

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 835/2016

Date of Decision: August 2nd, 2016

KAUSHAL JAIN & ORS

..... Petitioner

Through Mr.Parinav Gupta, Adv.
versus

GOVERNMENT OF NCT OF DELHI & ANR Respondent

Through Ms.Manjeet Arya, APP

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, Smt. Kaushal Jain, Sh. Gaurav Jain, Sh. Rakesh Jain, Sh. Sourabh Jain and Sh. Prateek Jain for quashing of FIR No.996/2015 dated 21.09.2015, under Sections 420/423/467/468/471/34 IPC registered at Police Station Madhu Vihar on the basis of the settlement arrived at between the petitioners and respondent no.2, namely, Smt. Sadhna Agarwal on 18.02.2016.

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 SI Anshul Kumar.

3. The factual matrix of the present case is that the accused persons belong to same family and are known to the complainant and her family since 2011. In the month of March 2014, accused nos. 2 and 3 offered property bearing no. C-15, II floor, Indira Park, hereinafter referred to as the property in question, to the complainant/respondent no. 2 and her husband, stating that the said

property is registered in the name of their mother/petitioner no. 1 and that she wanted to sell it on account of her personal needs and bonafide requirements. The complainant purchased the said property in question for a sum of Rs. 11,30,000/- and thereafter, a sale deed dated 07.04.2014 was executed between the accused persons and the complainant. After the execution of the sale deed, the accused persons requested the complainant to give the property in question to them on rent as a favour to which the complainant agreed and thereafter a rent agreement was executed between them on 03.05.2014. In the month of November 2014, the accused no. 2 & 3 again visited the house of the complainant and offered one shop/office on the ground floor of the property in question which was purchased by the complainant and the same got mutated in her name on 05.02.2015. The accused persons did not make the rent payment in the month of March 2015 and the accused no. 2 was not accessible to the complainant during this time, therefore, the complainant went to the property in question to collect the same but she was shocked to see that the property was locked. When the complainant inquired about it from one Mr. Satinder Sharma who is also a property dealer in that area, he told the complainant that the accused persons had gone out of station and he further informed that he has purchased the property in question from one Smt. Suman Pahuja. He also showed documents of the property in question and in some of the documents, it was mentioned that the petitioner no. 1 sold the property in question to Smt. Suman Pahuja and that Smt. Suman Pahuja resold it to Mr. Satinder Sharma. After many efforts, the complainant finally found the office address of the

accused persons. When the complainant's husband went there, the accused persons misbehaved with him and threatened to implicate him in false cases and also, warned him of facing dire consequences.

Thereafter, the complainant lodged a complaint at the instance of which, the FIR in question was registered. Despite lapse of 5 months from the date of lodging FIR, neither the charge-sheet has been filed nor has the trial commenced. Now, the parties have settled the matter vide settlement deed dated 17.02.2016.

4. Respondent No.2 present in the Court submitted that the dispute between the parties has been amicably resolved. It is affirmed that the petitioners have already paid an amount of Rs. 12,00,000/- at the time of signing of the settlement Deed. As per the settlement, it is agreed that after receiving the above-mentioned amount, the respondent no. 2 shall have no claim left against the petitioners with respect to the property in question and the sale deed dated 03.04.2014 executed by the petitioner no. 1 in favor of the respondent no. 2 shall be treated as null and void. It is agreed that the petitioners shall file appropriate proceedings for cancelling the sale deed dated 03.04.2014 and declaring the same as null and void and the respondent no. 2 shall have no objection and shall fully cooperate with the petitioners in doing so. It is agreed that the respondent no. 2 shall cooperate with the petitioners in order to get them discharged on bail in the FIR in question and shall also cooperate in its quashing proceedings. It is further agreed that the legal expenses regarding the bail and quashing petitions shall be solely borne by the petitioners. It is affirmed by the respondent no. 2 that she have not made any type of further

transfer/sale/lease/rent or mortgage with respect to the property in question to any third party in any manner whatsoever and it is therefore agreed between the parties that in future, if any such type of misdeed/issue arises then it shall be the sole responsibility of the respondent no. 2 and any legal/financial liability arising therefrom shall be solely borne by the respondent no. 2. It is agreed that after execution of the deed, the parties shall not be entitled to any amount or any other property left out to be discussed or compromised in the personal name of the parties or their husbands or wards. It is also agreed that in case of any breach of the terms of the settlement by the respondent no. 2, the deed shall become null and void and the respondent no. 2 shall be liable to refund the entire amount of settlement to the petitioners.

Respondent no. 2 affirmed the contents of the aforesaid settlement and of her affidavit dated 23.02.2016. In the affidavit, she has stated that she 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 she stated that she has entered into a compromise with the petitioners and has settled all the disputes with them. She further stated that she 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 her 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 according to section 320(2) Cr.P.C., an offence under Section 420 IPC is compoundable only with the permission of the Court, therefore, there should be no impediment in quashing the FIR under this section, 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.996/2015 dated 21.09.2015, under Sections 420/423/467/468/471/34 IPC registered at Police Station Madhu Vihar and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

AUGUST 02, 2016
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