

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1555/2016**

Date of Decision: September 5th, 2016

MANISH RADHESHYAM MALANI Petitioner

Through Mr.Fusail Khan, Adv. wtih
Mr.Prakash Kumar Singh, Adv.

Versus

STATE & ANR Respondents

Through Mr.Amit Chadha, APP for the State.
Mr.Akhil Sachar, Adv. with
Mr.Raghu Vasishth, Adv. with
respondent no.2 in person.

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. Manish Radheshyam Malani for quashing of FIR No. 159/13 dated 20.06.2013 under Sections 406/409/120-B IPC against petitioner registered at Police Station EOW on the basis of Compromise Deed executed between the petitioner and respondent no. 2, namely, Smt. Renu Ghosh on 15.02.2016.
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 by her counsel.
3. The factual matrix of the present case is that the complainant/respondent no.2 was assured by the HDFC Securities Ltd. that the deposit with Birla Power Solutions shall fetch high returns and is very safe and secure. The complainant deposited a sum of Rs. 20 Lacs with Birla Power Ltd. vide FDR receipt no. 12404 for a period of

12 months from 07.09.2011 to 06.09.2012. When the complainant contacted the company on maturity of the FDR, i.e. on 06.09.2012, the officials informed her that the refund would be delayed and the refund order along with the interest shall be dispatched by the end of October 2012 but the same was never received by the complainant. On 11.10.2012, the accused company published an advertisement in a free Press Journal that the company has no overdue deposits other than the unclaimed on the date of the advertisement.

Thereafter, the complainant got lodged a complaint following which, the FIR in question was registered against the petitioner. 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. It is pertinent to mention that the petitioner has already paid a sum of Rs. 9 Lacs vide two Demand Drafts, 001189 for a sum of Rs. 1,51,901/- and 061859 for a sum of Rs 6,88,960/-, drawn on Bank of Baroda, Walkeshwar, Mumbai and Axis Bank Ltd., Nariman Point, Mumbai, respectively towards interest due and the reimbursement of expenses to the respondent no.2. According to the compromise deed, it is agreed that the petitioner shall ensure that the respondent no.2 is given the Form 16A for the tax deducted at the source at the earliest and that the respondent no.2 shall cooperate with the petitioner in getting the FIR in question quashed. It is further agreed that the parties shall not file any case/complaint against each other in future arising out of the FIR in question.

Respondent no. 2 affirmed the contents of the aforesaid settlement and of her affidavit dated 07.04.2016. In the affidavit, she has 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 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 she stated that she has entered into a compromise with the petitioner and have settled all the disputes with him. 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 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 offence under Section 409 IPC is a non-compoundable offence, 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. 159/13 dated 20.06.2013 under Sections 406/409/120-B IPC against petitioner registered at Police Station EOW and the proceedings emanating therefrom are quashed against the petitioner.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

SEPTEMBER 05, 2016
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