

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

+ CRL.M.C. 941/2014 & Crl.M.A. No.3171/2014

Date of Decision: February 26th, 2016

SUDHESH GUPTA & ORS Petitioner

Through: Mr. D.K. Sharma, Advocate

versus

STATE & ANR Respondent

Through: Mr. Rajat Katyal, Additional Public
Prosecutor for the State

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, Sh. Sudhesh Gupta, Sh. Jai Pal Goyal and Sh. Vinod Kumar for quashing of FIR No.712/2006 dated 14.07.2006, under Sections 63/65/68(a) Copyright Act r/w Section 7 Cinematography Act registered at Police Station Dabri on the basis of the settlement arrived at between the petitioners and the respondent no.2, namely, Sh. Ashwani Katoch, authorized representative of the Indian Music Industries, D-32, Nizamuddin East, New Delhi.

2. Learned Additional Public Prosecutor for respondent-State submitted that Sh. Ashwani Katoch has been identified to be the authorized representative of the complainant-Company in the FIR in question by ASI Devender.

3. The factual matrix of the present case is that the complainant namely, Avadh Sharma, lodged the FIR in question on the allegation that the Film Censor Certificate is mandatory under the Cinematographer Act and the Copyright Act film Censorship includes a decision either to allow or not to allow a particular film for public viewing but hundreds of producers/companies/dealers are releasing/selling their films/video films without any censor certificate which is a total violation of the law of the land. An SI was marked by ACP/DUI for necessary action on the complaint on 14.07.2006. After knowing the facts from the complainant, a raiding party along with the complainant left for Dabri. The team reached Shankar Park, West Sagar Pur, New Delhi and one Mr. Sudesh Gupta @ Pintoo was taken under control and a few CDs and VCDs were recovered from him. On the disclosure statement of the petitioner no.1, the petitioner nos. 2 & 3 were also arrested.

In the FIR in question, a total of 12 accused persons were arrested and charge sheet was filed against them. Later on, three accused namely, Naresh Malhotra, Vijay Malhotra and Deepak Malhotra got compromised the matter with the respondent no.2 and

got the FIR in question quashed against themselves vide order dated 18.07.2013. Another accused namely, Rakesh Kumar also filed for the quashing of the FIR in question which was quashed against him vide order dated 04.02.2014. Thereafter, the petitioners-herein also got their matter compromised with the respondent no.2 who agreed to cooperate in the quashing of the FIR in question against them.

4. Respondent No.2 present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the settlement, respondent no.2 has agreed to give no objection to the quashing of the FIR in question against the petitioners in return of compensation in terms of money. It is also agreed that respondent no.2 shall file on record the affidavit along with authorization letter at the time of hearing of the petition and that they are not ready to handover the affidavit to the petitioners at the time of present petition. It is agreed that the petitioners shall not indulge in any kind of illegal activities and into the business of audio cassettes, VCD, MP3 and CDs etc. and any other related business. Respondent No.2 affirmed the contents of the aforesaid settlement and of his affidavit dated 17.04.2015 supporting this petition. In the affidavit, the respondent

no.2 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 petitioners survives and so, the proceedings arising out of the FIR in question be brought to an end. Statement of the respondent No.2 has been recorded in this regard in which he stated that he has entered into a compromise with the petitioners and has settled all the disputes with them. 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. The respondent no.2 agreed to the quashing of the FIR in question and has 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. 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.

11. In the facts and circumstances of this case and in view of statement made by 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.712/2006 dated 14.07.2006, under Sections 63/65/68(a) Copyright Act r/w Section 7 Cinematography Act registered at Police Station Dabri and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

14. Application Crl.M.A. No.3171/2014 is also disposed of.

(P.S.TEJI)
JUDGE

FEBRUARY 26, 2016
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