

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48323 of 2016

Arising Out of PS.Case No. -344 Year- 2016 Thana -GANDHIMAIDAN District- PATNA

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1. Chanda Nawalgaria wife of Late Malkosh Nawalgaria
 2. Sharad Nawalgaria son of Late Malkosh Nawalgaria
 3. Samir Nawalgaria son of Late Malkosh Nawalgaria

All are resident of C-171 Sector II, Salt Lake City Kolkata and officer at 107/1 2nd Floor Park Street Kolkata, P.S.- East Vidhangar, District- North 24 Parganas.

.... Petitioner/s

Versus

1. The State of Bihar
2. Vinod Kheria son of Late Sawal Ram Kheria, residen of Vasant Bihar Colony, Boring Road, P.S.- S.K. Puri, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Prasad Singh, Sr. Advocate
	:	Mr. Manindra Kishore Singh, Advocate
For the Opposite Party No.2	:	Mr. Varun Kumar Trivedi, Advocate
	:	Mr. Sunil Kumar Trivedi, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-08-2017

Heard Mr. Krishna Prasad Singh, learned Senior Advocate for the petitioners, Mr. Varun Kumar Trivedi, learned Advocate, who has suo motu appeared on behalf of the informant Vinod Kheria and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State.

2. The present application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been preferred by the petitioners for quashing the First Information Report (for short 'the FIR') of Gandhi Maidan P.S. Case No.344 of 2016 registered under Sections 406 and 420/34 of the Indian Penal Code (for short 'the



IPC') on the basis of compromise dated 03.05.2017.

3. The opposite party no.2 lodged Gandhi Maidan P.S. Case No.344 of 2016 on 10.09.2016 against the petitioners stating there in that he is Director of M/S A.V. Ispat Private Limited, a company incorporated under the Companies Act, 1956, whose head office is situated at Patna. He has stated that his two companies, M/S Santainath (Ispat) Yarns Private Limited and A.V. Ispat Private Limited are registered in Patna. He has alleged that from the account of the said companies rupees fifty lakh and twenty five lakh were given to the M/S Albeli Fashions Private Limited on interest. Against the said money about rupees forty lakh interest became due to be paid by M/S Albeli Fashions Private Limited. It is further stated that for the said dues the petitioner no.2 Sharad Nawalgaria and petitioner no.3 Samir Nawalgaria negotiated a deal of land worth rupees seventy six lakh on 2nd January, 2014, which was allotted to their mother Chanda Nawalgaria (petitioner no.1) by WBHIDCO. The deal was made with the condition that either the entire money would be returned in one year with interest or they would transfer the said land by registered sale deed. It is further stated that for the said deal an agreement was also signed between the petitioners and the informant at Patna before Notary Public on 23rd January, 2014, as the accused persons did not fulfill either of the conditions for long time. However, subsequently,



they gave him two cheques of rupees twenty five lakh each in the name of M/S Santainath Ispat Private Limited, which is now named as Santai Nath Yarn Private Limited. They also gave two cheques one amounting to rupees two lakh and the other amounting to rupees one lakh in the name of M/s A.V. Ispat Private Limited. These cheques were given with an assurance that when they would transfer the said land, they would settle the account for balance amount of interest, but all the cheques got dishonoured for which a case against the accused persons was lodged on 13.06.2016 by the son of the informant Vinod Kheria. The informant states further that petitioners no.2 and 3 were arrested and at the time of bail a compromise petition was filed that they would pay the amount of rupees fifty lakh by draft and assurance was given to hand over twelve post dated cheques for rest of the amount of rupees twenty five lakh, which shall be encashed. After the bail was granted, they neither gave the said twelve cheques nor transferred the land. It is further stated that the informant got information that the accused persons did transfer the land to others.

4. On the basis of the above allegations, an FIR under Sections 406 and 420/34 of the IPC was registered against the petitioners and investigation was taken up.

5. It has been submitted by Mr. Krishna Prasad Singh, learned Senior Advocate for the petitioners that during pendency of



the investigation, the matter has been compromised between the petitioners and the opposite party no.2 with the intervention of common friends and well wishers. He has submitted that an affidavit in this regard has also been filed before this Court jointly signed by both the parties. He has drawn my attention towards the terms of compromise between the parties. In paragraph-5 of the terms of compromise duly signed by the petitioners and the opposite party no.2, it has been stated that now because of intervention of well wishers of both the parties, the dispute has been settled and the second party does not want to pursue the criminal case pending before the Judicial Magistrate, Patna registered as Gandhi Maidan P.S. Case No.209 of 2016 and Gandhi Maidan P.S. Case No.344 of 2016.

6. Mr. Singh, learned Senior Advocate for the petitioners has submitted that since the parties have decided to keep harmony and the opposite party no.2 has specifically agreed not to pursue the criminal case, continuance of criminal proceeding in the aforesaid FIR will be a futile exercise of mere wastage of precious time of the Court as well as the investigating agency.

7. Mr. Varun Kumar Trivedi, learned Advocate appearing for the complainant has supported the submissions made on behalf of the petitioners. He has submitted that both the parties have undertaken not to indulge in any litigation further. He has submitted that the



dispute is purely private in nature and as the parties have amicably resolved their dispute outside the court, no useful purpose would be served by keeping the investigation of the case open.

8. On the other hand, Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State has submitted that since the matter is under investigation, it would not be proper for this Court to terminate the criminal proceeding in exercise of power conferred under Section 482 of the CrPC. He has submitted that on completion of investigation, the party may approach the court below for compounding the offence in terms of Section 320 of the CrPC.

9. I have heard learned counsel for the parties and perused the record.

10. The issue involved in the present case is no more res integra. In the matter of **Gian Singh vs. State of Punjab and Another [(2012) 10 SCC 303]**, the Supreme Court has recognized the needs of amicable settlement resolving of the dispute in certain class of cases by observing as under:

“However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender



and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.”

11. The aforesaid ratio laid down by the Supreme Court has been reiterated in **Narendra Singh and Others vs. State of Punjab and Others**, [(2014) 6 SCC 466] by observing 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 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 pre-dominantly 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.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under [Section 307](#) IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of [Section 307](#) IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of [Section 307](#) IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under [Section 307](#) IPC. For this purpose, it would be open to the High Court to go by the nature of



injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under [Section 482](#) of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is



still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under [Section 482](#) of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under [Section 307](#) IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under [Section 307](#) IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

12. Having noticed the ratio laid down by the Supreme Court, when I look to the facts of the present case, it would be manifest that the offences alleged are overwhelmingly and predominantly of civil character arising out of commercial transaction



and the parties have decided to keep harmony between them. The compromise petition records that the opposite party no.2 does not want to pursue the criminal case pending before the judicial Magistrate arising out of Gandhi Maidan P.S. Case No.344 of 2016. In view of the compromise between the parties, there is no chance of the witnesses coming forward in support of the prosecution even if the investigating agency would submit charge-sheet before the court.

13. Taking all the factors into consideration cumulatively, I am of the opinion that the compromise between the parties be accepted and the FIR of Gandhi Maidan P.S. Case No.344 of 2016 and also the criminal proceeding arising out of the said FIR be quashed. I order accordingly.

14. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

