

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

205/A

CRM-M-33710 of 2016

Date of Decision: May 10th, 2017

Ashwani Kumar Gandhi @ Ashwani Gandhi and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rishi Kaushal, Advocate
for the petitioners.

Ms. Bhavna Gupta, Deputy Advocate General, Punjab,
for respondent No.1.

AUGUSTINE GEORGE MASIH, J. (ORAL)

This petition has been filed for quashing of FIR No.184 dated 28.12.2013 under Section 420 IPC registered at Police Station Shaheed Bhagat Singh Nagar and the consequential proceedings arising therefrom on the basis of a compromise confirmed by letter dated 09.05.2016 (Annexure P-2).

2. Briefly the facts are that the brother of petitioner No.1 Surender Pal Gandhi-petitioner No.2 had taken a loan from State Bank of India, Nawashahr Branch. Petitioner No.1, who is the real brother of Surender Pal Gandhi, stood as a guarantor and hypothecated some of his properties. Since the loan amount, according to petitioner No.1, was being paid by his brother Surender Pal Gandhi, he proceeded to sell his properties which were mortgaged with the bank, under a *bona fide* belief that the said properties have been discharged from hypothecation. The bank in view thereof, proceeded to lodge the FIR, referred to above. A compromise has been entered into between the parties, on the basis of which the liability stands discharged which is apparent from the confirmation letter dated 09.05.2016 (Annexure P-2) issued by the

Chief Manager, State Bank of India, Nawashahr, which is addressed to the Senior Superintendent of Police, Nawashahr Doaba, Shaheed Bhagat Singh Nagar.

3. Counsel for the petitioners, on the basis of these facts, submits that the FIR be quashed as a compromise has been entered into between the parties and the liability, if any, has been duly discharged.

4. Reference has also been made by the counsel for the petitioners to the order dated 22.09.2016 passed by this Court, wherein the parties were directed to appear before the Illaqa Magistrate for recording their statements with regard to the compromise. The Illaqa Magistrate was directed to record the statements of the parties and submit his report with regard to the genuineness of the statements. Prayer has thus been made for allowing the present petition.

5. Counsel for respondent No.1-State has opposed the prayer made by the counsel for the petitioner by relying upon the judgment of the Supreme Court in *State, Rep. By Inspector of Police Central Crime Branch Versus R. Vasanthi Stanley and Anr. 2016(1) SCC (Cri) 282*, to contend that economic offences cannot be compounded, especially when it relates to financial institutions. She, therefore, contends that the present petition cannot be accepted, however, the factum of compromise and the receipt of the communication dated 09.05.2016 (Annexure P-2) by the Senior Superintendent of Police, Nawashahr Doaba, Shaheed Bhagat Singh Nagar, has not been disputed.

6. In response to the arguments raised by the counsel for the respondent objecting to the quashing of the FIR, counsel for the petitioner

has referred to the judgment of the Supreme Court in *CBI, ACB, Mumbai Versus Narendra Lal Jain and others 2014(2) R.C.R. (Criminal) 15*, where a three Judge Bench of the Supreme Court, had in similar circumstances, proceeded to uphold the order passed by the High Court passed under Section 482 Cr.P.C. quashing the FIR on the basis of the compromise which has been entered into with the bank officials.

7. I have considered the submissions made by learned counsel for the parties and with their assistance, have gone through the pleadings of the case.

8. As regards the objections which have been raised by the counsel for the State with reference to the judgment in *State, Rep. By Inspector of Police Central Crime Branch Versus R. Vasanthi Stanley and Anr. 2016(1) SCC (Cri) 282*, the said judgment is distinguishable on facts as it was a case where the accused had taken loan from four banks by depositing forged documents. It is under those circumstances, the Hon'ble Supreme Court had not accepted the plea of quashing as was prayed for on the basis of a compromise. Present is a case where there is no such allegation with regard to any forged document having been used by the petitioners, rather as has been mentioned above in the facts, it is the mortgaged properties which have been sold by the petitioner and that too under a *bona fide* belief that the liability of the loan having been discharged and the properties have been released. The three Judge Bench of the Supreme Court in *CBI, ACB, Mumbai's case (Supra)*, is almost the same as in the present case where a mutual settlement had taken place between the parties, rather it was a case which was much more serious as the case was

registered under the Prevention of Corruption Act against the bank officials. The offence in that case was also under Section 420 IPC which being compoundable and a compromise having been entered into between the bank and the accused. On that basis, High Court had proceeded to quash the FIR and the consequent proceedings which aspect has been upheld by the Supreme Court. The case in hand, therefore, would be governed by the principle as laid down by the Supreme Court in *CBI, ACB, Mumbai's case (supra)*.

9. Coming to the present case, this Court had passed the following order on 22.09.2016:-

“This is a petition filed under Section 482 Cr.P.C. for quashing of FIR No. 184 dated 28.12.2013, under Section 420 of the IPC, registered at Police Station, City Shaheed Bhagat Singh Nagar on the basis of compromise (Annexure P-2).

Notice of motion.

Ms.Amarjit Kaur Khurana, Addl. AG, Punjab, on the asking of the Court, accepts notice on behalf of the respondent-State.

Learned counsel for the petitioners undertakes to supply a copy of the petition to the learned Addl.AG during the course of the day.

Adjourned to 06.12.2016.

In the meantime, let the parties appear before the Illaqa Magistrate on 17.10.2016 or any other date convenient to the Illaqa Magistrate for recording their statements with regard to compromise. The Illaqa Magistrate is directed to record the statements of both the parties to his satisfaction to know its genuineness that the statements are not the result of any pressure or coercion in any manner. The Illaqa Magistrate is also directed to send a report along with statements of the parties with regard to validity or otherwise of the compromise effected between the parties and also intimate whether any criminal proceedings are pending against either of the parties or not before the next date of hearing”.

In pursuance thereto, a report dated 11.05.2016 has been received from the Additional Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar. According to the said report, after recording the statements of the parties, the learned Additional Chief Judicial Magistrate has concluded as follows:-

“In the said back ground, keeping in view the statement so suffered by the Manager of the complainant bank as well as accused Ashwani Kumar Gandhi @ Ashwani Gandhi & Surinder Pal Gandhi, it seems that the compromise so effected amongst them is genuine. The present FIR has been got registered due to financial dispute amongst the parties that seems to be resolved. Furthermore, as per report of the Criminal Ahlmad and affidavit of Surinder Pal Gandhi, one criminal case titled as 'State Versus Surinder Pal Gandhi' being FIR No.64 dated 07.05.2015, under Sections 420, 406 of IPC is pending before this court against him. On the other hand, as per statement of Ashwani Kumar Gandhi and Criminal Ahlmad, no case is pending against said accused”.

10. In view of the above, the matter having been compromised between the parties without there being any force, coercion or undue influence, the present petition is allowed.

11. Consequently, FIR No.184 dated 28.12.2013 under Section 420 IPC registered at Police Station City Shaheed Bhagat Singh Nagar and all consequential proceedings arising therefrom are hereby quashed.

May 10th, 2017
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No