

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 1730/2016 & Crl.M.A. Nos. 7359-60

Date of Decision: July 27th, 2016

GAURANG DOSHI

..... Petitioner

Through

Mr.Kirti Uppal, Sr. Adv. with
Mr.Kunal Cheema, Adv., Mr.Dhruv
Kapur, Adv, Mr.Yogesh, Adv. &
Mr.Siddharth Bhatia, Adv.

versus

THE STATE & ANR

..... Respondent

Through

Mr.Izhar Ahmad, APP for the State.
Mr.R.K. Dubey, Adv. for R-2 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, Mr. Gaurang Doshi for quashing of FIR No. 29/2008 dated 14.11.2008, under Sections 420/427/380/120B IPC registered at Barakhamba Road Police Station on the basis of the settlement agreement arrived at between the petitioner and respondent no.2, namely, Mr. Vivek Shukla on 15.11.2008.

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 his counsel.

3. The factual matrix of the present case is that the FIR in question was lodged by the complainant/ respondent no. 2 on the allegation that the petitioner checked-in at the Intercontinental The Grand Hotel, Connaught Place, on 14.08.2008, of which complainant is the General

Manager and on request, the petitioner was given a presidential suite. The petitioner initially told that he would stay only for a period of three days, however he extended his stay till 27.08.2008. The petitioner on being asked by the Hotel authorities to pay the bill dues for the said period of his stay, issued a cheque bearing no. 137513 dated 26.09.2008 for a sum of Rs.3,50,000/-, which when was presented for encashment was returned with the endorsement "funds insufficient". When this fact was brought to the notice of the petitioner by the Hotel authorities, he assured that this time the cheque would be duly honored and issued a cheque bearing no. 137514 dated 14.10.2008 for a sum of Rs.6,50,000/- to cover his further period of extended stay in the hotel. On presentment, this cheque was also dishonored. Petitioner again issued a cheque bearing No. 137521 dated 04.11.2008. On presentment, this cheque was also returned for want of funds. Thereafter, the petitioner was served with a legal notice dated 11.11.2008 under section 138 of the Negotiable Instruments Act, 1881 by the Hotel authorities. The petitioner started abusing and misbehaving with the hotel staff and has also stolen various articles from the room of the hotel. Mr. Kapil Kapoor, front office manager of the Hotel was hand in glory with the petitioner and facilitated the petitioner's extended stay in the hotel. Mr. Kapil Kapoor also did not ensure that the request details in the registration card were filled in by the Petitioner.

Thereafter, the complainant lodged the complaint at the instance of which the FIR in question was registered against the petitioner. During the course, on 15.11.2008 all the issues between the petitioner and

respondent no. 2 were settled and consent terms were drawn between the parties.

4. Respondent No.2 present in the Court submitted that the dispute between the parties has been amicably resolved on the basis of the settlement agreement entered into by them on 15.11.2008. The cheques which were received from the petitioner by the Hotel authorities were duly returned in original as a sum of Rs.17,70,000/- and the same has been received by the Hotel authorities towards full and final settlement of their claims towards each other. As per the settlement, respondent no.2 has no objection if the FIR in question against the petitioner were to be quashed. Respondent no. 2 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. Statement of the respondent no.2 has 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 him. 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 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 380 IPC is a non-compoundable offence, 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.29/2008 dated 14.11.2008, under Sections 420/427/380/120B IPC registered at Barakhamba Road Police Station and the proceedings emanating therefrom are quashed against the petitioner.

13. This petition is accordingly disposed of.

14. Applications Crl.M.A. Nos. 7359-60 are also disposed of.

(P.S.TEJI)
JUDGE

JULY 27, 2016/dd

