

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

% Decided on: 30th September, 2016

+ **CRL.M.C. 3683/2016**

PRADEEP KUMAR SEHDEV

..... Petitioner

Represented by: Mr. Sandeep Bajaj, Mr. Amit
Saraf, Mr. S. Qureshi, Advs.

versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR.

..... Respondent

Represented by: Mr. Amit Ahlawat, APP.
Ms. Harleen Singh, Adv. for
R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 15434/2016

Exemption allowed subject to just exceptions.

CRL.M.C. 3683/2016

1. By the present petition the petitioner seeks quashing of FIR No. 310/2014 registered at PS Chitranjan Park, Delhi on the complaint of Respondent No.2 on the ground that the parties have settled the matter. The FIR was initially registered for offences punishable under Sections 406/420/468/471 IPC, later since the petitioner absconded and could not be arrested Section 174A IPC was also invoked and charge-sheet was filed for the said offence as well.

2. During the course of investigation the parties have settled the matter and when the petition for bail came up before this Court on 1st September, 2016 it was observed that the parties have settled the matter. Copy of the settlement deed dated 27th September, 2016 has been placed on record which is at pages 41 to 43 of the paper book.

3. Learned APP for the State on instructions submits that in the above-noted FIR the petitioner is the only accused and respondent No.2 the only complainant/ victim. He further submits that though this Court may quash offences punishable under Section 406/420/468/471 IPC, however since Section 174A IPC does not affect the complainant but the administration of justice the same be not quashed.

4. Respondent No.2 who is present in Court and is identified by the learned counsel and the Investigating Officer states that he has received a sum of ₹10 lakhs by way of demand draft No.'206479' drawn on Punjab National Bank. On receipt of this amount he has no claim remaining against the petitioner in respect of which he lodged the above-noted FIR. He states that he does not wish to pursue the above-noted FIR and the proceedings pursuant thereto.

5. The parties have settled the matter, there is no legal impediment in quashing the FIR for provisions under Sections 406/420/468/471 IPC and no useful purpose would in continuing with the trial wherein besides the petitioner, the complainant would also face unnecessary rigours of the trial.

6. However the issue remains whether this Court can quash the FIR qua Section 174A IPC which is a standalone offence committed by the petitioner after registration of FIR as he had absconded and could not be arrested. In the decision of the Supreme Court reported as (2014) 6 SCC 466 Narinder

Singh and Ors. Vs. State of Punjab & Ors. Supreme Court relying upon its earlier decision in Gian Singh Vs. State of Punjab held:

“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.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept

the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

7. The allegations in the FIR are that on the assurance of the petitioner the complainant desired to purchase half share of properties bearing Khasra No. 130/2, 131/2, 133, 148/1, 149/2, 14-9, 11-11, 20-19, 8-17, 51-13 total admeasuring 151 Canals and 09 Marlas situated at Village Harra Tikka, Dhangu, H.B. No.394, Tehsil Pathankot Punjab. An agreement to sell was also executed. Though the complainant fulfilled all the pre-registration formalities, however the petitioner failed to execute the sale documents and later it was revealed that the petitioner had already disposed of the said property for which he had entered into a fresh agreement to sell with the respondent No.2.

8. Considering the nature of allegations in FIR for offences punishable under Sections 406/420/468/471 IPC being personal in nature, I deem it fit to quash the FIR No. 310/2014 qua Sections 406/420/468/471 IPC, however since Section 174A IPC is a standalone provision which has no bearing to the other offences alleged and is not an offence of personal nature inter-se the parties i.e. the petitioner and respondent No.2, this Court refrains from quashing the proceedings pursuant to the above-noted FIR qua Section 174A IPC.

9. Consequently the proceedings before the learned Trial Court would now go on for offence punishable under Section 174A IPC and not qua offences punishable under Sections 406/420/468/471 IPC to which extent the proceedings pursuant to the FIR are hereby quashed. While continuing with the trial for offence punishable under Section 174A IPC the learned Trial Court will also bear in mind that the petitioner has been in custody for nearly 45 days.

10. Parties have signed this order sheet in acknowledgment of their

statements made before this Court.

11. With the above-noted directions the present petition is disposed of.

12. Order dasti.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 30, 2016
‘ga’