

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.103 OF 2018

Delta Corporation Ltd.,
a Company registered under the
Companies Act, 1956, through its
Manager Legal Shri Premanand
Vasant Gawas, having their registered
Office at 108/109, Bayside Mall,
2nd Floor, Opposite Sobo Central Mall,
Tardeo Road, Haji Ali,
Mumbai, Maharashtra 400 034.

.... Petitioner.

Versus

1. State of Goa, through the
Public Prosecutor,
High Court of Bombay, Panaji, Goa.
2. Police Inspector,
Porvorim Police Station,
Porvorim, Bardez, Goa.
3. Novex Communication Private
Limited, a Company registered under
the Companies Act, having their Office
at B 301, Remi Biz Court, Plot No.9,
Shah Industrial Estate, Off.
Veera Desai Road, Andheri (W),
Mumbai – 400 053, through their
authorised representative Suraj Kamat,
aged 28 years, authorized vide Board
Resolution dated 08.05.2017,

And also at :

A-302, Shalom Apartments,
P.O. Caranzalem, Behind Hotel
Miramar, Goa 403 002.

..... Respondents.

Mr. P. S. Rao, Advocate for the Petitioners.

Mr. S. R. Rivankar, Public Prosecutor for Respondents No.1 and 2.

Mr. Nikhil Pai, Advocate for Respondent No.3.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 15 June 2018.

ORAL JUDGMENT : (Per N.M. Jamdar, J.)

Rule. Rule made returnable forthwith. The respondents waive service. Taken up for final disposal.

2. By this Petition, the Petitioner has sought quashing of the FIR No.130/2017 and also the complaint dated 17 March 2017. The ground on which the relief has been sought is that the Petitioner and the Complainant have compromised their dispute.

3. The Petitioner is engaged in the business of gaming and entertainment. The Petitioner, on board of its vessel, has electronic

games and slot machines, etc. For entertainment of the customers, the Petitioner plays songs for which, according to the Petitioner, it had obtained licences.

4. The Respondent No.3 filed a Civil Suit No. 8/2017 in the Court of the Additional District Judge, alleging infringement of copyright assigned and authorised to the Respondent No.3 in respect of the songs played by the Petitioner. Written statement was filed by the Petitioner and the Suit was contested. While the suit was pending, the Respondent No.3 also filed a complaint in the Panaji Police Station, alleging that the Petitioner had committed an offence under Sections 63 and 69 of the Copyright Act, 1957. The complaint was transferred to the Porvorim Police Station. Initially, Respondent No.2 did not register an FIR, based on the complaint of Respondent No.3. Respondent No.3 filed an application before the Court of Chief Judicial Magistrate, Panaji. The learned Magistrate directed further investigation and that the FIR be registered against the Petitioner under Sections 63 and 69 of the Copyright Act.

5. Mr. Rao, the learned Counsel for the Petitioner and Mr. Pai, the learned Counsel for Respondent No.3 submitted that the dispute between the Petitioner and Respondent No.3, regarding the

copyright issue has been settled and consent terms have been filed before the learned District Judge-1, Panaji and based on the consent terms, an order has also been passed by the learned District Judge. An affidavit has been filed by the authorised representative of Respondent No.3, reiterating this position. Mr. Rao and Mr. Pai jointly pray that, in view of the settlement arrived at between the parties, the criminal proceedings initiated be quashed and set aside, so that the settlement can be given full effect.

6. The Petitioner has invoked the power of this Court under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure. Power of the High Court under Section 482 of the Code of Criminal Procedure for quashing the criminal proceedings involving non-compoundable offences in view of the compromise arrived at between the parties came up for consideration of the Apex Court in the case of *Gian Sing vs. State of Punjab and another*¹, and also in the case of *Parbatbhai Aahir and ors. vs. State of Gujarat and another*². The Apex Court took review of the law in *Gian Sing* and held that the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a

1 (2012) 10 SCC 303

2 (2017) 9 SCC 641

criminal court for compounding the offences under Section 320 of the Code. In which cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute, would depend on the facts and circumstances of each case and no category can be prescribed. The Apex Court observed that, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. It was held that the criminal cases having predominatingly civil character stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions. In the cases where the wrong is basically private or personal in nature and the parties have resolved their entire dispute, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise. This decision was subsequently reiterated in the case of *Parbatbhai Aahir*, wherein the Apex Court culled out certain parameters. The Apex Court held that the provision does not confer new powers, and it only recognises and

preserves powers which inhere in the High Court.

7. Applying the above position of law to the case at hand, we find that the parameters indicated by the Apex Court are satisfied. The dispute had arisen between the Petitioner and Respondent No.3, which led to filing of the complaint, is relating to infringement of copyright assigned and authorised to the Respondent No.3. Respondent No.3 put the criminal law in motion, essentially for safeguarding its own commercial interest. The dispute, therefore, is of commercial nature. In view of the compromise, which has been accepted by the learned District Judge, quietus will have to be given to the dispute between the parties, so that overall settlement is achieved. In view of the stand taken by Respondent No.3, there is no possibility of conviction being recorded against the Petitioner.

8. Considering this position, we are of the opinion that continuing with the criminal proceedings, in such circumstances, will be a needless harassment to both, the Petitioner and Respondent No.3. Therefore, this is a fit case where the FIR registered against the Petitioner and the complaint require to be quashed exercising inherent jurisdiction of this Court.

9. Accordingly, Rule is made absolute in terms of prayer clause (a). FIR No. 130/2017 and the Complaint dated 17 March 2017 are quashed and set aside. No order as to costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.