

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

+ **CRL.M.C. 4499/2015 & CrI.M.A. No.16030/2015**

Date of Decision : March 16th, 2016

ASHWANI SIROHI & ORS Petitioners
Through **Mr.Sundeeep Srivastava, Adv.**

versus

STATE & ORS Respondents
Through **Mr.Rajat Katyal, APP for the State.**
SI Shiv Singh, PS Sarojini Nagar.

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. Ashwani Sirohi, Sh. Vinod Kumar, Sh. Sandeep, Sh. Balkishan Dhawan @ Kishan Dhawan, Sh. Sanjeev Kumar and Sh. Kamruddin for quashing of FIR No.403/2006 dated 25.07.2006, under Sections 365/392/342/323/34 IPC registered at Police Station Sarojini Nagar on the basis of a settlement agreement arrived at between the petitioners and respondent no.2, namely, Smt. Laxmi Bansal on 09.09.2015.

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent no.2, present in the Court has been identified to be the First-informant/complainant in the FIR in question by her counsel.

3. The factual matrix of the present case is that the FIR in question was lodged by the complainant on the allegation that on 25.07.2006, the complainant was in her car. When her car reached the Sarojini Nagar flyover, one Maruti 800 car in which 4 persons were sitting, stopped in front of her car. When the driver of the complainant asked the said persons, they slapped her driver. One of them sat on the driver seat and the other person sat with the complainant and meanwhile two other persons who were on their motorcycle also started chasing the car of the complainant. When the driver of the complainant tried to call the family members of the complainant, they beat him up mercilessly and also snatched away the mobile phone. The accused persons took the complainant to the Punjabi Bagh jungle where they made her sign some documents. Thereafter the accused persons let her go and took the car away.

The son of the respondent no.2 has approached M/s Kotak Mahindra Prime Ltd. for the finance of the Wagon R car and a sum of Rs. 2,93,820/- was financed. The petitioner no.1 is the proprietor of M/s Chaudhary & Co. which is an agency of M/s Kotak Mahindra Prime Ltd. Dispute had arisen between M/s Kotak Mahindra Prime Ltd. and the respondent no.2 regarding the outstanding of payments against the said loan. During the hearing of the Appeal No. FA-07/334 filed by M/s Kotak Mahindra Prime Ltd. the parties arrived at an amicable settlement.

4. Respondent No.2 present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the settlement agreement, an agreement dated 29.05.2015 was entered into

between M/s Kotak Mahindra Prime Ltd., Mr. Manu Bansal and respondent no.2-herein as per which it was agreed that M/s Kotak Mahindra Prime Ltd. shall pay an amount of Rs. 2.25 Lacs to Sh. Manu Bansal towards full and final settlement against the claims of all the parties towards each other which has been paid by M/s Kotak Mahindra Prime Ltd. to Sh. Manu Bansal by way of DD within a period of three weeks from 22.05.2015 and that the respondent no.2 shall cooperate with all the accused persons named in the FIR in question in quashing the same before this Court. It is further stated in the agreement dated 09.09.2015, that after the execution of the settlement agreement dated 29.05.2015, M/s Kotak Mahindra Prime Ltd. has paid a sum of Rs. 2.25 lacs to Manu Bansal vide DD bearing no.363147 dated 17.06.2015. It is also agreed that the respondent no.2 is not interested in pursuing the FIR in question and is willing to cooperate with the petitioners in getting the FIR in question and the charge sheet filed therein quashed before this Court. It is agreed that after signing the present settlement agreement, the petitioners shall move an appropriate application for recording of settlement in the case bearing FIR no. 403/2006 pending in the concerned Court of Ld. MM, Patiala House Courts, Delhi. It is also agreed that the respondent no.2 shall do all the acts including but not limited to cooperating, signing, verifying and providing photographs etc. for the purpose of filing of the quashing petition for quashing of the FIR in question and charge sheet thereto in favour of the petitioners in the Charge Sheet pursuant to the FIR in question before this Court. It is also agreed that the parties shall not file any kind of proceedings civil and criminal against

each other and their family members, relatives and business, agents, representatives and assignees. It is also agreed that if any complaint/case which is not in the knowledge of the parties, then it shall be deemed to be considered as withdrawn and will not have any legal effect. It is also agreed that the above stated payment shall be the full and final settlement between the parties with respect to any dispute pending between all the parties and neither party shall further claim any amount or dues from the other party after the signing and discharge of the present settlement. It is agreed that each party knows and acknowledges that neither this settlement agreement, nor any payment made in pursuance of the agreement shall be construed to be an admission or concession by the parties of any kind with respect to any fact, liability or fault. Respondent No.2 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 the respondent No.2 has been recorded in this regard in which she stated that she has entered into a compromise with the petitioners and has settled all the disputes with them. She further stated that she 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 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 offences under Sections 365/392 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.403/2006 dated 25.07.2006, under Sections 365/392/342/323/34 IPC registered at Police Station Sarojini Nagar and the proceedings emanating

therefrom are quashed against the petitioners i.e. qua M/s Kotak Mahindra Prime Ltd.

13. This petition is accordingly disposed of.

14. Application CrI.M.A. No. 16030/2015 is also disposed of.

(P.S.TEJI)
JUDGE

MARCH 16, 2016
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