

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 866/2016**

Date of Decision: July 27th, 2016

GAURI KANT JHA

..... Petitioner

Through: **Mr. Amitabh Kumar, Advocate**

versus

STATE & ORS.

..... Respondents

Through: **Mr. G.M. Farooqui, Additional Public
Prosecutor for the State**

**Mr. Kameshwar Mishra, Advocate for
respondent No. 2 and 3.**

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 petitioner, namely, Sh. Gauri Kant Jha for quashing of FIR No.460/2015 dated 20.07.2015, under Sections 468/471/448/34 IPC registered at Police Station Bhalswa Dairy on the basis of Compromise deed between the petitioner and the respondent nos.2 and 3, namely, Sh. Suraj Pal and Sh. Brijesh, respectively.

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 of the FIR in question by his counsel.

3. The factual matrix of the present case is that the complainant was a resident of C-39, Lal Bagh Jhuggies, Azadpur, Delhi 110033 and his wife was the owner and person in possession of property admeasuring 25 sq. yards out of khasra 158/2, in village Mukandpur,

Delhi abadi known as gali 5/11, samta vihar, Mukandpur extn., Part-2, Delhi 110042. The wife of the complainant expired on 18.10.2014 and the complainant and his children became Class-I heirs according to Section 15(a) of The Hindu Succession Act, 1956. On 20.02.2015 when the complainant and his children reached at their property in khasra 158/2, in village Mukandpur, Delhi abadi known as gali 5/11, samta vihar, Mukandpur extn., hereinafter called as property in question, they were shocked to see the construction going on over the abovesaid property. When the complainant and his son inquired about it, they came to know that one Gauri Kant Jha/petitioner is constructing the property. On further inquiry, the petitioner told them that he has purchased the property in question from one Mr. Heera Singh, who, when inquired by the complainant, clarified before the petitioner that he sold another property to the petitioner and not the property in question. On 20.10.2015, when the petitioner did not stop the construction, the complainant made several PCR calls and when the police came, the petitioner assured and admitted before the police that he will return the property to the complainant and called him for negotiations on 22.10.2015. When the complainant and his son reached the property in question on the said date to negotiate, the petitioner and his associates started abusing the complainant on the basis of his caste and started pelting stones and bricks at him.

Thereafter, the complainant lodged a complaint at the instance of which, the FIR in question was registered. A compromise/Settlement was arrived at between the Petitioner and the Respondents on 09.11.2015, when the dispute was pending in the

Court of Ld. ADJ, North, Rohini Courts.

4. Respondent No.2, present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the settlement, it is agreed that Respondent no. 2 and 3 do not wish to pursue the proceedings emanating from the FIR in question. It is agreed that the respondents shall have absolute right of ownership in respect of the entire property in question from the date of settlement and that the petitioner shall not raise any objection on the above said rights of the respondents. It is agreed that the petitioner shall pay Rs. 2.5 Lacs to the respondents, either in installments or in one, except the first installment of Rs. 50,000/-, on the day of settlement, in lieu of construction raised by the petitioner over the property in question. It is agreed that during the payment of Rs. 2.5 Lacs, the petitioner shall remain in possession of the property in question as tenant and a rent agreement shall be executed between the parties for the same for a period till the above-said amount is paid by the petitioner and extension in any condition shall be granted to any of the parties for performing their part under the agreement. It is agreed that the petitioner shall execute a non-objection certificate in favour of the respondents, on the basis of which, the electricity and water connections could be transferred in the names of respondents and that he shall have no interest, right or title in respect of the property in question after payment. It is agreed that the parties shall not file any claim, petition, complaint and/or any other proceedings against each other and that the respondents shall facilitate the petitioner in quashing of the FIR in question. Respondent No.2 affirmed the contents of the

aforesaid settlement. 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 respondent No.2 has been recorded in this regard in which he stated that he has entered into a compromise/settlement 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. The respondent no.2 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. 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 Sections 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 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. 460/2015 dated 20.07.2015, under Sections 468/471/448/34 IPC registered at Police Station Bhalswa Dairy and the proceedings emanating therefrom are quashed against the petitioner.

13. This petition is accordingly disposed of.

JULY 27, 2016
dd

(P.S.TEJI)
JUDGE

