

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C.4881/2015

Date of Decision : April 1st, 2016

LAL BIVHAY NATH SHAHDEO & ORS Petitioner
Through Mr.P.S. Rai, Adv.

versus

THE STATE OF NCT OF DELHI & ANR Respondent
Through Mr.Amit Chadha, APP for the State
with Inspt.Virendra Singh, PS Crime
& Railway.
Mr.Mukesh Gupta, Adv. with
Constituted Attorney of R-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. Lal Bivhay Nath Shahdeo, Sh. Lal Sanjay Nath Shahdeo and Sh. Lal Abhay Nath Shahdeo for quashing of FIR No.47/2014 dated 28.04.2014, under Sections 409/420/120-B/34 IPC registered at Police Station Crime Branch on the basis of the statement of compromise of respondent no.2 namely, Smt. Shivani Mishra on 06.12.2015 in view of the settlement arrived at between the petitioners and respondent no.2.

2. Learned Additional Public Prosecutor for respondent-State

submitted that Mr. Dinesh Sharma, present in the Court has been identified to be the attorney of the complainant/first-informant (respondent no.2) in the FIR in question by Inspector Virendra Singh.

3. The factual matrix of the present case is that the FIR in question was lodged by the complainant on the allegation that the complainant is a 76 years old widow and since the death of her husband, she has been living on his pension. In 1993, Shri Sudhanshu Shekhar Sahay started staying with the complainant. Later, the complainant shifted to the residence of her son at Delhi. After the complainant shifted to Delhi, Sudhanshu and his wife used to live at her house at Hazaribagh. In 2009, the complainant sold the said house. Later, Sudhanshu became friends with one Rajesh Sahdeo and introduced him to the complainant. In the month of December 2010, he showed the complainant brochures of Vrindavan Constructions Company, Jharkhand and told her that he can facilitate the complainant to purchase a three side open plot for Rs. 50 lacs. The complainant accepted the same. On 17.01.2011, the complainant transferred Rs. 10 lacs in favour of Vrindavan Constructions. Rajesh Sahdeo got the agreement made and the complainant signed on it. Thereafter, the complainant again transferred certain amounts on various dates. The transaction totaled to an amount of Rs. 41 lacs. Rajesh never gave the copy of the agreement to the complainant. During 2012, Rajesh told the complainant that due to inordinate delay in obtaining the sanction from the State Authority of Jharkhand, the said piece of land would now be transferred in 2013. Thereafter, Rajesh, kept on delaying the same on one pretext or the other. Later, the complainant came to know

that there was no Company by the name Vrindavan Constructions and when the complainant tried to contact Rajesh and his partners, no one responded.

The investigation was initiated against all the three accused persons. The three accused are the partners in the said firm. During the investigation, Mr. Rajesh Sahdeo was arrested. He then paid Rs. 18 lacs to the complainant and applied for regular bail which was granted to him although there is no full and final settlement between him and the complainant w.r.t. the FIR in question. Later, the remaining amount was also paid to the complainant and the matter was settled.

4. Mr. Dinesh Sharma, present in the Court submitted that the dispute between the parties has been amicably resolved. As per the statement of compromise, it has been stated that during the pendency of investigation in the FIR in question, the petitioners paid the disputed amount of Rs. 41 Lakhs to respondent no.2 and it is agreed that the same amount has been acknowledged as received by the respondent no.2. It is also agreed that the petitioners have further paid an amount of Rs. 14 Lakhs as full and final settlement of disputes between the parties. It is agreed that respondent no.2 shall put an end to all the litigation(s) and that the litigations and criminal proceedings arising out of the FIR in question either by way of cooperating in having the FIR and/or all the criminal proceedings disposed of and/or quashed by this Court and/or by withdrawing all the criminal proceedings initiated against the petitioners. It is also agreed that respondent no.2 shall cooperate for the grant of bail to release petitioner no.2 and that she shall not oppose his bail or release

application before the Court and that she shall not have any objection if bail were to be granted to him. Mr. Dinesh Sharma 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 Mr. Dinesh Sharma has been recorded in this regard in which he stated that he on behalf of respondent no.2 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 through, Mr. Dinesh Sharma that the matter has been settled out of her 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 409 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 Mr. Dinesh Sharma on behalf of 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.47/2014 dated 28.04.2014, under Sections 409/420/120-B/34 IPC registered at Police Station Crime Branch and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

APRIL 01, 2016
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