

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5819/2014**

Date of Decision : April 04th, 2016

DARSHAN KHURANA & ORS Petitioners
Through **Mr.Anvar Qamaruddin, Adv.**

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR ... Respondents
Through **Mr.Amit Chadha, APP for the State**
Inspt.G. Singh
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, Sh. Darshan Khurana, Sh. Sanjeev Khurana and Sh. Narinder Kaushal for quashing of FIR No.537/2006 dated 25.07.2006, under Sections 406/420/468/471/120B IPC registered at Police Station Shalimar Bagh on the basis of the compromise deed arrived at between petitioner nos. 1 & 2 and respondent no.2, namely, Sh. Pradeep Bhushan Goel along with others on 01.10.2009 and the compromise deed arrived at between respondent no.2 on behalf of others and petitioner no.3 on 26.05.2010.

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent no.2, present in the Court has been identified to be the one of the complainants/first-informants in the FIR

in question by Inspector G. Singh.

3. The factual matrix of the present case is that the FIR in question was lodged by the complainant on the allegation that on 04.11.1996, alleged persons namely Darshan Khurana and others formed a welfare society under the name and style of “Greater Delhi Awas Vikas Society” and collected money from public through advertisements. The true fact was that the registration of Housing Societies in Delhi was not permitted legally in Delhi at that time and they got themselves registered as a Charitable and Welfare Association thereby misleading the members of the public and collected Rs. 45 lacs in the bank account besides collecting cash as per membership. After acceptance of the money, the management never called any General Body meeting and their books of accounts were never audited. The members who booked the plot/flat were totally kept in dark about their true affairs. Shri Narinder Kaushal in almost all the cases, personally presented the affairs of the society to lure the members of the public to get their money etc. The accused Dharshan Khurana after incorporation of the society came in contact of Narender Kaushal and authorized him to assist in the business of the society. All the three accused persons were instrumental in alluring the complainants/victims to part away from their money.

Thereafter, the matter got compromised between the parties.

4. Respondent No.2 present in the Court submitted that the dispute between the parties has been amicably resolved. As per the compromise deed dated 09.10.2009, it has been agreed that petitioner nos.1 & 2 shall pay a sum of Rs. 1 Lakh in cash on 09.10.2009 to

respondent no.2 and others, who have been named as parties of the First Part in the said compromise deed. It is also agreed that respondent no.2 shall receive the above mentioned cash for and on behalf of others, who have been named as parties of the First Part in the said compromise deed. It has also been agreed that on 12.10.2009, petitioner nos.1 & 2 shall issue one post dated cheque of Rs. 1 Lakh only dated 10.11.2009, which will also be received in the name of respondent no.2 for and on behalf of others, who have been named as parties of the First Part in the said compromise deed. It is also agreed that on 12.10.2009, petitioner nos.1 & 2 shall issue 15 post dated cheques for a sum of Rs. 50,000/- each in the name of respondent no.2 received for and on behalf of others, who have been named as parties of the First Part in the said compromise deed. It is also agreed that the 15 post dated cheques shall be payable on the 10th day of every month from December 2009 and that the petitioner nos. 1 & 2 shall pay the last installment of Rs.50,000/- by way of draft/cheque at the time of quashing of the FIR in question before this Court. It is also agreed that the respondent no.2 along with others, who have been named as parties of the First Part in the said compromise deed shall withdraw all complaint cases under Section 138 N.I. Act filed against petitioner nos. 1 & 2 after receipt of the total compromise amount. It is also agreed that the bail granted in view of the compromise shall be conditional upon the fact that the petitioner nos. 1 & 2 shall pay the post dated cheques on the date mentioned above and also undertake that the post dated cheques issued by the petitioner nos. 1 & 2 shall be duly honoured on its presentation. It is also agreed that the in case any

cheque of the compromise amount is dishonoured, then the petitioner nos. 1 & 2 shall be liable to pay the entire amount as due on 30.04.2003, i.e. Rs.12,49,015/- along with interest @ 24% per annum from 30.04.2003 and the bail granted to the petitioner nos. 1 & 2 shall be liable to be cancelled and the respondent no.2 along with others, who have been named as parties of the First Part in the said compromise deed shall be at liberty to move appropriate application for cancellation of the bail before the appropriate Court. It is also agreed that the respondent no.2 along with others, who have been named as parties of the First Part in the said compromise deed shall cooperate with petitioner nos. 1 & 2 at the time of quashing of the FIR in question before this Court. As per the compromise deed dated 26.05.2010, the first party i.e. respondent no.2 and others shall receive a sum of Rs. 2.5 lacs from the petitioner no.3. The Cheque No. 205683 dated 28.02.2010 was duly paid on presentation. The first party was in possession of the second Cheque No. 205684 dated 31.03.2010 for Rs.1 lacs pending towards discharge of the obligation. In compliance with the order dated 26.03.2010, a demand draft No. 576173 dated 27.03.2010 for Rs. 1.5 lacs drawn in the name of respondent no.2 was made out and deposited in the Court on 29.03.2010. The first party accepted the said draft through IO of the case and was paid on 09.04.2010. Respondent no. 2 affirmed the contents of the aforesaid compromise deeds and of his affidavit dated 26.11.2014, supporting this petition. In the affidavit, he has stated that he has been authorized by other complainants of the FIR in question to proceed in the matter on their behalf. He further 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. Respondent no. 2 agreed to the quashing of the FIR in question and 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 471/468 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.537/2006 dated 25.07.2006, under Sections 406/420/468/471/120B IPC registered at Police Station Shalimar Bagh and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

APRIL 04, 2016
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