

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

+ **CRL.M.C. 2107/2016**

Date of Decision : May 30th, 2016

AJAY SAPRA

..... Petitioner

Through Mr.Anuj Narula, Adv. with petitioner
in person.

versus

STATE & ANR

..... Respondent

Through Ms.Meenakshi Chauhan, APP with SI
Pawan kumar, PS Harsh
Vihar.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. Ajay Sapra for quashing of FIR No.150/2004 dated 08.06.2004, under Sections 448/454/323/392/397/380 IPC registered at Police Station Dilshad Garden on the basis of the Memorandum of Understanding (MOU) arrived at between the petitioner and respondent no.2, namely, Smt. Chander Jyoti Arora and others i.e. Gulshan Arora, Smt. Shukla Chawla, Mrs. Anita Dhawan, Mrs. Reena Sapra and Mrs. Preeti Sharma on 30.10.2015 at New Delhi.

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 her 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 complainant in the course of the business had borrowed loan from Suresh Chand Chawla in 2000 of Rs. 4 lacs and also executed papers of ownership at his instance as security against the loan. The rent of Rs. 4,200/- was given regularly to the accused- Suresh Chand Chawla by the complainant. Thereafter, the health of the husband of the complainant deteriorated and after putting lock on the house, the complainant shifted to Bhopal. The key of the house was handed over to Harish Kumar. The mother-in-law of the complainant informed her that the accused persons (Suresh Chand Chawla, Ajay Sapra and Rajpal Singh) had trespassed into her house and were removing goods. The complainant along with her husband came back to Delhi and on 06.06.2004, the husband and the mother-in-law of the complainant were present in the house and the accused persons forcibly entered into the house and the accused-petitioner threatened them with dire consequences.

Thereafter, FIR in question was registered by the complainant against the petitioner and other accused persons. Later on, due to the intervention of family, common friends etc. parties arrived at an amicable settlement with each other.

4. Respondent No.2 present in the Court submitted that the dispute between the parties has been amicably resolved. As per the MOU, Smt. Shukla Chawla, Mrs. Anita Dhawan, Mrs. Reena Sapra and Mrs. Preeti Sharma have agreed not to execute the judgment and decree

dated 20.01.2011 passed in suit No. 727/2009 against the respondent no.2, Gulshan Arora or any other. Smt. Shukla Chawla, Mrs. Anita Dhawan, Mrs. Reena Sapra and Mrs. Preeti Sharma also agreed to set aside the said decree and stated that the respondent no.2 has full right in the property No. 24-A, Pocket-F, Dilshad Garden, Delhi and that they have no right in the same property. The respondent no.2 agreed to withdraw the appeal being RFA 128/2011 filed against the judgment and decree dated 20.01.2011. It is also agreed that the respondent no.2 be allowed the refund of the deposited decretal amount in RFA No. 128/2011 and Smt. Shukla Chawla, Mrs. Anita Dhawan, Mrs. Reena Sapra and Mrs. Preeti Sharma have no objection to the same. The respondent no.2 and Gulshan Arora assured that they shall not pursue their complaint or FIR against Smt. Shukla Chawla, Mrs. Anita Dhawan, Mrs. Reena Sapra, Mrs. Preeti Sharma and the petitioner and will not get the charges framed against them. The respondent no.2 also undertakes to not prosecute the petitioner pursuant to FIR No. 150/2004, PS Dilshad Garden. The petitioner and Smt. Shukla Chawla, Mrs. Anita Dhawan, Mrs. Reena Sapra and Mrs. Preeti Sharma agreed to withdraw the criminal complaint case bearing No. 150/2004 filed by late S.C.Chawla and further agreed to handover all the original documents in their power and possession and stated that the respondent no.2 shall have exclusive ownership right over the property mentioned above. Smt. Shukla Chawla, Mrs. Anita Dhawan, Mrs. Reena Sapra, Mrs. Preeti Sharma and the petitioner also agreed to be present before the Sub-Registrar if required to execute any documents in favour of the respondent no.2. The respondent no.2 and

Gulshan Arora also agreed to be present before this Court for extending no objection in quashing of the FIR in question. Respondent No.2 affirmed the contents of the aforesaid settlement and of her affidavit dated 24.05.2016 supporting this petition. In the affidavit, she has stated that she 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 has 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 has 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 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 offences under Sections 454/392/397/380 IPC are non-compoundable offences, there should be no impediment in quashing the FIR under these sections, 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.150/2004 dated 08.06.2004, under Sections 448/454/323/392/397/380 IPC registered at Police Station Dilshad Garden and the proceedings emanating therefrom are quashed against the petitioner.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

MAY 30, 2016
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