

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 1336/2015

Date of Decision: February 26th, 2016

USHA DHURIA & ORS Petitioner

Through: Ms.Ritu Dhuria, Adv.

versus

THE STATE & ANR Respondents

Through: Mr.Kamal Kumar Ghei, APP.
IO/SI Subhash Chand, PS: Lajpat
Nagar.

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 petitioners, namely, Sh. Usha Dhuria, Sh. Vishal Kumar Dhuria, Smt. Babita Dhuria and Smt. Meeta Agrani for quashing of FIR No.962/1999 dated 11.08.1999, under Sections 177/182/203/191/192/355 IPC registered at Police Station Lajpat Nagar on the basis of the Memorandum of Understanding (MOU) arrived at between the petitioners and the respondent no.2, namely, Sh. Satendar Kumar Malik on 10.05.2014.

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 SI Subhash Chand.

3. The factual matrix of the present case is that the complainant lodged the FIR in question on the allegation that the complainant was being illegally harassed by the accused persons for a very long time due to professional rivalry. The accused used all kinds of illegal and unlawful acts and omissions to cause damage to the business, property, life and limbs of the complainant. It is very common tendency of the accused/petitioner no.2 to send his employee right next to the shop of the complainant and distract the customers. Whenever, the complainant tried to stop them, he was abused and threatened. On 11.08.1999, the petitioner no.2 sent his employee to stand in front of the complainant's shop. The complainant tried to stop him, on which, the petitioner no.2 came to the shop of the complainant with an iron rod in his hand and started threatening the complainant. After half an hour, three Sikh youths along with the petitioner no.2 came to the shop of the complainant. One Sikh youth slapped the employees of the complainant and the petitioner no.2 took

out a knife and tried to stab the complainant's son. During the same, the petitioner no.1 came in between and got injured. Thereafter, certain police officials came to arrest the complainant as the petitioners had already reported to the police a false and concocted story.

The petitioner no.1 had filed a complaint in PS Lajpat Nagar and thus FIR No.723/99 was registered against the complainant. The respondent no.2 filed a complaint before the Ld. CMM, which lead to the registration of FIR in question against the petitioners. Later on, with the intervention of their respective counsels, parties resolved all their issues.

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 respondent no.2 alongwith Rishi Malik shall pay an amount of Rs. 4 Lakhs by way of bank drafts in the name of petitioner no.1. It is also agreed that the schedule of payment shall be as enunciated in the terms of the MOU. It is also agreed that the parties shall file two different quashing petitions before this Court seeking quashing of FIR no. 723/1999 and the FIR

in question and have further decided to cooperate with each other in getting the FIR in question quashed and also to execute the necessary documents for the same. It is further agreed that both quashing petitions shall be prepared by respondent no.2 alongwith Rishi Malik which shall be filed before this Court within 20 days from the date of signing of the MOU. It is also agreed that all expenses with regard to such quashing petitions shall be borne by the respondent no.2 alongwith Rishi Malik. It is agreed by the parties that they shall not initiate any civil or criminal proceedings against each other in any Court in respect of the incident resulting into the registration of the two FIRs which have been agreed to be mutually settled. Respondent No.2 affirmed the contents of the aforesaid settlement and of his affidavit dated 24.03.2015 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 petitioners 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 petitioners and has settled all the disputes with them. 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 has 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 offences under Sections 177/182/191/192/203 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.962/1999 dated 11.08.1999, under Sections 177/182/203/191/192/355 IPC registered at Police Station Lajpat Nagar and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

FEBRUARY 26, 2016
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