

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2127/2016**

Date of Decision: September 9th, 2016

BHARAT BHASKAR & ORS Petitioners

Through Mr.B. Mohan, Adv. with Ms.Harsh
Lata, Adv.

versus

THE STATE & ANR Respondents

Through Mr.Izhar Ahmad, APP for the State.
SI Dharmender, EOW.

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. Bharat Bhaskar, Sh. Abhinav Bhaskar and Sh. Ashish Bhaskar for quashing of FIR No. 127/2010 dated 18.08.2010, under Section 406/409/420/120-B IPC registered at Police Station Economic Offences Wing on the basis of the Memorandum of Settlement arrived at between the petitioner no.1 and respondent no.2, namely, M/s Magpie Developers Pvt. Ltd. through its Director Ms. Anjali Bhardwaj along with others on 11.01.2016.

2. Learned Additional Public Prosecutor for respondent-State submitted that the Ms. Anjali Bhardwaj, present in the Court has been identified to be the Director of the Respondent No.2 Company in the FIR in question by her counsel.

3. The factual matrix of the present case that the complainant is one of the Directors of M/s. Magpie Developers Ltd and that the complainant being a developer was approached by the accused persons for the sale of two properties in Ishwar Nagar, New Delhi in

Khasra No. 262 with the block named 4 and 6. It is the case of the complainant that he bought the said two properties, believing them to encumbrance free on the fraudulent representation of the accused persons vide Property Development Agreement dated 22.07.2006. It is alleged that a consideration amount of Rs.104 Lakhs vide various cheques was given to the accused persons for the said properties which were purchased under the name of mother of the complainant. It is also alleged that the accused persons were avoiding the development agreement dated 22.07.2006 and that later another agreement dated 20.12.2006, superseding all other agreements was entered into with regard to property named block 6 as referred to above. It is alleged that a suit for specific performance was filed by the complainant against the accused persons before this Court vide Suit No. 965/2008, where this Court passed a restraint (Stay) order against the accused persons from selling or parting with the possession of the suit property during the pendency of the proceedings. That during the pendency of the proceedings in the said suit, a company with the name of TNB investments Pvt. Ltd., moved an application before this Court praying for the Court to add this Company to the parties to this Suit, as the same company had purchased some portion of the property in question vide Sale Deed dated 23.08.2006. The complainant, however, opposed this application, by filing a reply for the same. It is further alleged that the accused persons executed a Sale Deed dated 23.08.2006 in the name of a fictitious company i.e. TNB investments Pvt. Ltd.

Thereafter, the police was informed and a complaint was lodged

following which, the FIR in question was registered against the accused persons. Later, the parties arrived at an amicable settlement.

4. Ms. Anjali Bhardwaj, Director of Respondent No.2 Company, present in the Court, submitted that the dispute between the parties has been amicably resolved out of their own volition. As per the relevant terms of the Memorandum of Settlement, it is agreed that in Suit No. CS(OS) 965/2008 (M/s. Magpie Developers Pvt. Ltd. Vs. The Ishwar Industries Ltd., & Ors.) pending in this Court, M/s. Ishwar Industries Ltd. through its Director, petitioner no.1 herein, or the petitioner no.1 in his capacity as a separate party to the Memorandum of settlement shall submit a sum of Rs. 3 Crores only referred to as “Decretal sum” in full and final settlement and in lieu of all claims/right or interest whatsoever, being the subject matter of the said suit by Anjali Bhardwaj against the petitioner. It is agreed that the Decretal sum shall be discharged by The Ishwar Industries Ltd. or otherwise the petitioner no.1 shall discharge the same out of his own property by Development/Sale of Block No.6 (subject matter of Suit No. 965/2008) within 24 months from the date of decree. It is agreed that the respondent no.2 shall have no objection to this arrangement and has undertaken not to execute the Decree until 24 months from the date of the decree. It is also agreed that as security for the discharge of the Decretal sum, the parties have agreed for a lien on the share of the petitioner no.1 out of the above mentioned property as per subject matter of the agreement to sell dated 20.12.2006, which shall stand released automatically on due payment of the Decretal sum. It is agreed The Ishwar Industries Ltd. /the petitioner no.1 have allowed the

M/s. Millennium Realtech Pvt. Ltd. uninterrupted right of ingress and egress (Subject matter of Suit no. 388 of 2011 titled M/s. Millennium Realtech Pvt. Ltd. Vs. Sh. Bharat Bhaskar leading upto the property measuring 1148 sq. yds. In Khasra No. 260 situated in the revenue estate of Village Bahapur, Tehsil Kalkaji, New Delhi, purchased by M/s. Millennium Realtech Pvt. Ltd. from Vidur Bhaskar and Indu Bhaskar vide Sale Deed dated 07.07.2007, subject to exceptions and limitations, if any. It is also agreed that the M/s Magpie Developers Pvt. Ltd. through its Director Ms. Anjali Bhardwaj shall withdraw the suit No. 388/2011, for permanent injunction from the Court concerned.

Ms. Anjali Bhardwaj, Director of Respondent No.2 Company affirmed the contents of the aforesaid settlement and of her affidavit dated 14.05.2016 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 petitioners survives and so, the proceedings arising out of the FIR in question be brought to an end. Statement of the Ms. Anjali Bhardwaj, Director of Respondent No.2 Company has been recorded in this regard in which she stated that she has entered into a compromise with the petitioners and has settled all the disputes with them. 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 Section 409 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 Ms. Anjali Bhardwaj, Director of Respondent No.2 Company, 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.127/2010 dated 18.08.2010, under Section 406/409/420/120-B IPC registered at Police Station Economic Offences Wing and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

SEPTEMBER 09, 2016
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