

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

+ **CRL.M.C. 4211/2015**

Date of Decision : March 01st, 2016

NAFE SINGH

..... Petitioner

Through Mr.N.M. Popli, Adv.

versus

STATE & ORS

..... Respondent

Through Ms.Manjeet Arya, APP.
Mr.Puneeth K.G. & Mr.Deepak
Pathak, Advs. for R-2 with
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. Nafe Singh for quashing of FIR No.511/2014 dated 20.07.2014, under Section 308/34 IPC registered at Police Station Saket on the basis of the settlement agreement arrived at Delhi Mediation and Conciliation Centre, Delhi High Court, New Delhi between the Sh. Manish, S/o petitioner and respondent no.2, namely, Sh. Khubi Ram on 20.12.2014.

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 his counsel.

3. The factual matrix of the present case is that the complainant lodged the FIR in question on the allegation that his ancestral home is situated in F-212, Lado Sarai, New Delhi in which he along with his three brothers, namely, Subhash, Lt. Bheem Singh and Nafe Singh are share holders. Since past many years, the complainant was having dispute regarding the said property with his brother-petitioner herein. The complainant had kept a tenant on monthly basis. On 20.07.2014, the complainant visited the said property with his family to collect rent and the petitioner came and started threatening the complainant and closed the main gate. The petitioner along with his son Manish and another person Manbeer came and Manbeer and petitioner attacked the complainant with an iron rod whereas Manish charged at the complainant with a wooden stick. Even the son of the complainant is alleged to have been attacked by the accused persons.

Pursuant to the FIR in question, the petitioner was arrested and granted bail by the Trial Court, while Manish applied for the grant of anticipatory bail which was declined. Manish approached this Court

for the grant of protection under Section 48 Cr.P.C. and during the pendency of the same, the 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 settlement agreement, it is agreed between the parties that they shall not disturb the peaceful possession of their respective house/share at property bearing Khasra No. 222, F-212, Lado Sarai, New Delhi and also in respect of each other's peaceful living in the future to maintain good relations. It is also agreed that their respective share in the above said property at present is 113.60 sq. yds. (in the possession of the petitioner) and 104 sq. yds (in the possession of respondent no.2) as shown in the site plan annexed with the agreement. It is also agreed that the common wall shown in the site plan as a-a1, b-b1, c, d-d1, e-e1, f, g-g1 constructed between the house of respondent no.2 and the petitioner shall be exclusively used for all times to come by the petitioner and in case respondent no.2 wishes to rebuild/reconstruct his portion then he would construct a fresh wall next to the said common wall at his own expense without disturbing the foundation of

the house of the petitioner. It is also agreed that in case the respondent no.2 wishes to reconstruct/rebuild his whole house then he shall cut the common lanter existing on each floor of the houses of the petitioner and respondent no.2 with precaution and safety towards each other and at his own expense. It is also agreed that the petitioner shall not raise any objection or cause any hurdle if respondent no.2 does the above mentioned reconstruction in future by taking all precautions as per the safety of both the buildings. It is also agreed between the parties that petitioner has already paid Rs. 4 lacs towards the cost of the above stated common wall existing on the piece of land at the said property to respondent no.2. It is also agreed that the parties shall be free to deal with their respective shares as per law/entitlement in future. It is also agreed respondent no.2 shall cooperate and shall have no objection if the FIR in question were to be quashed. It is also agreed that the quashing petition for the FIR in question shall be filed by the petitioner, being the principal offender, before this Court in the month of January 2015 with due prior intimation of the same to respondent no.2. It is further agreed that the petitioner shall not proceed with his complaint pending before the Ld.

MM, Saket Courts, New Delhi after quashing of the FIR in question. It is also agreed that the petitioner and respondent no.2 shall cooperate with each other for registration of their NOC before Mehrauli Authority. Respondent No.2 affirmed the contents of the aforesaid settlement and of his affidavit dated 31.08.2015 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 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 he stated that he has entered into a compromise with the petitioner and has settled all the disputes with him. 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 offence under Section 308 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 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.511/2014 dated 20.07.2014, under Section 308/34 IPC registered at Police Station Saket and the proceedings emanating therefrom are quashed against the petitioner.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

MARCH 01, 2016
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