

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1103/2016**

HARJEET SINGH & ANR
Through Mr.Gurpreet Singh, Adv.

Date of Decision: August 31st, 2016
..... Petitioners

versus

THE STATE NCT OF DELHI & ANR
Through Mr.M.P. Singh, APP for the state.
SI Suresh Chand, PS, EOW.
Respondent no.2 in person.

..... Respondents

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. Harjeet Singh and Sh. Navjeet Singh for quashing of FIR No.79/2014 dated 28.07.2014, under Sections 103/104 Trademark Act and Section 63 Copyright Act registered at Police Station EOW on the basis of Mediation Report of Delhi Mediation Centre, Tis Hazari Courts in view of the settlement arrived at between the petitioners and the respondent no.2, namely, Sh. Devender Kumar Sachdeva on 08.02.2016.

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent No.2, present in the Court has been identified to be the authorized representative of the complainant company i.e. M/s. Asian Agencies in the FIR in question by his counsel.

3. The factual matrix of the present case is that the complainant

company, M/s. Asian Agencies is engaged in the manufacturing /Trading/marketing of various products such as automobile parts, paints, spray paints, colour, varnishes & antitrust spray and paints. The company has been producing, importing and marketing the aforesaid products along with one of its unique product, acrylic Lacquer, bearing a distinctive trademark/brand “KOBE” among other products. The accused persons were allegedly carrying out their nefarious impugned activities under the trademark/name of the complainant company in the market and were selling spurious counterfeits and substandard products under the brand name of the complainant company.

Thereafter, on receiving the said information about the petitioners/accused persons, the complainant got lodged a complaint following which, the FIR in question was registered against the petitioners. An amicable settlement was arrived at between the parties during the pendency of the matter.

4. Respondent No.2, present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the Mediation Report, it is agreed that the petitioners shall not indulge into activity/trade or sale of product which would amount to infringement of registered trademark “KOBE” of the respondent no.2. It is agreed that the petitioners shall not indulge in any activity or sale of their product by using any trademark which would be similar to the trademark of the respondent no.2 in any manner which may infringe the colour combination, logo, artistic work and feature of the packaging scheme of the product of the respondent no.2. It is also

agreed that the petitioners shall not use the trademark “KOBE” or any other trademark which may be deceptively or phonetically similar to the trademark of the respondent no.2 for passing off their goods as that of the goods of the respondent no.2. It is agreed that the respondent no.2 has agreed to forego the past and present claim of damages on account of passing off and infringement of trademark and copyright of “KOBE” from the petitioners on account of using the trademark name “NEW COBE” by the petitioners and that the respondent no.2 shall not file any suit for recovery of any amount against the petitioners as all the disputes have been settled in full and final amongst the parties. It is agreed that the parties shall withdraw all the cases/complaints filed by them against each other from the concerned courts and any proceeding which is still pending shall be treated as withdrawn by virtue of the present settlement. It is agreed the respondent no.2 shall cooperate in getting the FIR in question quashed against the petitioners.

Respondent No.2 affirmed the contents of the aforesaid settlement and of his affidavit dated 14.03.2016 supporting this petition. In the affidavit, he 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/settlement 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 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 tranquility 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 103/104 of Trademark Act and Section 63 of Copyright Act are non-compoundable offences, therefore, 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 needs to be quashed.

12. Accordingly, this petition is allowed and FIR No.79/2014 dated 28.07.2014, under Sections 103/104 of Trademark Act and Section 63 of the Copyright Act and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

August 31, 2016/dd



**(P.S.TEJI)
JUDGE**