

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and order: April 8th, 2016

+ CRL.REV.P. 276/2016
SUNIL KUMAR TANDON & ANR.

..... Petitioner

Through: Mr. Vivek Bhadauria, Advocate

versus

GHANSHYAM SHARMA

..... Respondent

Through: In person.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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P.S.Teji (Oral)

1. By this revision petition filed under Section 397, 401 of Cr.P.C., read with Section 482 Cr.P.C. the petitioner seeks to challenge the judgment dated 25.02.2016 passed by learned Additional Session Judge 03 (East), Karkardooma, Delhi, passed in Criminal Appeal No.100/2016, whereby the conviction and sentenced passed by the learned Metropolitan Magistrate has been upheld.

2. The learned Metropolitan Magistrate has held the petitioners guilty for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) and the petitioner No.1 has been sentenced to undergo simple imprisonment for the period of three months and fine of Rs.1.5 lacs was also imposed upon petitioner No.1, however petitioner No.2 was sentenced

to pay fine of Rs.50,000/-.

3. Mr. Vivek Bhaduria, learned counsel for the petitioner contends that due to intervention of the common friends and well wishers, wishers, the disputes/differences between the parties have been amicably settled and to restore the harmony between the parties, they have decided to bury their all disputes and differences. Even the respondent is not willing to pursue the dispute further and he has given the statement before the court of learned Metropolitan Magistrate that he has amicably settled the matter with the petitioners and has also received the settled amount. However, the petitioners had preferred the revision petition being Crl. Rev. No. 183/2016 before this court, which was dismissed as withdrawn on 09.03.2016.

4. The factual matrix of the present case is that the complainant-respondent had filed a case against the petitioner on account of dishonour of cheques. According to the complaint, the petitioners had demanded loan of Rs.1 lac for business purpose, which the respondent gave on three different dates, i.e., Rs.17,000/- on 01.02.2007; Rs. 25,000/- on 17.02.2007; and Rs.20,000/- on 19.02.2007 and lastly Rs.38,000/- on 25.03.2007. An agreement was executed between the parties on 25.03.2007.

5. It is further alleged in the complaint that on 25.06.2007, the respondent demanded the amount back from the petitioners and the petitioners had issued two cheques for Rs.50,000/- each, which were dishonoured by the bank with the remark 'insufficient funds'. Legal

notice was sent on 19.12.2007, which was replied by counsel for the petitioners. Thereafter, complaint under Section 138 of NI Act was filed by the respondent.

6. Trial commenced. Complainant deposed himself in support of his case, as CW1 and the accused vide their statement recorded under Section 313 of Cr.P.C. wish to lead defence evidence. Trial concluded and vide order dated 12.05.2015, the learned Metropolitan Magistrate held the petitioners guilty for the offence and vide order dated 19.05.2015, the petitioner No.1 was sentenced to undergo simple imprisonment for a period of three months with fine of Rs.1.5 lacs for two cheques and petitioner No.2 was ordered to pay fine of Rs.50,000/- for 1 cheque.

7. Being aggrieved by the aforesaid order of conviction and sentence, the petitioners preferred an appeal, which was dismissed by the learned Additional Session Judge vide order dated 25.02.2016 and while upholding the conviction and sentence passed by learned Metropolitan Magistrate, the petitioner No.1 was sent to judicial custody for serving the sentence, as awarded by the Trial Court.

8. Lastly, counsel for the petitioner contended that since the matter has been amicably settled between the parties and the petitioners have already deposited a sum of Rs.5,000/- each to the State (totaling Rs.10,000/-) as fine, therefore it is contended that in the facts and circumstances of the present case the impugned order dated 25.02.2016 passed by learned Additional Session Judge be set aside

and to give rest to the litigation between the parties, the present revision petition may be allowed and the order on sentence passed by learned Metropolitan Magistrate qua simple imprisonment for a period of 3 months, as imposed upon the petitioner no.1, be set aside.

9. Mr. Ghanshyam Sharma, respondent is present in person and affirms the aforesaid contentions raised by the learned counsel for the petitioner. He has further submitted that he has amicably settled the dispute with the petitioners and nothing remains due on him. He has also submitted that he has no objection if the impugned order on sentence is set aside and the petitioner No.1 is released from jail.

10. I have heard the aforesaid submissions of learned counsel for the petitioner as well as respondent who was present in person. I have also perused the material on record.

11. After considering the submission of the petitioner this court observes that the petitioner No.1 has been held guilty for the offence punishable under Section 138 of NI Act. It is also observed that the parties to the case have resolved their inter-se disputes and the respondent has also given his no objection to setting aside of the impugned order on sentence, and has no objection if the petitioner No.1 is released on bail.

12. On the aforesaid facts and circumstances, it would be relevant to quote the extracts of the judgment in *Gian Singh v. State of Punjab* (2012) 10 SCC 303, in which the Hon'ble Supreme 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.”

13. 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.

14. The petitioners have also invoked the inherent powers of this court under Section 482 of Cr.P.C. and this court is conscious of the fact that 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. Mr. Ghanshyam Sharma, respondent has agreed to setting aside the order of sentence qua sentencing the petitioner No.1 for simple imprisonment for a period of three months and has also stated that the dispute between the parties has been settled out of his own free will.

15. Considering the fact that the matter has been settled and compromised amicably, and the fact that the petitioner No.1 is in custody consequent upon the impugned order dated 25.02.2016 passed by learned Additional Session Judge, this Court is of the considered opinion that this is a fit case to invoke the jurisdiction under Section 482 Cr.P.C. to secure the ends of justice.

16. The incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with the situation in the absence of expressed 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.

17. 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.

18. In the present case, this Court is of the opinion that since according to Section 147 of the N.I. Act, every offence under the N.I. Act is a compoundable offence and since both parties have arrived at an amicable settlement and the compounding fee of Rs.15,000/- has already been deposited, therefore there will be no impediment in quashing the orders in question.

19. In the facts and circumstances of this case and in view of the submissions of Mr. Ghanshyam Sharma, respondent, the revision petition filed by the petitioners is allowed and the offence punishable under Section 138 of NI Act is compounded. Resultantly, the order dated 25.02.2016 passed by learned Additional Session Judge upholding the conviction as well as the order on sentence dated 19.05.2015 passed by learned Metropolitan Magistrate are set aside.

20. A copy of this order be sent to the Jail Superintendent and the

petitioner No.1 be released forthwith, if not required in any other case.

21. The present revision petition is disposed of in the aforesaid terms.

22. Dasti.

P.S.TEJI, J

APRIL 08, 2016

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