

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2170/2016**

Date of Decision: August 22nd, 2016

FAHAD AZIZ AZMI & ORS Petitioners
Through **Mr.Atin Chadha, Adv.**

versus

STATE & ORS Respondents
Through **Mr.Izhar Ahmad, APP for the State.**
SI Varun, PS Jamia Nagar.
Mr.R.C.S. Bhadoria, Adv. with
respondent nos.2 & 3 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 petitioners, namely, Sh. Fahad Aziz Azmi, Sh. Faisal Nazir Azmi and Ms. Fatima Mariyam for quashing of FIR No.381/2014 dated 01.06.2014, under Sections 323/324/341/34 IPC registered at Police Station Jamia Nagar on the basis of the Memorandum of Understanding executed between the petitioners and respondent nos. 2 & 3, namely, Sh. Hifzur Rahman Azmi and Ms. Farhana Mariyam on 23.05.2016.

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 and respondent no.3 has been identified to be the victim in the FIR in question by their counsel.

3. The factual matrix of the present case is that complainants are

eight brothers and his eldest brother/ Sh. Atiqur Rehman has 5 children. Out of these 5 children, Sh. Fahad Aziz Azmi, Sh. Faisal Nazir Azmi and Ms. Fatima Mariyam are the accused persons/petitioners and Sh. Hifzur Rahman Azmi and Ms. Farhana Mariyam are respondent nos.2 & 3 in the present case. It is the case of the complainant that Ms. Farhana Mariyam/respondent no.3 married one Sh. Mohd. Asim, out of her own will, due to which some tension started in their family. The accused persons were not happy with the marriage of respondent no.3. Due to this on 29.05.2014 complainant's eldest brother, namely Sh. Atiqur Rehman and respondent no.3 came to the complainant's house to live with him. On 01.06.2014, the accused persons came to the complainant's house and started beating respondent no.3 mercilessly and when the complainant tried to intervene, the accused no.1 bit him on his arm.

Thereafter, the complaint was lodged by the complainant at the instance of which, the FIR in question was registered against the accused persons. During the pendency of the trial, the parties entered into a settlement.

4. Respondent Nos.2 & 3, present in the Court, submitted that the dispute between the parties has been amicably resolved with the intervention of their family members, relatives etc. It is agreed between the parties that the petitioners shall not repeat such mistakes in future and that the respondent nos. 2 & 3 have decided to pardon the petitioners. It is agreed that the entire legal expenses towards quashing of the FIR in question shall be borne by the petitioners and this includes any fees paid by respondent nos.2 & 3 to their lawyers. It

is agreed that the respondent nos. 2 & 3 shall have no objection if the FIR in question or any other proceeding arising therefrom is quashed before this Court.

Respondent nos.2 & 3 affirmed the contents of the aforesaid settlement and of their affidavits dated 23.05.2016 supporting this petition. In the affidavits, the Respondent nos.2 & 3 stated that they have 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. Statements of the respondent nos.2 & 3 have been recorded in this regard in which they stated that they have entered into a compromise with the petitioners and have settled all the disputes with them. They further stated that they have 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 nos.2 & 3 agreed to the quashing of the FIR in question and stated that the matter has been settled out of their 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 the offence under Section 324 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 statements made by the respondent nos.2 & 3, 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.381/2014 dated 01.06.2014, under Sections 323/324/341/34 IPC registered at Police Station Jamia Nagar and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

AUGUST 22, 2016
dd