

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 5101/2013

Date of Decision : February 05th , 2016

JASBIR KAUR & ANR

..... Petitioner

Through: Mr. M.M. Singh, Advocate for
petitioner No.1
Mr. Vishal Sharma, Advocate for
petitioner No.2

versus

THE STATE & ANOTHER

..... Respondent

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for the State
Mr. Jitendra Kumar, Advocate for
respondent No. 2 – complainant

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, Smt. Jasbir Kaur and Sh. Manoj Kumar for quashing of FIR No.74/2011 dated 14.03.2011, under Sections 471/420/448/468/34 IPC registered at Police Station Nihal Vihar on the basis of the Memorandum of Understanding (MOU) arrived between the petitioners and the respondent no.2, namely, Sh. Dilip

Vishwas on 12.12.2012.

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 this present case is that the complainant purchased the plot No. 178, Kh. No. 26/16, Village Nilothi on 01.03.2008 from Sh. Naresh Shokeen. The original agreement to sell is in the possession of the complainant. The affidavit of the seller and receipt of Rs. 90,000/- are intact in the possession of the complainant. The said plot was let out to Pavitra Rai vide rent agreement on 27.03.2009 on monthly rent of Rs. 1700/- through property dealer Santa Singh. On 18.03.2010, the said agreement was replaced by a new agreement by Pavitra Rai. On 10.08.2010, when Pavitra Rai did not come to pay the rent, the complainant enquired about him. Thereupon, Santa Singh told that he has purchased the said plot. He told the complainant that he has purchased the plot for Rs. 8,10,000/- and started abusing in filthy language. When the complainant objected to the same, Santa Singh showed him a knife and threatened to kill

him. On 19.08.2010, Mahender Singh and Santa Singh called the complainant and asked him to bring along the original documents of the said plot but he only took along the photocopies of the same which they tried to snatch from him.

Thereafter, on the basis of the complaint lodged by the complainant, the FIR in question was lodged against the petitioners. The petitioner no.2 was arrested by the police officials on 22.11.2012 and was sent to J.C. The bail application on behalf of petitioner no.2 was filed and he was granted the same. Thereafter, the petitioners settled the dispute with the respondent no.2.

4. Respondent No.2 present in the Court, submitted that the dispute between the parties has been amicably resolved due to the intervention of well-wishers, relatives and common friends of the parties in respect of the Plot No. 178, measuring 50 sq. yards, situated out of Khasra No. 26/16, village Nilothi Extn., Nangloi, Delhi-41 ('property in dispute'). As per the MOU, the petitioner no.2 shall compensate the petitioner no.1 who is the bonafide purchaser and has been victimized by means of handing over the possession of plot situated at third floor alongwith roof right in property bearing no. 33-

B admeasuring 50 sq. yards out of Khasra No. 35/5 in the village Nilothi, Colony known as Chander Vihar, Nilothi Extn. New Delhi-41 ('property') which is still under construction and has been booked by the petitioner no. 2 through a builder. It has been further agreed that petitioner no.1 shall make the payment of Rs. 4.50 lacs and Rs. 1 lacs to the builder at the time of execution of the sale documents. It has been further agreed that the possession of the said property shall be handed over to the petitioner no.1 on or before 31.03.2013. It has been further agreed that the petitioner no.1 shall hand over the possession of the property in dispute i.e. the subject matter of FIR to the respondent no.2. It has been further agreed that after getting the possession of the property, the petitioner no.1 shall hand over the possession of the property in dispute to the respondent no.2. Respondent no. 2 affirmed the contents of the aforesaid settlement and of his affidavit dated 30.11.2013. 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 468/471 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.74/2011 dated 14.03.2011, under Sections 420/448/468/471/34 IPC registered at Police Station Nihal Vihar and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

FEBRUARY 05, 2016
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