

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1368/2016**

Date of Decision: July 27th, 2016

M/S AERENS GOLDSOUK INTERNATIONAL LTD ... Petitioner

Through: Ms. Kaadambri Singh, Advocate
versus

STATE (NCT OF DELHI) & ORS ... Respondent

Through: Mr. M.P. Singh, Additional Public
Prosecutor for the State

Mr. Mayank Wadhwa, 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, M/s. Aerens Goldsouk International Ltd. for quashing of CC No. 166/1/15 dated 15.10.2015, under Sections 418/420/471/120-B IPC registered before the Ld. CMM, Dwarka Courts on the basis of Agreement executed between the petitioner and respondent nos.2 & 3, namely, Mr. Arun Pratap Singh and Mr. Narender Agarwal on 16.02.2016.

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent Nos.2 & 3, present in the Court have been identified to be the complainants in the complaint in question by his counsel.

3. The factual matrix of the present case is that the accused no. 2 company is engaged in the business of real estate and infrastructure and invites buyers for purchase of flats in the project of its various

clients. On 25.12.2012, Mr. Prince Grover, accused no. 3, approached the residence of complainants, RZ-203A, Roshan Garden, Najafgarh, New Delhi 110043 and introduced himself as marketing executive of the accused no. 2 company and told them about a housing project at gold course extension road in Gurgaon by one of the clients of the accused no. 2 company namely, M/s. Aerens Goldsouk International Ltd., Gurgaon/Accused no. 1 company. Accused no. 3 and the officials of accused company no. 1 and 2 induced the complainants for buying the flat in their said project and promised the complainants that the project would be delivered in 18 months from the date of booking and that it would cost them about Rs. 3,500/- per sq. ft.. The complainant purchased the flat at Rs. 3,490/- per sq. ft. with 2% discount and paid a sum of Rs. 10,60,000/- by way of five cheques in favour of accused no. 1 company during 25.12.2012 to 11.02.2013. When the complainant inquired about the project from the above said persons and from their offices after 6 months, they again assured them timely delivery of the flat and safety of the money of the complainants. After 4 months, when the complainants again inquired about the project, no signs of any upcoming project were there at the above said site and when they approached the offices of accused no. 1 and accused no. 2 companies for refund of their money, the accused no. 1 company issued a no objection certificate dated 31.03.2014 with regard to refund of money to the complainants but the money was never released by them. Thereafter, on 24.07.2015, the complainants filed a complaint to the D.C.P (south-west) and during the inquiry, the I.O. concluded that the accused persons have cheated the

complainants by showing the fake site plans and pictures and that no such project was going on at the site.

Registration of the F.I.R was approved but no directions were given by the S.H.O to register the case, hence, the complaint was filed before the Ld. CMM, Dwarka Courts. During the proceedings, the matter was settled by way of a settlement agreement between the parties.

4. Respondent Nos.2 & 3, present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the settlement, it is agreed that the petitioner has refunded the above said paid/invested amount of Rs. 10,60,000/- and the interest amount of Rs.3,47,400/- as full and final settlement amount at the time of execution of the agreement which in total amounts to Rs. 14,07,400. It is agreed that the petitioner company shall keep sufficient balance in its account to honor the cheques and shall not charge the signatory or close the account. It is agreed that after receipt of the above-said amount, all the documents executed by the parties shall be deemed to be cancelled and the respondent no. 2 shall have no right, title, claim or interest or concern of any nature whatsoever in respect of the above-said investment amount. It is agreed that the respondent nos. 2 & 3 have handed over all the original documents and receipts to the petitioner and that they shall not misuse their photocopies or original documents which may not have been returned by them. It is agreed that none of the parties shall claim against each other regarding the present dispute in future and shall withdraw all the pending complaints. It is also agreed that the respondent nos. 2 & 3 shall

withdraw their names from social media/group made against the petitioner company and shall not support such media/group in any manner. Respondent No.2 & 3 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. Statements of the respondent Nos.2 & 3 have been recorded in this regard in which he stated that he has entered into a compromise with the petitioner and has settled all the disputes with them. They further stated that they have 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 nos.2 & 3 agreed to the quashing of the FIR in question and stated that the matter has been settled out of their 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 Section 471 IPC is a non-compoundable offence, there should be no impediment in quashing the complaint 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 statements made by the respondent nos.2 & 3, 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 CC No. 166/1/15 dated 15.10.2015, under Sections 418/420/471/120-B IPC registered before the Ld. CMM, Dwarka Courts and the proceedings emanating therefrom are quashed against the petitioner.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

JULY 27, 2016
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