

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

+ **CRL.M.C. 4696/2014 & CrI.M.A. No.15981/2014**

Date of Decision: March 11th, 2016

KUSUM NAGRATH & ORS

..... Petitioner

Through

Mr.Vikram Chaudhri, Sr. Adv. with
Mr.A. Chandra, Adv. & Mr.Harshit
Sethi, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through

Mr.Amit Chadha, APP for the State.
Mr.Vijay Shankar, Adv. 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 petitioners, namely, Smt. Kusum Nagrath, Ajay Nagrath and Rohit Nagrath for quashing the FIR No.672/2014 dated 25.08.2014, under Sections 420/120B IPC registered at Police Station Pandav Nagar on the basis of the compromise arrived at in the Delhi High Court Mediation & Conciliation Centre, Delhi High Court, New Delhi between the petitioners (ex-directors of Rajit Paints Ltd.) and Radiant Polychem Pvt. Ltd. (hereinafter referred to as the “complainant company”) through its director (authorized representative) Vidhya Dutt (complainant) on 06.08.2015.

2. Learned Additional Public Prosecutor for respondent-State

submitted that Mr. Vidhya Dutt, present in the Court has been identified to be the complainant and Director-authorized representative of M/s Radiant Polychem Pvt. Ltd. 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 the petitioners were the directors of Rajit Paints Ltd. along with other accused persons. The accused persons had been making purchases from the complainant company on credit basis from time to time. The complainant company has been maintaining regular account of all the business dealings and transactions carried put between accused persons and the complainant company. Accordingly, there is an outstanding amount of Rs. 3439448/- as on the date of the FIR in question. The accused persons on much persuasions issued several cheques in favour of the complainant company and all the cheques were returned back as dishonoured. The complainant company after giving notice to the accused persons, filed a complaint case under Section 138 N.I.Act against the accused persons.

Thereafter, the matter came before this Court and this Court referred the complainant company and petitioners to Delhi High Court Mediation & Conciliation Centre to appear on 12.05.2015 at 3 pm. Later on, the parties arrived at an amicable settlement before the said mediation centre.

4. Sh. Vidhya Dutt, authorized representative of complainant company, present in the Court submitted that the dispute between the parties has been amicably resolved. As per the mediation report, it is

submitted that the complainant company, has now come to know that the members of Rajit Paints Ltd. i.e. the petitioners are themselves victims at the hands of other accused viz. members of Mehra Family led by Rajit Mehra who are currently having majority stakes in Rajit Paints Ltd. It has been agreed that the complainant company is satisfied that no liability whatsoever vests with the petitioners regarding the business transaction between the complainant company and Rajit Paints Ltd. The petitioners undertook to appear as witnesses to support the cause of the complainant company for recovering balance amount of Rs. 2691750/- at any stage of the proceedings against Rajit Paints Ltd. and its remaining directors led by Mr. Rajit Mehra. The petitioners also agreed to pay an amount of Rs. 2 lacs to the complainant company as a lumpsum and final amount for the satisfaction of all the claims of the complainant company towards the petitioners. The petitioners have already paid an amount of Rs. 1 lacs by cash to Mr. Vidhya Dutt before the Id. Mediator on 06.08.2015 and the balance amount of Rs. 1 lacs shall be paid by cash or DD in favour of the complainant company before this Court at the time of the disposal of the present petition. The complainant company also undertook to facilitate the quashing of the FIR in question and shall submit the requisite documents. The complainant company also undertook to withdraw its complaints under Section 138 N.I.Act qua the petitioners. Both the parties also agreed that the instant settlement does not in any way prejudice, impede or impinge upon the rights of the complainant company towards Rajit Paints Ltd. and its remaining directors. Mr. Vidhya Dutt, Director of complainant company

affirmed the contents of the aforesaid settlement. 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 Sh. Vidhya Dutt, Director of complainant company has been recorded in this regard in which he stated that M/s Radiant Polychem Pvt. Ltd. has entered into a compromise with the petitioners and has settled all the disputes with them. He further stated that M/s Radiant Polychem Pvt. Ltd. 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 Sh. Vidhya Dutt, the authorized representative of M/s Radiant Polychem Pvt. Ltd. agreed to the quashing of the FIR in question and has stated that the matter has been settled out of the free will of M/s Radiant Polychem Pvt. Ltd. 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 as per Section 320 (2) Cr.P.C., the offence under Section 420 IPC is an offence compoundable only with the permission of the Court, 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 Sh. Vidhya Dutt, 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 the FIR No.672/2014 dated 25.08.2014, under Sections 420/120B IPC registered at Police Station Pandav Nagar and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

14. The application CrI.M.A. No.15981/2014 is also disposed of.

(P.S.TEJI)
JUDGE

MARCH 11, 2016
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