

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2056/2016 & CrI.M.A. No. 8696/2016**
Date of Decision: July 25th, 2016
DHARMESH SHAH Petitioner
Through **Mr.Rohit Singh, Adv.**

versus

THE STATE (NCT OF DELHI) & ANR Respondents
Through **Mr.Izhar Ahmad, APP for the State.**
SI Kuldeep Sharma, PS Barakhamba Road.
Mr.Vivek Agarwal, 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, Sh. Dharmesh Shah for quashing of FIR No.55/2010 dated 08.04.2010, under Section 408 IPC registered at Police Station Barakhamba Road on the basis of the Memorandum of understanding executed in view of the settlement arrived at between the petitioner and respondent no.2, namely, Sh. J.K. Budhreja, Managing Director, Jetways Travel Private Limited, having its registered office at Flat No. 5, UGF, Indra Prakash Building, 21 Barakhamba Road, New Delhi-01 on 22.04.2016.

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 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 on the allegation that the accused person/Petitioner committed criminal offences of misappropriation of property; criminal breach of trust, cheating, falsification of accounts etc. Mr. Debashish Sen is an ex-employee of the complainant company and was appointed as Vice-President (Business Development) on 01.02.2008 due to which, he became vested with whole sole charge for all air bookings, visas, passports and other travel services and recovery of payment for the above said services on behalf of Complainant Company for such clients. Amdocs India Pvt. Ltd., one of the clients of the complainant company, had an agreement with the complainant company as per the rules of which the complainant company was required to depute and post an employee as “implant” in the office of Amdocs India for providing services as per the agreement on behalf of the Complainant Company. The billing information of a completed service was sent to Delhi office of the complainant company and the bills were raised accordingly on the basis of the said information. Mr. Debashish Sen proposed the name of the petitioner since he was known to him and he got appointed as branch manager at the Pune office by the complainant company. Mr. Debashish sen used to obtain/draw from Complainant Company for rendering visa services to Amdocs India against his imprest account with the complainant company under the agreement. The complainant company also used to raise cash vouchers debiting imprest account of Mr. Sen through emails on receiving requisition of cash from him. Several bills of the complainant company, amounting to Rs. 24,97,500 towards which Mr.

Sen had withdrawn cash of Rs. 23,60,000, which remained unpaid by Amdocs India. Mr. Debashish Sen and the Petitioner verbally assured the complainant company that the bills have been raised upon Amdocs India shortly and showed payment of Rs. 1,90,000/- made by Amdocs India towards the outstanding bills. When the complainant company approached Amdocs India, they were informed that no bill was outstanding. Upon reconciliation of accounts by Amdocs India, it was found that Mr. Sen had raised fake bills from the complainant company without submitting the same to Amdocs India.

The complaint was lodged following which, the FIR in question was registered against the accused person. During the pendency of the trial, the parties entered into a settlement.

4. Respondent No.2 present in the Court submitted that the dispute between the parties has been amicably resolved. As per the MOU, it is agreed between the parties that the petitioner shall pay an amount of Rs. 2.3 Lacs as full and final settlement to the respondent no.2. It is also agreed that at the time of signing of the said settlement, the petitioner shall pay an amount of Rs. 50,000/- to respondent no.2 vide DD no. 451999 drawn on Shamrao Vitthal Cooperative Bank Ltd. and the rest of the amount shall be paid to the respondent no.2 at the time quashing of the FIR in question before the concerned Court. It is also agreed that respondent no.2, upon receiving the said settlement amount, shall have no objection if the FIR in question is quashed by the concerned Court and also that respondent no.2 shall cooperate for the same. It is also agreed that respondent no.2 shall not raise any further claims or any criminal or civil litigations against the petitioner

after this settlement. Upon breach of the terms of the MOU, it shall be open to the aggrieved parties to take any legal action and other party shall be solely responsible for the cost and consequences thereof. Respondent no. 2 affirmed the contents of the aforesaid settlement and of his affidavit dated 18.05.2016 supporting this petition. In the affidavit, the respondent no.2 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 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 408 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.55/2010 dated 08.04.2010, under Section 408 IPC registered at Police Station Barakhamba Road and the proceedings emanating therefrom are quashed against the petitioner.

13. This petition is accordingly disposed of.

14. Application CrI.M.A. No. 8696/2016 is also disposed of.

(P.S.TEJI)

JUDGE

JULY 25, 2016/dd