

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47714 of 2016

Arising Out of PS.Case No. -209 Year- 2016 Thana -GANDHIMAIDAN District- PATNA

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1. Ramakant Pansari son of Late Bimal Kumar Pansari, resident of CG-115, Sector-II, Salt Lake City, Kolkata- 700091, P.S.-East Vidhan Nagar, District- North 24 Parganas
 2. Sharad Nawalgaria son of Late M.K. Nawalgaria, resident of CG-171, Sector-II, Salt Lake City, Kolkata- 700091, P.S.-East Vidhan Nagar, District- North 24 Parganas
 3. Samir Nawalgaria son of Late M.K. Nawalgaria, resident of CG-171, Sector-II, Salt Lake City, Kolkata- 700091, P.S.-East Vidhan Nagar, District- North 24 Parganas

.... Petitioner/s

Versus

1. State of Bihar
2. Sumit Kheria son of Vinod Kheriya, resident of Vasant Vihar 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
For the Opposite Party No.2 : Mr. Barun 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. Barun Kumar Trivedi, learned Advocate, who
has suo motu appeared on behalf of the informant Sumit Kheria and
Mr. Jharkhadi Upadhyay, learned Additional Public Prosecutor for the
State.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'the CrPC') has been filed for quashing



the First Information Report (for short 'the FIR') of Patna Gandhi Maidan P.S. Case No.209 of 2016 registered under Sections 406 and 420/34 of the Indian Penal Code (for short 'the IPC').

3. A written report was submitted by the informant Sumit Kheriya before the Officer Incharge of Gandhi Maidan Police Station, Patna stating therein that he is Director of M/s Santainath Ispat Private Limited. In course of business transaction, he came in contact with Rajesh Kasera at Kolkata with whom Sharad Nawalgaria, Samir Nawalgaria and Ramakant Pansari were also present. It is further stated that at the request of Rajesh Kasera he paid rupees fifty lakh to Sharad Nawalgaria, Samir Nawalgaria and Ramakant Pansari for which Rajesh Kasera stood as a guarantor. The said amount of money was paid from the Santainath Ispat Private Limited's account no.57601002091 of ING Vysya Bank, Exhibition Road, Patna Branch to the account of Albeli Fashion Private Limited, Kolkata of which Sharad Nawalgaria, Samir Nawalgaria and Ramakant Pansari were Directors. It is further stated that between the period 10.09.2010 and 30.11.2013 interest was paid over the aforestated amount of money by the Albeli Fashion Private Limited, but after that the payment of interest was not paid. Thereafter, he went to Kolkata several times and, in presence of Rajesh Kasera, talked with Sharad Nawalgaria, Samir Nawalgaria and Ramakant Pansari and requested them to return



the principal amount of rupees fifty lakh with interest. Subsequently, the three accused persons issued two cheques amounting to rupees twenty five lakh each, but on being presented for clearance both the cheques were returned unpaid due to insufficiency of fund in the account. The accused persons were served with legal notice, but they did not take any interest in returning the due amount. It is further stated that on demand of money they threatened him with dire consequences.

4. Mr. Krishna Prasad Singh, learned Senior Advocate appearing for the petitioners has submitted that the entire dispute arose due to commercial transaction and, during pendency of the investigation of the case, the parties have amicably settled their dispute outside the court and have decided to keep harmony between them. He has submitted that due to intervention of common friends and well wishers, now good feelings have been restored between the parties and a joint compromise petition has also been filed in the court below.

5. The submissions made by the learned Senior Advocate appearing for the petitioners have also been supported by Mr. Barun Kumar Trivedi, learned Advocate appearing on behalf of the informant. He has submitted that due amount has been paid by the petitioners to the informant. He has submitted that the informant is not



willing to pursue the matter any more and no useful purpose would be served by continuing with the investigation of the case.

6. 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 parties may approach the court below for compounding the offence in terms of Section 320 of the CrPC.

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

8. 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.”

9. The Supreme Court has the need to quash the criminal proceedings while exercising the powers under Section 482 of the CrPC where the parties have settled the matter between themselves 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.”

10. Having noticed the ratio laid down by the Supreme



Court, when I look to the facts of the present case, it would be evident 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.209 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.

11. It would be manifest from the record that the offences alleged are under Sections 406 and 420/34 of the IPC. Both the offences punishable under Sections 406 and 420 of the IPC are compoundable with the permission of the court under Section 320 of the CrPC.

12. Regard being had to the nature of the offences alleged, in view of the submissions made by the respective counsel for the parties before the Court, I am of the opinion that allowing the investigation to continue would neither be in the interest of justice nor in the interest of the parties.

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.209 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
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