

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

+ W.P.(CRL) 2572/2015 & CrI.M.A. No.16323/2015

Date of Decision : March 10th, 2016

VISHAL KAUSHIK ...Petitioner

Through Mr.Vivek Aggarwal, Adv.

versus

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

Through Ms.Richa Kapoor, A.S.C. with
Mr.Kamal Kumar Ghei, APP for the
State.

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 petitioner, namely, Sh. Vishal Kaushik for quashing of FIR No.284/2013 dated 01.10.2013, under Sections 65/66/67 of Information & Technology Act, 2000 registered at Police Station Paschim Vihar on the basis of the report of the Counseling Cell, Family Courts, Dwarka Court, New Delhi in view of the settlement arrived at between the petitioner and the respondent no.2, namely, Cheshta Sharma on 05.12.2014.

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 on 10.07.2013, while the complainant was working on her computer and then she discovered that the password for her id on Gmail account was not working and it was changed on 01.07.2013. Thereafter, she found out that her facebook password has also been changed. Even the recovery phone number for her Gmail account was changed. Later on, the complainant filed a complaint to the SHO, P.S. Paschim Vihar, New Delhi on 13.07.2013. Thereafter, the complainant managed to again change the password of her account and when she opened her mail, she found a mail saying that her password has been recently changed. The complainant then requested for all recent activity details from her account from Google, from which it was revealed that the husband of the complainant i.e. the petitioner was behind the illegal act of hacking.

Thereafter, the complainant/respondent no.2 lodged the FIR in

question against the petitioner. Later on, both the petitioner and the respondent no.2 mutually settled their matter before the Counseling Cell, Family Courts, Dwarka, New Delhi.

4. Respondent No.2 present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the settlement, it is agreed that the parties shall take divorce by mutual consent. It is further agreed that the petitioner shall pay Rs. 25 Lacs to the respondent no.2 as full and final settlement towards stridhan, permanent alimony, dowry articles, jewellery, past, present and future and nothing remains due towards this marriage. It is also agreed that the petitioner shall pay Rs. 25,000/- cash to the respondent no.2 on 05.12.2014 and Rs.25,000/- on 06.12.2014, in lieu of this settlement. It is further agreed that the first motion petition will be filed within ten days of this settlement and the petitioner will pay Rs.10,00,000/- to respondent no.2 in the form of DD or cash at the time of statements. It is further agreed that the second motion petition will be filed after the expiry of statutory period and the petitioner shall pay an amount of Rs. 10,00,000/- in the form of cash/DD to the respondent no.2. It is further agreed that the parties will approach this Court for

quashing FIR No.227/2013 under Section 498A/406 IPC at Police Station Paschim Vihar and the FIR in question within one month of obtaining the decree of divorce and the petitioner will pay Rs. 4.5 Lacs in the form of cash or DD to the respondent no.2. It is also agreed that the respondent no.2 shall withdraw her case under D.V. Act pending in the concerned Court on 09.12.2014. It is also agreed that respondent no.2 shall withdraw her application filed before this Court, which is fixed for hearing on 05.03.2015 within one month of this settlement by filing an application for withdrawal. It is also agreed that neither of the parties to this settlement shall pursue any pending cases or file new complaint(s) against each other. It is also agreed that the parties shall not interfere in each other's life in the future. Respondent No.2 affirmed the contents of the aforesaid settlement and of her affidavit dated 03.10.2015 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 petitioner 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 petitioner and has settled all the disputes with him. 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 there should be no impediment in quashing the FIR under Sections 65/66/67 IT Act, 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.284/2013 dated 01.10.2013, under Sections 65/66/67 of Information & Technology Act, 2000 registered at Police Station Paschim Vihar and the proceedings emanating therefrom are quashed against the petitioner.

13. This petition is accordingly disposed of.

14. The application Crl.M.A. No.16323/2015 is also disposed of.

(P.S.TEJI)
JUDGE

MARCH 10, 2016
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