

#36

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 31.05.2016

W.P.(CRL) 1761/2016

VARDHMAN ESTATES & DEVELOPERS PRIVATE

LIMITED & ORS

..... Petitioners

Through : Mr. Amit Bhatia, Adv.

versus

STATE & ORS

..... Respondents

Through : Ms. Kamna Vohra, ASC for State
with SI Amit Kumar PS Keshav
Puram in person.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present petition under Article 226 of the Constitution of India read with section 482 of Code of Criminal Procedure, 1973 seeks quashing of FIR No.453/2015 under Sections 420/34 IPC registered at PS Keshav Puram.
2. The subject FIR came to be registered at the complaint instituted by the respondent nos.2 & 3 alleging therein that the petitioners, who are commercial developers, had cheated the former during the

course of a transaction to acquire commercial space. Subsequent to the registration of the subject FIR, the complainant as well as the petitioners have entered into a Memorandum of Understanding executed at Delhi on 29.10.2015. Relevant terms and conditions of the said Memorandum of Understanding are as follows:-

- (i) That the first party has acknowledged that the first party has received the total sum of Rs.60,56,250/- (Rupees Sixty Lakhs Fifty Six Thousand Two Hundred Fifty Only) from the second party in respect of the said units and on account of their request to seek cancellation of the booking of units made by them earlier and request for refund have agreed to refund the same to the second party.
- (ii) That it has been mutually agreed that the first party shall refund the entire amount of Rs.60,56,250/- along with compensation amount of Rs.3,00,000/- (Rupees Three Lakhs) and Rs.3,63,370/- (Rupees Three Lakhs Sixty Three Thousand Three Hundred Seventy Only) on or before 15.4.2016. Out of the total amount of Rs.67,19,620/- the first party shall pay a sum of Rs.64,19,620/- (Rupees Sixty Four Lakhs Nineteen Thousand Six Hundred Twenty Only) to the second party on or before 15.3.2016. The balance amount of compensation of Rs.3,00,000/- @ 12% per annum w.e.f. 1.9.2015 till 15.3.2015 shall be paid on or before 15.4.2016.
- (iii) That First party has previously paid Rs.7,50,000/- on 9.9.2015 and further Rs.7,50,000/- was paid to the second party in cash on 26.9.2015 which the second party acknowledged.

- (iv) That today the first party has further paid a sum of Rs.16,57,558/- (Rupees Sixteen Lakhs Fifty Seven Thousand Five Hundred Fifty Eight Only) in cash to the second party which the second party acknowledged. Now the first party shall pay the balance amount of over due interest of Rs.3,37,033/- (Rupees Three Lakhs Thirty Seven Thousand Thirty Three Only) after deducting TDS @ 10% on the amount of Rs.3,63,370/- to the second party by way of cheque by 30.11.2015. The said over due interest pertains to period from 1.3.2015 till 31.8.2015.
- (v) As per the settlement, the entire amount shall be paid on or before 15.3.2016 in monthly installments by way of demand draft which shall be paid by the first party to the second party on or before 20th day of each successive English calendar month starting from 20.12.2015. That it has been agreed that the first party shall pay 12% per annum interest (quarterly basis) on reducing basis on the said amount till the entire payment is made to the second party. The over-due interest @ 12% amount on reducing balance on principal outstanding amount of Rs.31,18,700/- shall be calculated and shall be paid by the first party to the second party at the time of recording of statement of the second party in the quashing petition to be filed before the Hon'ble Delhi High Court.
- (vi) It has been mutually agreed that after 1.09.2015, the first party shall no pay the monthly commitment charges to the second party. That aforesaid amount shall be paid jointly to the second party.

- (vii) That the first party has agreed to compensate the second party for the delay in offer of possession of the units and further towards the litigation cost which the second party has incurred or will occur in getting the aforesaid FIR quashed and it has been agreed that the amount of Rs.3,00,000/- (Rupees Three Lakhs Only) as compensation shall also be paid by the first party to the second party at the time of recording of statement of the second party at the time of quashing of the FIR bearing no.453/2015 before the Hon'ble Delhi High Court. The said petition will be filed by the first party on or before 15.4.2016 before the Hon'ble Delhi High Court subject to the entire re-payment of the principal amount along with interest payable on reducing basis till the date of actual payment of entire payment.
- (viii) That it has been mutually decided and agreed upon in principle that the second party after receiving the entire settlement amount would not claim any other amount as liquidated damages on account of delay in offer of possession, litigation cost, etc. and the second party undertakes that subject to receiving the entire settlement amount, there shall be no pending claim of any nature against the first party and the second party shall accordingly withdraw all the complaints lodged by them and shall co-operate fully in getting the aforesaid FIR bearing no.453/2015 PS Keshav Puram under Section 420/34 IPC.
- (ix) That the bookings made by the second party shall stand cancelled and all the receipts thereof with respect to the said

bookings stands cancelled. The first party shall be at liberty to re-allot the said space to any other third party. All the claims of the second party as mentioned in the FIR shall stand satisfied after receiving the entire settlement amount from the first party. No claim of any nature over and above the aforesaid settlement amount along with compensation and over due interest as agreed over the principal amount shall be entertained by the first party.

