

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

+ **CRL.M.C.723/2016 & Crl.M.A. No.3095/2016**

Date of Decision : May 04th, 2016

DEEPAK MISHRA @ SUMIT & ANR Petitioner
Through **Mr.Samrat Nigam, Adv.**

versus

THE STATE (NCT OF DELHI) & ORS Respondent

Through **Ms.Meenakshi Chauhan, APP with SI**
Ram Phool, PS Paschim Vihar.
Respondent No.2 in person with
Mr.Sumant De & Mr.Vivek Agarwal,
Advs.

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. Deepak Mishra @ Sumit and Sh. Deepak Kumar @ Dipu for quashing of FIR No.337/2011 dated 10.11.2011, under Sections 406/409/419/420/465/467/468/471/120B IPC registered at Police Station Paschim Vihar on the basis of the settlement agreement executed at Delhi Mediation Centre, Tis Hazari Courts, Delhi between the petitioners and respondent no.2, namely, Sh. Tarjeet Singh for himself and on behalf of respondent no.3-Sh. Gursharanjit Singh on 03.11.2015.

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent no.2, present in the Court has been

identified to be the complainant/first informant 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 on the allegation that the accused persons herein in connivance with others including some unknown officials of the UCO Bank, Paschim Vihar, Delhi cheated the complainant of their hard earned money. In the end of August 2011, the complainant received a call from a person and introduced himself as the employee of Dhamlakshmi Bank and promised to get the complainant an overdraft account of Rs. 25 to 30 lakhs. Thereafter, Sumit, as representative of the said bank called the complainant and asked to meet him. Then, the complainant met him and gave him photographs of documents, property papers etc. Then the complainant gave him a cheque signed by his father-respondent no.3 of Rs. 1250/-. Later he came to know that Rs. 4.1 lakhs was withdrawn from the account of respondent no.3. The said cheque issued by the complainant was misused and the date was changed and the amount was written as Rs. 4.1 lakhs instead of Rs. 1250/-. Even the name of the drawee was changed from Dhanlakshmi Bank to Deepak Kumar.

Thereafter, the IO on 29.02.2012 filed the charge sheet against the petitioners under Sections 419/420/467/468/471/120-B IPC. The petitioners were arrested and released on bail on 07.03.2012 and 20.03.2012 respectively. The Trial Court on joint request of the parties referred the matter for mediation. Thus, the parties amicably resolved all their issues.

4. Respondent no. 2 present in the Court submitted that the dispute

between the parties has been amicably resolved. As per the settlement agreement, it has been agreed that respondent nos.2 & 3 shall compound the offences subject matter of FIR in question with the petitioners for a sum of Rs. 2.6 Lakhs which is to be paid equally by both the accused as per the schedule mentioned in the terms of the agreement. It is also agreed that the petitioners shall pay Rs. 1 Lakh to respondent nos. 2 & 3 before the Referral Court on 28.11.2015 either in cash or by way of DD. It is also agreed that the petitioners shall initiate appropriate legal proceedings for quashing of the FIR in question and all the proceedings emanating therefrom before 15.12.2015 before this Court qua them and that respondent nos. 2 & 3 shall cooperate with the petitioners for the same including the issuance of NOC/execution of affidavits whatsoever may be necessary. It is further agreed that the petitioners shall pay Rs. 1.6 Lakhs with equal proportion i.e. Rs. 80,000/- each to respondent nos. 2 & 3 at the time of quashing of the FIR in question. It is also agreed that in case the quashing petition is not allowed, in that eventuality, the respondent nos. 2 & 3 shall return Rs. 1 Lakh to the petitioners in equal proportion before the Referral Court as per the directions of the Referral Court. It is also agreed that after the execution of the terms and conditions of the current settlement agreement, respondent nos. 2 & 3 shall not initiate any other proceedings either civil or criminal against the petitioners nor shall they raise any claim in respect of subject matter of FIR in question qua the petitioners. Respondent no. 2 affirmed the contents of the aforesaid settlement and of the affidavits dated 18.02.2016 supporting this petition. In their individual

affidavits, the respondent nos.2 & 3 stated that they have 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.

In the light of the aforesaid, this Court is of the view that notwithstanding the fact that the offences under Sections 409/465/467/468/471 IPC are non-compoundable offences, 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 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.337/2011 dated 10.11.2011, under Sections 406/409/419/420/465/467/468 /471/120B IPC registered at Police Station Paschim Vihar and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

14. Application CrI.M.A. No.3095/2016 is also disposed of.

(P.S.TEJI)
JUDGE

MAY 04, 2016
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