta' in respect of Cheque bearing no.:- 760168 dated 13.03.2013 for a sum of Rs. 5 Lakhs; and complaint no. C.C. 4935/2014 titled as 'M/s Satyam Finlease Pvt. Ltd. vs. Ramesh Gupta' in respect of Cheque bearing no.:- 760170 dated 15.03.2013 for a sum of Rs. 10 Lakhs as such respondent has now no pending claim(s)/dues as against the petitioner and that it is agreed that respondent shall apply for withdrawal of the suit bearing no. 353/2013 pending before the Ld. ADJ, Patiala House, Delhi within seven days from the execution of the settlement deed. It is also agreed that respondent shall not claim any compensation amount as awarded by the Ld. DJ, Delhi vide order dated 06.01.2016 in complaint no. 4933/2014, 4934/2014, 4932/2014 and 49/25/2015 and in appeal no. 95/2015, 96/2015, 97/2015 and 98/2015 as the respondent has already received the amount in full and final settlement

of their claim as against the petitioner. It is thereby further agreed that the respondent shall pray to the Court for granting of compensation award. It is also agreed that as and when the petitioner shall prefer the revision petition against the order dated 06.01.2016 praying to this Court that in view of the settlement between the parties the matter shall be treated as compounded, the respondent shall not claim any compensation award in judgment dated 25.09.2014, 13.10.2014 and 06.01.2016. It is also agreed that the parties shall not file any case/complaint against each other in future regarding the transactions mentioned in the above said 4 complaints under Section 138 N.I. Act and regarding the transaction as mentioned in suit bearing no.353/2013 pending in the Court of Ld. ADJ, Patiala House, Delhi. It is also agreed that in no case shall the terms of the settlement be revoked by either parties. It is also agreed that the respondent has received the total amount/dues from Sh. Veer Bhan Garg, Relative (*Samdhi*) of the petitioner on behalf of the petitioner. It is also agreed that the respondent shall withdraw all claims/complaint/suits against the petitioner and that Sh. Sahil Gupta shall also withdraw the complaints against the respondent pending before Police station Naraina Vihar, Delhi. It is also agreed that the parties or their respective family members have not filed any other complaint, claim representation, case before any forum Judicial or Quasi-Judicial, Court, Police Station or any other authority, against each other and that they shall not file the same in future against each other or their families. It is also agreed that if any other complaint, claim representation, case before any forum Judicial or Quasi-Judicial,

Court, Police Station or any other authority, against each other is found pending then the same shall be deemed to have been settled upon/withdrawn unconditionally after the execution of the present settlement deed and that the parties shall make any statement in furtherance of the same. Mr. Sunil Batra, on behalf of respondent-company, affirmed the contents of the aforesaid settlement and of his affidavit dated 27.01.2016, supporting this petition. In his affidavit, he has stated that he has no objection if the FIR in question is quashed. All the disputes and differences have been resolved through mutual consent. Now no dispute with petitioner survives and so, the proceedings arising out of the FIR in question be brought to an end. Statement of the Mr. Sunil Batra has been recorded in this regard in which he stated that he has entered into a compromise with the petitioner and has settled all the disputes with him. He further stated that he has no objection if the FIR in question is quashed.

5. In ***Gian Singh v. 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:-

“61. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.”

6. 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 relevant 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.

7. The inherent powers of the High Court ought to be exercised to prevent the abuse of process of law and to secure the ends of justice. Mr. Sunil Batra agreed to the quashing of the FIR in question and stated that the matter has been settled out of his own free will. As the matter has been settled and compromised amicably, so, there would be an extraordinary delay in the process of law if the legal proceedings between the parties are carried on. So, this Court is of the considered opinion that this is a fit case to invoke the jurisdiction under Section 482 Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice.

8. The incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with the situation in the absence of express provision of law to secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process of law is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of the legal process in the delivery of justice. Whereas, the inherent power is not to be exercised to circumvent the express provisions of law.

9. It is settled law that the inherent power of the High Court under

Section 482 Cr.P.C. should be used sparingly. The Hon'ble Apex Court in the case of *State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors. MANU/SC/0842/2014* and in the case of *Inder Singh Goswami v. State of Uttaranchal MANU/SC/0808/2009* has observed that powers under Section 482 Cr.P.C. must be exercised sparingly, carefully and with great caution. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings.

10. In the present case, this Court is of the opinion that since according to Section 147 of the N.I. Act, every offence under the N.I. Act is a compoundable offence and since both parties have arrived at an amicable settlement, therefore there should no impediment in quashing the impugned orders.

11. In the facts and circumstances of this case and in view of statement made by Mr. Sunil Batra, the orders in question warrant to be put to an end and proceedings emanating thereupon need to be quashed.

12. Accordingly, this petition is allowed and judgment of conviction passed by Ms. Rekha Rani, District and Sessions Judge, West, Tis Hazari Courts, New Delhi in Criminal Appeal No. 95/2015 and 97/2015 dated 06.01.2016 maintaining the conviction of the revisionist in the judgment dated 13.10.2014 in Complaint no. 4934/2014 (Old no:-265/2013) and 4932/2014 (Old no:-290/2013) passed by Sh. Gaurav Gupta, MM, New Delhi under Section 138 N.I. Act and the proceedings emanating therefrom are quashed against the

petitioner. The petitioner is accordingly acquitted matter being compromised.

13. Vide order dated 02.02.2016, the sentence of the petitioner was suspended on his furnishing a personal bond in the sum of Rs.15,000/- with two sureties of the like amount to the satisfaction of the Trial Court. In view of the aforesaid, the bail bonds stand discharged.

14. This petition is accordingly disposed of.

15. Application Crl.M.B. No. 146/2016 is also disposed of.

MARCH 30, 2016
dd



(P.S.TEJI)
JUDGE