

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38933 of 2017

Arising Out of P.S. Case No. -3977 Year- 2015 Thana -PATNA COMPLAINT CASE
District- PATNA

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1. Tanmay Ganguly, aged about 43 years, S/o Late Deb Kumar Ganguly, resident of 2nd floor, Fomra Tower, 84-A, AJC, Bose Road, P.S.-Bealo (Kolkata), District-Kolkatta-700014.

2. Tilak Raj Sharma, aged about 51 years, S/o Mr. B.N. Sharma, resident of 2nd floor, Fomra Tower, 84-A, AJC, Bose Road, P.S.-Bealo (Kolkata), District-Kolkatta-700014.

3. Vijay Agrawal, aged 67 years, S/o Late Major Sahai, resident of Dudhola Link Road, Village-Dudhola, P.S.-Sadar Palwal District-Palwar, Haryana.

All are Regional Manager having its Head Office situated at Action Construction Equipment Ltd. Plot No. 7, 2nd Floor L.S.C. Pocket H Market Sarita Vihar, P.S.-Sarita Vihar, New Delhi-110076, as well as the Regional Office situated at Action Construction Equipment Limited, Fomra Tower, 3rd Floor 84A, A.J.C. Bose Road (Opposite Gem Cinema), P.S.-Bealo (Kolkata), Kolkata-700014.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Dhananjay Kumar Tripathi, S/o Late Pandit Bhola Nath Tripathi, resident of Village-Nirakhpur, Paliganj, P.S.-Paliganj, District-Patna, at present residing at House No. 33, Ram Krishna Path, West Shri Krishna Puri, P.S.-Shri Krishna Puri, Boring Road, Patna-800013.

.... Opposite Party/s

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Appearance :



For the Petitioner/s : Mr. P.K. Sahi, Sr. Adv.
Mr. Manoj Kumar Singh, Adv.
For the O.P. No. 2 : Mr. Ajit Kumar, Adv.
For the State : Mr. Anil Kumar Singh 1, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

3 13-02-2018 The petitioners, who are the Managing Director, Sales & Marketing Manager, Regional Manager as well as Zonal Manager of Action Construction Equipment Ltd., New Delhi, have sought quashing of the order dated 05.05.2016, passed in Complaint Case No. 3977C of 2015, whereby cognizance has been taken against them for the offences punishable under Sections 406 and 420 of the Indian Penal Code. The aforesaid prayer of the petitioners has been made on the strength of settlement between the parties and on the redressal of the entire grievances of the complainant-opposite party No. 2.

From the averments made in the complaint petition, it appears that the complainant-opposite party No. 2 had entered into a business deal with the petitioners and had invested Rs. 7,00,000/- and thereafter Rs. 11,00,000/-, in all, but the returns of the aforesaid investments were not forthcoming and the complainant-opposite party No. 2 and his two relatives, who are witnesses in the complaint, felt



cheated. Hence, the complaint and the order taking cognizance.

During the course of the enquiry of the aforesaid complaint and sometimes thereafter, a settlement was arrived at between the petitioners and the complainant-opposite party No. 2, whereby the complainant-opposite party No. 2 agreed to accept Rs. 10,00,000/- towards settlement of all disputes. The aforesaid money was admittedly paid to the complainant-opposite party No. 2, but some disputes still remained. Later, after prolonged deliberation between the parties, it was further agreed upon that the petitioners shall pay an additional amount of Rs. 5,90,000/- to the complainant-opposite party No. 2, whereafter the complainant-opposite party No. 2 shall have no complaint whatsoever against the petitioners and he would not be desirous then of prosecuting the petitioners any further.

Mr. P.K. Sahi, learned Senior Advocate appearing for the petitioners, has brought a draft of Rs. 5,90,000/-, payable to "Dhananjay Kumar Tripathi", bearing Demand Draft No. 004347 dated 11.01.2018 of Axis Bank Ltd., Rajendra Nagar, Patna, which has been handed over to the complainant-opposite party No. 2, who is present in person. Mr. Ajit Kumar, learned Advocate for the complainant-



opposite party No. 2, has submitted that this takes care of the entire grievances of the complainant-opposite party No. 2.

As stated earlier, from the averments made in the complaint petition as also from the deposition of the witnesses, the offences alleged against the petitioners appear to be personal in nature and arising out of business dispute only between the petitioners and the complainant-opposite party No. 2, without there being any connotation of a public wrong.

Considering the factum of settlement of disputes and the complainant-opposite party No. 2 having accepted a total amount of Rs. 15,90,000/- towards settlement of all disputes and his not now being desirous of prosecuting the petitioners, this Court is of the view that no useful purpose would be served in keeping the prosecution of the petitioners alive.

The Supreme Court in case of ***Gian Singh Vs. State of Punjab and Another***, reported in **(2012) 10 SCC 303**, held in paragraph 53, 54, 55, 56, 57 and 58 as follows:-

"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, condetitur 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."

For the reasons aforesaid, especially taking into account that no useful purpose would be served in keeping the prosecution alive, the order taking cognizance and all the other emanating proceedings therefrom are set-aside.

The application stands allowed.

(Ashutosh Kumar, J)

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