

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

+ **CRL.M.C. 541/2016**

Date of Decision : May 24th, 2016

DAVINDER BAKSHI & ORS

..... Petitioner

Through **Mr.Amit Mahajan & Mr.Praveen
Kumar Pandey, Advs.**

versus

STATE NCT OF DELHI & ANR

..... Respondent

Through **Ms.Meenakshi Chauhan, APP with SI
Rakesh, PS Sarita Vihar.
Mr.Paritosh Budhiraja & Mr.Rajesh
Prasad, Advs. for R-2 with AR
Mr.Medhanshu Mishra.**

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioners, namely, Davinder Bakshi, Amrit Newar and Ms. Padmavathy for quashing of FIR No.731/2014 dated 28.10.2014, under Sections 406/34 IPC registered at Police Station Sarita Vihar on the basis of the Memorandum of Understanding (MOU) arrived at between M/s Hallex Applied Power Pvt. Ltd. through its Authorized Signatory Ms. S. Padmavathy and respondent no.2, namely, Leaseplan India Pvt. Ltd. through its Authorized Representative Mr. Anuj Kant on 13.07.2015 at New Delhi.

2. Learned Additional Public Prosecutor for respondent-State submitted that Medhanshu Mishra, present in the Court has been identified to be the Authorized Representative of the respondent no.2/complainant in the FIR in question by his counsel.

3. The factual matrix of the present case is that the FIR in question was lodged by the complainant i.e. the Authorized Representative of the respondent no.2, on the allegation that M/s Asian Power Control Ltd. through its representative approached the complainant to take on lease various vehicles for the use of its employee including the service relating to maintenance, management and administration of such vehicles. The said accused-company agreed to take on lease various vehicles from the complainant. Accordingly, a lease agreement dated 13.03.2009 was entered into between the accused-company and complainant. The complainant used to send various quotations for various cars including payable monthly lease rental to the accused-Company. Many vehicles were provided on lease to the accused-Company at New Delhi during the month of April, May and June 2009 for 36 months or 60,000 kms. The accused-Company initially did make some payments towards the outstanding lease rental but thereafter it did not make any payment. Rs. 3,69,11,268/- was the outstanding against the accused-Company as on 04.09.2013 inclusive of interest and penal charges. On 22.07.2013, the complainant received one call from one Mr. Daya who informed him that he had purchased a Fiat Linea car bearing No. DL 3CBM 0618 and asked for NOC for the said vehicle. The accused persons had no right or authority to sell the said vehicle. Thereafter, on 23.08.2013, the

complainant received another call from a Mr. Rohtash Rana informing him that one vehicle No. DL 3CBE 3266 Honda Civic has been involved in a hit and run case. He further informed him that the said vehicle has been leased by the complainant to the accused-company. The accused persons/petitioners had illegally sold the Honda Civic to M/s Pandit & Co. who further sold the same to various other people.

The respondent no.2 also filed a suit for permanent injunction against M/s Hallex Applied Power Pvt. Ltd. (Hallex), Halcyon Asia Strategic Management Services Pvt. Ltd. and directors of M/s Asian Power Control Ltd. (APCL) During the pendency of the said suit, the complainant entered into a settlement with M/s Hallex Applied Power Pvt. Ltd. on 13.07.2015 executed on 16.07.2015.

4. Mr. Medhanshu Mishra present in the Court submitted that the dispute between the parties has been amicably resolved. As per the MOU, in consideration of the respondent no.2 agreeing to withdraw all the outstanding litigation against Hallex, APCL and other individuals connected thereto, Hallex agreed to pay Rs. 1.25 crore to respondent no.2 in the manner as enunciated in the MOU. It is further agreed that after the execution of the said MOU, the respondent no.2 shall not press for proceeding with the matters against Hallex or APCL and respondent no.2 shall make appropriate applications before the concerned Courts to withdraw the entire litigation against Hallex & APCL. It is also agreed that with regard to the FIR in question, the directors of APCL i.e. petitioners herein shall file the quashing petition before this Court and respondent no.2 shall support the same. In the event, Hallex fails to submit DD as mentioned in the MOU, the

respondent no.2 shall be at full liberty to pursue all the litigations against the accused. Medhanshu Mishra, the Authorized Representative of the respondent no.2 affirmed the contents of the aforesaid settlement and of his affidavit dated 19.01.2016 supporting this petition. In the affidavit, he has stated that the complainant-Company 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 petitioners survives and so, the proceedings arising out of the FIR in question be brought to an end. Statement of the Mr. Medhanshu Mishra, has been recorded in this regard in which he stated that complainant-Company has entered into a compromise with the petitioners and has settled all the disputes with them. He further stated that the complainant-Company 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. Respondent no.2 agreed to the quashing of the FIR in question and Medhanshu Mishra, present in the Court has stated that the matter has been settled out of the complainant-Company's 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. It is a well settled law that where the High Court is convinced that the offences are entirely personal in nature and therefore do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, pursuing prosecution would be waste of time and energy. Non-compoundable offences are basically an obstruction in entering into compromise. In certain cases, the main offence is compoundable but the connected offences are not. In the case of *B.S. Joshi and others v. State of Haryana and another 2003 (4) SCC 675* the Hon'ble Apex Court observed that even though the provisions of Section 320 Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers under Section 482 Cr.P.C. The Hon'ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon'ble Apex Court justified the

exercise of powers under Section 482 Cr.P.C. to quash the proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were non-compoundable.

In the light of the aforesaid, this Court is of the view that notwithstanding the fact that the offence under Section 406 IPC is a compoundable offence, as per Section 320 Cr. P.C., there should be no impediment in quashing the FIR under these sections, if the Court is otherwise satisfied that the facts and circumstances of the case so warrant.

11. In the facts and circumstances of this case and in view of statement made by the Medhanshu Mishra, on behalf of the respondent no.2, the FIR in question warrants to be put to an end and proceedings emanating thereupon need to be quashed.

12. Accordingly, this petition is allowed and FIR No.731/2014 dated 28.10.2014, under Sections 406/34 IPC registered at Police Station Sarita Vihar and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

MAY 24, 2016
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