

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

+ CRL.M.C. 5259/2015 & Crl.M.A. Nos.18980-81/2015

Date of Decision : March 09th, 2016

PAWAN KUMAR SARASWAT & ANR Petitioner

Through Mr.Anil Grover & Mr.Shivesh P.
Singh, Advs.

versus

STATE OF NCT OF DELHI & ANR Respondent

Through Mr.Rajat Katyal, APP with SI Vikram
Singh, PS Civil Lines.
Mr.Ankur Goel & Mr.Lokesh
Aggarwal, Advs. for R-2 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, Sh. Pawan Kumar Saraswat and Sh. Shyam Sunder Aggarwal for quashing of FIR No.118/2003 dated 16.04.2003, under Sections 387/506/34/467/468/471/120B IPC registered at Police Station Civil Lines the basis of the mediation report of the Delhi High Court Mediation and Conciliation Centre, Delhi High Court, New Delhi in view of the settlement arrived at between the petitioner no.1 and the respondent no.2, namely, Ms.

Ruchi Kohli, respectively, on 30.05.2014.

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent no.2, present in the Court has been identified to be the complainant/first informant 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 the complainant inherited the property situated at 1933, Argara, Fountain, Delhi-6 from her late mother Smt. Madhu Rathi after her death on 30.01.2002. The maternal grandmother of the complainant namely, Mrs. Prakash Kohli filed a civil suit before this Court and has obtained a stay against her. In the month of March, 2003, Sh. Pawan Kumar Sarawat, a notorious builder approached the complainant along with his henchman Sh. Shyam Suder Aggarwal and requested her to enter into an agreement to sell with Sh. Ramesh Dubey. The complainant could not sell the plot due to injunction order. Sh. Pawan Kumar got annoyed and threatened the complainant with dire consequences. On 31.03.2003, petitioner no.1 again came to her house along with petitioner no.2 and threatened the complainant. Since 01.04.2003, the

complainant has been receiving threatening calls from the petitioners. On 07.04.2003, the petitioners even sent some labourers with building material to the said property and threatened the chowkidar to open the gate. The chowkidar informed the complainant about the same and then she called the police who dispersed the labourers. After that, the petitioners called up the complainant and threatened her to fabricate the documents.

The respondent no.2 lodged the FIR in question against the petitioners. The petitioners were arrested and then enlarged on bail. The charge sheet has been filed by the CBT Section/EOW/ Crime Branch against the petitioners and the trial is pending. The respondent no.2 also filed a suit bearing No. CS (OS) No. 811 and 812 of 2004 for cancellation of three sale deeds all dated 27.10.2003. During the pendency of the said suits, the parties arrived at an amicable settlement and resolved all their issues.

4. Respondent No.2 present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the mediation report, it is agreed that the all disputes and differences arising out of CS(OS) No. 811/2004 & CS(OS) No.812/2004 as well

as in relation to property bearing no. 973 (old), 2199 (new), Gali Hinga Beg, Phatak Habash Khan, Tilak Bazar, Delhi-6 and some portion of property bearing No. 1933(part) Arghara Fountain, Delhi-6 have been settled. It is also agreed that respondent no.2 shall withdraw all her suits filed against the petitioner no.1 and that she shall hereby not dispute his ownership in respect of the properties purchased by him from Smt. Kamla Rathi. It is also agreed by petitioner no.1 that he shall withdraw all his suits in respect of the above properties filed by him against the respondent no.2 and further agreed that he shall withdraw his objection filed in the probate petition pending before this Court. It is also agreed that that petitioner no.1 shall cooperate with respondent no.2 for the deletion of his name from the said proceedings. It is also agreed that respondent no.2 shall not stake any claim on the above properties purchased by the petitioner no.1 from Smt. Kamla Rathi at any point of time and that she shall hand over the possession of the part in the Arghara property to the petitioner no.1. It is also agreed that respondent no.2 shall cooperate in the quashing of the FIR in question before this Court. It is also agreed that petitioner no.1 shall not in the future, dispute the

factum of respondent no.2 being the adopted daughter of Late Sh. Nand Lal Rathi and Late Sh. Madhu Rathi. It is also agreed that petitioner no.1 shall pay a sum of Rs. 20,00,000/- to respondent no.2 in lieu of the above properties purchased by him from Smt. Kamla Rathi. It is further agreed that out of the above mentioned amount, Rs. 15,00,000/- has already been paid by the petitioner no.1 way of Cheque bearing no.32071048 drawn on UBI, S.B. Sarafa Market, Delhi to the respondent no.2 and that respondent no.2 acknowledges the receipt of the same. It is further agreed that the petitioner no.1 shall pay the balance amount of Rs. 5,00,000/- to the respondent no.2 by way of Cheque bearing no.32071055 drawn on UBI, S.B. Sarafa Market, Delhi. It is also agreed that after receipt of the same respondent no.2 shall not be left with any claim in respect of the above properties and after the receipt of the above amount, respondent no.2 shall withdraw both her suits bearing CS No.811/2004 & CS(OS) No.812/2004 both titled as “Ruchi Kohli Vs. Pawan Kumar Saraswat & Ors”, and all other criminal litigations filed against the petitioner no.1. It is further agreed that respondent no.2 has already handed over physical and vacant possession of the portion in her possession in the

part of property bearing no. 1933(part) Arghara, Chandni Chowk, Delhi to the petitioner no.1 which fact is acknowledged by the petitioner no.1. It is also agreed that petitioner no.1 shall withdraw suit bearing CS No. 242/04/10 titled as “Pawan Saraswat vs. Ruchi Kohli” from the concerned Court. It is also agreed that petitioner no.1 shall also withdraw his civil suit bearing CS No.59/2004 titled as “Pawan Saraswat vs. Prakash Kohli” pending in the Court of Sh. V.K. Bansal, ADJ, Tis Hazari Courts, Delhi adjourned sine die on 03.06.2013. It is also agreed that petitioner no.1 shall withdraw his civil suit bearing CS No.436/2004 titled as “Pawan Saraswat vs. Roshan Zamil & Ors” pending in the concerned Court. It is also agreed that the respondent no.2 shall withdraw CM(M) bearing no.1539/2010 pending before this Court. It is further agreed that the petitioner no.1 shall be at liberty to deal with the sole tenant Sh. Roshan Zamil in the property at Arghara who is a tenant under the respondent no.2 and is paying rent @ Rs. 5,000/- per month to the respondent no.2 but has not paid any rent since January 2014. It is further agreed that the petitioner no.1 shall be at liberty to recover such above mentioned unpaid rent from the abovementioned tenant.

Respondent No.2 affirmed the contents of the aforesaid settlement and of her affidavit dated 08.10.2015 supporting this petition. In the affidavit, the respondent no.2 has stated that she 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 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

387/467/468/471 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.118/2003 dated 16.04.2003, under Sections 387/506/34/467/468/471/120B IPC registered at Police Station Civil Lines and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

14. Applications Crl.M.A. Nos. 18980-81/2015 are also disposed of.

(P.S.TEJI)
JUDGE

MARCH 09, 2016
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