

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

Decided on: 3rd March, 2017

+ **CRL.M.C. 2881/2014**

STEVEN SEHGAL Petitioner

Represented by: None

versus

STATE OF NCT OF DELHI) & ANR. Respondents

Represented by: Mr. Amit Ahlawat, APP for the
State
Mr. Sidharth Luthra, Sr.
Advocate with Ms. Purnima
Raj, Ms. Saakshi & Mr. Neeraj,
Advocates for Respondent
No.2/applicant

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI. M.A.16857/2016 (under Section 482 Cr.P.C for recalling of order dated 4th July, 2014)

1. FIR No.654/13 registered at Police Station Vasant Kunj for offences punishable under Sections 354/354-A/506/509 IPC and proceedings pursuant thereto were quashed by this court in CrI. MC 2881/2014 vide order dated 4th July, 2014 on the ground that parties have settled the matter after respondent no.2, the complainant appeared in the court along with counsel and stated that the FIR had been lodged by her due to some misunderstanding and

misapprehension and since the matter has been compromised between the petitioner and respondent no.2, the same be quashed.

2. Respondent no.2/applicant has now filed the present application seeking recalling of order dated 4th July, 2017 passed in CrI. MC 2881/2014 and revival of proceedings arising from FIR 654/2013 registered at Police Station Vasant Kunj.

3. In the present application, respondent no.2/applicant noting the contents of her affidavit filed on 30th June, 2013 along with CrI.MC 2881/2014, has sought recalling of the order of 4th July, 2016 by stating that her consent was obtained by the petitioner by playing fraud upon this court as her consent had been obtained by undue force, pressure and coercion upon her. When this application came up before this court on 26th October, 2016, this court permitted the respondent no.2/applicant to file an additional affidavit explaining as to how her consent was taken with coercion and forcefully when the FIR in question was got quashed before this Court on 4th July, 2016. Additional affidavit of respondent no.2/applicant has since been filed. In the additional affidavit filed by respondent no.2/applicant, it is stated that the sister of respondent no.2/applicant is married with brother of the petitioner and was living with her husband at the time of the incident. After registration of FIR, respondent no.2/applicant was approached by the petitioner/non-applicant for quashing of the FIR on account of fact that her (respondent no.2/applicant's) sister was living with brother of the petitioner/non-applicant. For the sake of her sister's marriage, respondent no.2/applicant had no option but to succumb to the pressure and agreed to the quashing of the FIR though serious non-compoundable offences of public nature were made out. Respondent no.2/applicant was kept under

constant threat that in case she does anything, her sister would be thrown out of the matrimonial home. Thus, on account of undue influence exercised by the petitioner and his family members upon Respondent no.2/applicant and her family, compromise was entered into though consent was not free.

4. To make out a case for recalling the order dated 4th July, 2014 since consent was under coercion, learned counsel for the respondent no.2/applicant has relied upon decisions of the Hon'ble Supreme Court reported as (1964) 7 SCR 745 Ouseph Poulo vs. The Catholic Union Bank and (2015) 7 SCC 681 State of Madhya Pradesh v. Madan Lal.

5. Even as per the additional affidavit, the case of respondent no.2/applicant is that undue influence was exercised upon her on the pretext that otherwise her sister would be thrown out of the matrimonial home. No instance as to what threat was extended, who extended threat and what was stated; has not been deposed to in the additional affidavit and mere bald assertions have been made that respondent no.2/applicant had no option but to succumb to the pressure and agreed to the quashing of the FIR.

6. In Ouseph Poulo (supra), the three judge Bench of Hon'ble Supreme Court held that agreements which are made for stifling prosecution are opposed to public policy and as such, they cannot be enforced. The Supreme Court also held that the doctrine is not applicable to compoundable offences nor to the offences which are compoundable with the leave of the court where the agreement in respect of such offences is entered into by the parties with the leave of the Court. With regard to non-compoundable offence, it was held that no court of law can allow a private party to take the administration of law in its own hands and settle the question as to whether a particular offence has been committed or not, for itself. However, later on

in its various decisions the Hon'ble Supreme Court including the decisions reported as 2012 (10) SCC 303 Gian Singh Vs. State of Punjab & Anr. and (2014) 6 SCC 466 Narinder Singh and Ors.vs. State of Punjab and Anr. was held that where the parties have settled the matter, offences which are non-compoundable but not too serious in nature, can be quashed as continuance of a trial for the same would be an exercise in futility and an abuse of process of the court.

7. The three judge Bench of the Supreme Court in Gian Singh (supra) distinguishing the power of Court to compound an offence under Section 320 Cr.P.C. and the power of the High Court to quash the FIR/complaint and the proceedings pursuant thereto held-

“52. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code.

53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, “nothing in this Code” which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e. to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on the High Court; it merely safeguards existing inherent powers possessed by the High Court necessary to prevent abuse of the process of any court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the

redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non.

55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings

by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. 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.”

8. Thus, the decision of the Supreme Court in Ouseph Poulo (supra) has no application to the facts of the present case. Further, as noted above, despite being granted an opportunity to file an additional affidavit, no details have been stated as to how and at what time and in what manner respondent no.2/ applicant was coerced into settling the matter.

9. In view of the discussion aforesaid, the present application cannot be allowed. The application is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

March 03, 2017
‘sm’