- (x) That in event of default in making the payment by 15.4.2016 by the first party, the second party shall be at liberty to proceed with the criminal case for seeking the recovery of the due amount against the first party.
- (xi) That the second party shall file appropriate statement, affidavit and shall personally appear before the Hon'ble High Court on every date of hearing for the purposes of recording their statement regarding the settlement and their NOC for seeking quashing of FIR.
- (xii) That the second party after receiving the entire settlement amount shall not file any further court case, criminal complaint with respect to the previous dispute which has been amicably settled. That the second party has assured the first party and its Directors and previous Directors that they shall not prosecute their claim or made any complaints against them.
- (xiii) That both the parties shall remain bound by the terms of the present settlement. The first party shall ensure the timely payment of entire principal amount as per the tenure settled between the parties. The

first party assured the second party that the entire payment of principal amount shall be paid on or before 15.3.2016 and the liability regarding the over-due interest on reducing balance basis shall be computed and shall be paid along with compensation amount at the time of quashing of the FIR before the Hon'ble High Court on or before 15.4.2016.

(xiv) That the parties have executed the present MOU voluntarily without any force, fraud or pressure from any quarter in the presence of their respective counsels. It has been mutually agreed that the second party shall place the copy of the present settlement with the Investigation Officer, Police Station Keshav Puram, New Delhi with written request not to prosecute further on account of settlement of the disputes which are the subject matter of the FIR. The second party shall accordingly also place the copy of the settlement before the court concerned on the next date of hearing.

(xv) That two original copies of this MOU have been prepared, one copy to be retained by the first party and the other to be retained by the second party.”

3. Pursuant to the said Memorandum of Understanding, out of the total sum of Rs.70,13,244/-, which includes interest on the investment made by the complainants as well as compensation for the breach of the agreement between the parties, a sum of Rs.62,46,897/- has already been received by the complainants. Three demand drafts (1) bearing no.032849 dated 23.05.2016 for the amount of Rs.7,44,350/- (2) bearing no.032851 dated

23.05.2016 for the amount of Rs.16,498/- and (3) bearing no.032850 dated 23.05.2016 for the amount of Rs.5,399/-, all issued in favour of Sweta Bansal, respondent no.3 herein and drawn at Axis Bank, have been handed over by the petitioners to the complainants/respondent nos.2 & 3 in the Court today. The complainants acknowledge receipt thereof subject to encashment.

4. The respondent nos.2 & 3 namely Smt. Asha Bansal and Smt. Shweta Bansal, who are the complainants in the subject FIR are present in Court and have been identified by the IO in the subject FIR namely, SI Amit PS Keshav Puram, state that in view of the above stated Memorandum of Understanding all the underlying disputes between the parties, that resulted in the registration of the subject FIR, have been resolved, therefore, they are no longer keen to prosecute the same.
5. Ms. Vohra, learned APP appearing on behalf of police, on instructions from the IO in the subject FIR namely, SI Amit PS Keshav Puram, states that there are no other criminal cases pending against any of the petitioners.
6. In the present case, it is observed that offences alleged to have been committed by the petitioners relate to a private dispute and do not have a public element . Therefore, the present case is not an exception to the principle enunciated in ***Gian Singh vs. State of Punjab and Anr.*** reported as **(2012) 10 SCC 303** whereby the courts had been directed to exercise restraint while quashing of FIRs, which relate to offences that are heinous in nature or have a propensity to affect the public at large. The present dispute is

purely a commercial one and the alleged breach of contract on behalf of the petitioners herein, that led to the registration of the subject FIR under Sections 420/34 IPC, has been amicably resolved by and between the parties to the dispute.

7. Resultantly, the subject FIR No.453/2015 under Sections 420/34 IPC registered at PS Keshav Puram and the proceedings arising therefrom are set aside and quashed qua the petitioners herein, subject to the petitioners' depositing a sum of Rs.50,000/- (Rupees Fifty Thousand Only) in the aggregate with the Victims Compensation Fund within a period of 4 weeks from today. Receipt of the same be provided to the IO in the subject FIR.
8. Petition is disposed of accordingly.
9. A copy of the order be given dasti to counsel appearing on behalf of the parties.

SIDDHARTH MRIDUL, J

MAY 31, 2016/dk