

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

+ CRL.M.C. 4527/2015

Date of Decision : January 29th, 2016

RAJESH GOSAIN & ORS

..... Petitioner

Through: Mr.Anurag Ahluwalia, Adv.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through: Mr.Vinod Diwakar, APP.
Mr.Rajat Wadhwa and Mr.Kunal
Aggarwal, Advs. for R-2.
Inspector Deveshwari, PS: EOW.

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, Mr. Rajesh Gosain, Sh. Abhishek Arvind, Sh. Alok Gupta, Sh. Mohit Kothiwal, Pankaj Johari and Sh. Niraj Johari for quashing of FIR No.154/2011 dated 19.08.2011, under Sections 66/66C of the Information Technology Act, 2000 and Sections 408/420/120B/511 IPC, registered at Police Station E.O.W. on the basis of the Memorandum of Understanding (MOU) between the petitioners and respondent no.2, namely, Mr. Shailesh Agarwal,

authorized representative of M/s Vogueserv International Pvt. Ltd., Noida (“Company”) on 17.10.2015.

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent no.2, present in the Court has been identified to be the authorized representative of the complainant Company in the FIR in question by Inspector Deveshwari.

3. The factual matrix in the present case is that a complaint was made by Sh. Vijay Govind Saxena, General Manager(H.R.) of M/s Vogueserv International Pvt. Ltd., to the Additional Commissioner of Police E.O.W. against the petitioners/accused. The accused persons were ex-employees of the Company and they entered into a criminal conspiracy with each other and committed breach of trust by committing data theft from the system, network and emails of the Company and also took wrongful possession of very important and confidential files and records etc. all of which were entrusted to them in their official capacity and used the same for their wrongful gain causing corresponding loss to the Company. During the second week of July 2011, petitioner nos. 1, 2 & 4 had resigned from the services of the complainant Company and despite the notice period given by

them, they absconded without reporting. Later it was found that Mr. Abhishek Arvind had deleted all confidential data from the office laptop which was in his possession. The said three petitioners instigated petitioner no.3 to join them in the conspiracy of running their own business and that they also took secret passwords for email and related networks for the reason of keeping a watch over the Company's confidential data. They also asked petitioner no.3 for sharing the access of D-drive of Mr. Ajendra Agrawal with petitioner no.1 so that he can misappropriate the confidential data of the company.

In the year 2012, the respondent no.2 filed a civil suit against the petitioners before this Court being CS(OS) No. 1436 of 2012 and vide order dated 18.05.2012 this Court restrained the petitioners from using the data of respondent no.2 in respect of the companies mentioned in the said suit. Thereafter, the parties entered into 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 MOU, both the parties have on the intervention of the common

Business friends, arrived at the present amicable settlement out of their free will and consent without any force, compulsion or coercion from any corner and are signing the same after understanding the contents thereof. The parties have agreed that the petitioners shall pay a total amount of Rs. 14,00,000/- towards full and final settlement to respondent no.2. It has also been agreed that the petitioners or anybody acting on their behalf shall not contact the customers of respondent no.2. It is also agreed by the parties that the petitioners shall neither use nor possess or transfer the confidential data or the trade secrets of respondent no.2 in any manner whatsoever. However, Pankaj Johari-petitioner no.5 shall be entitled to pursue his legal remedies for recovery of his dues from Company namely “Strauss Innovations”. It has been further agreed between the parties that upon the petitioners fulfilling their obligations under this agreement, the parties shall together file an application under Order 23 Rule 3 CPC for decreeing the civil suit filed by the respondent no.2 and simultaneously, the petitioners shall file a petition in this Court for quashing the FIR in question. Respondent no. 2 affirmed the contents of the aforesaid MOU and of his affidavit dated 29.10.2015. In the

affidavit, the respondent no.2 has 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 on behalf of the Company 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 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 the offence under Section 511 IPC is 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 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.154/2011 dated 19.08.2011, under Sections 66/66C of the Information Technology Act, 2000 and Sections 408/420/120B/511 IPC, registered at Police Station E.O.W. and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

JANUARY 29, 2016
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