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

+ W.P.(CRL) 606/2017

REAL TECH INFRASTRUCTURE LTD Petitioner
Through: Mr.Saurabh Dev Karan Singh, Adv.

versus

STATE & ANR Respondents
Through: Mr.Rahul Mehra, Standing Counsel
with Mr.Jamal Akhtar, Adv.
Mr.Alok Bhachawat, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER
% **04.07.2017**

Crl.M.A.10292/2017

This is an application seeking Impleadment of the directors of Realtech Infrastructure Ltd. The three directors namely Mr.Yogesh Gupta, Mr.Pankaj Dayal and Mr.Rajeev Behl have been sought to be impleaded as the petitioner Nos.3, 4 & 5 respectively.

Heard the counsel for the parties.

There is no objection to the impleadment of the aforesaid three persons who are the directors of Realtech Infrastructure Ltd.

The present application for Impleadment has been filed by way of abundant caution so as to avoid any procedural complication later.

Taking into account the aforesaid facts, the prayer made in the application for impleadment is allowed.

The aforesaid three persons named above are impleaded as petitioner Nos.3, 4 & 5.

The amended memo of parties which has been filed along with the application referred to above is taken on record.

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The petitioners have sought quashing of FIR No.197/2014 dated 18.07.2014 (P.S.Defence Colony) instituted for the offences under Section 420 and 34 of the IPC.

The son of the respondent No.2 is present in Court along with the authorisation letter of his father.

The respondent No.2 lodged the subject FIR alleging that he had invested a huge amount to the tune of Rs.36,50,000/- on the assurance of the company and its directors who had assured him of benefits and returns to him in near future. The venture of the accused persons did not bear any fruit and the respondent No.2 felt cheated. It was alleged by respondent No.2 that in and around 2014, the petitioners were asked for refunding the amount to the respondent which was refused.

Hence the first information report under Section 420 read with Section 34 of the IPC.

During the course of investigation, the dispute between the parties was settled by way of two Memorandum of Understandings dated 21.10.2014 and 10.07.2015 respectively. Those Memorandum of Understandings have been nomenclatured as MOU-I and MOU-II. By virtue of the aforesaid arrangement/settlement, the respondent No.2 has been paid an additional amount of Rs.10 lakhs towards full and final settlement of all claims of the respondent against the petitioners. In the Memorandum of

Understanding No.II, there is a further stipulation that an additional amount of Rs.5 lakhs would be paid to the respondent as compensation, at the time when, on the consent of the respondent No.2, the proceedings would be quashed. Over the passage of time, it was further agreed between the parties that at the time of quashing of the FIR, Rs.3 lakhs more would be paid to the respondent, which arrangement was acceptable to the petitioners. As a result of such arrangement, the petitioners today are ready with two drafts of Rs.8 lakhs (Draft No.068006 dated 29.05.2017 for an amount of Rs.3 lakhs and Draft No.501929 dated 27.02.2017 for an amount of Rs.5 lakhs). Learned counsel appearing for respondent No.2 is ready to accept the aforesaid amount and is also agreeable for quashing of the FIR as the entire dispute stands settled and no useful purpose would be served in prosecuting the petitioners any further.

Mr.Rahul Mehra, learned Standing Counsel has fairly stated before this Court that after the investigation, chargesheet arraigning the petitioners as accused persons to be sent up for trial, has been filed before the trial Court. However, since the allegations and the accusations are in the realm of a private/pecuniary dispute which now stands settled without any force, coercion or pressure and which does not cast any impact on society at large, it would not be expedient in the interest of justice to continue prosecuting the petitioners any further.

Taking into account the aforesaid facts, this Court feels inclined to quash the aforesaid FIR and all other attendant proceedings.

The draft of Rs.8 lakhs (Draft No.068006 dated 29.05.2017 for an amount of Rs.3 lakhs and Draft No.501929 dated 27.02.2017 for an amount of Rs.5 lakhs) has been handed over to the son of respondent No.2, who has

accepted them on satisfaction.

In ***Gian Singh vs. State of Punjab & Another, (2012) 10 SCC 303***, the Supreme Court has held that cases which are not compoundable under Section 320 of the Cr.P.C. could also be quashed, when continuation of any criminal proceeding would be an exercise in futility and where justice demands that the dispute between the parties should be put to an end and peace is restored. But ending of such criminal proceedings could only be ordered for securing the ends of justice.

The Supreme Court has further observed in *Gian Singh vs. State of Punjab & Another (Supra)*:

“58..... No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. 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 the victim and the offender and the 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 FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.”

[Refer to B.S. Joshi, (2003) 4 SCC 675; Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1.]

In ***Narinder Singh &Ors. Vs. State of Punjab &Anr.***2014 6 SCC 466, the pertinent observations of the Apex Court 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.

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 latter 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.”

Considering the aforesaid facts, the FIR No.197/2014 dated 18.07.2014 (P.S.Defence Colony) instituted for the offence under Section 420 and 34 of the IPC and all other emanating proceedings therefrom are quashed.

The petition is disposed of in terms of the above.

ASHUTOSH KUMAR, J

JULY 04, 2017

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