

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

Decided on: 28.09.2018

1. CRM-M No.12521 of 2016

Anand Kumar

....Petitioner

Versus

State of Haryana and another

....Respondents

2. CRM-M No.7492 of 2016

Rajni Rampal and another

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. P.S. Ahluwalia, Advocate
for the petitioners (in both the petitions)

Mr. Naveen Sheoran, DAG, Haryana (in both the petitions)

Mr. Karanvir Nanda, Advocate
for respondent No.2 (in both the petitions)

ARVIND SINGH SANGWAN, J.

By way of this common order, I shall dispose of the aforesaid petitions as common questions of law and facts are involved for adjudication.

Prayer in both these petitions is for quashing of FIR No.292 dated 10.08.2015 (Annexure P1) registered under Sections 406, 420, 467, 468, 471, 506, 120-B of the Indian Penal Code, 1860 (in short 'IPC') and 3/32 of the Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013/2014, along with all consequential

proceedings arising therefrom.

CRM-M No.12521 of 2016 has been filed by the petitioner – Anand Kumar, Director of M/s. Hanumanta Land Promoters Private Limited whereas **CRM-M No.7492 of 2016** has been filed by Rajni Rampal and Karan Kumar, wife and son of the aforesaid petitioner – Anand Kumar.

Brief facts of the case as per the allegations in the FIR are as under:-

“Anand Kumar and Rajbir Singh Sodhi have floated a project to construct flats under the name and style of Micro Home Projections in a land situated in Khasra No.32//16/1, 16/2, 16/3, 17, 25/1 and 25/2, 3/7th share measuring 06 kanal and 10 marlas in village Jhandpur, Desumajra Road, Kharar, District S.A.S. Nagar, Mohali. The project was also advertised in various newspapers and the brochures were also issued. The accused persons are also running their said business at House No.596, Sector 4, Panchkula and also booking the flats and receiving money from the people. The complainant resides just near the said house and the accused persons contacted the complainant and stated that they would give a flat to him @ Rs.13 lacs for 2 BHK flat and asked the complainant to invest money in the said project. The complainant, thereafter, invested money for 03 flats on their inducement and gave Rs.39 lacs in cash to the accused persons vide 03 agreement of sale dated 02.12.2014 and receipt in this regard was also issued. The said agreements dated 02.12.2014 were executed by accused – Anand Kumar and Rajbir Singh as seller and the complainant, his son Aakash and Sahil, respectively. The khasra numbers of the said land are also mentioned in the agreements and it was

agreed that the vacant possession of the flats complete in all respects be provided to the complainant within a period of 01 year and it was also stated therein that M/s. Hanumanta Land Promoters Private Limited was bound to buy back the said flats @ Rs.13,25,000/- on 28.02.2015. There was no progress in construction of the flats and the complainant several times visited the office of accused persons in order to know the progress of construction but the accused persons put off the matter by making false excuses and assurance. At last, the complainant asked for return of the entire amount so invested by him in 03 flats but on long persuasion, the accused persons agreed to return the amount on or before 15.03.2015 in terms of the agreement @ Rs.13.25 lacs per flat. Despite all this, the accused persons did not return the said amount. Thereafter, the complainant came to know that the accused persons have further sold their project and land to one Jarnail Singh Bajwa son of Sh. Bishan Singh, Managing Director of M/s. Bajwa Developers Limited, Sunny Enclave Desumajra, Tehsil Kharar, District S.A.S. Nagar, Mohali and have executed an agreement to sell dated 26.04.2015. The said fact was also confirmed by Jarnail Singh Bajwa. The complainant, thereafter, approached the accused persons for return of his entire amount so paid by him but they refused to pay the same and asked him to approach Jarnail Singh Bajwa in this regard. When the complainant approached Jarnail Singh Bajwa, he also refused to return the amount. The complainant had been approaching the accused persons as well as Jarnail Singh Bajwa time and again but his amount has not been returned back and, thus, the present FIR has got been registered by the complainant.”

Counsel for the petitioner(s) has submitted that the

petitioner – Anand Kumar had earlier filed a petition i.e. CRM-M No.35327 of 2015, seeking anticipatory bail, in which the following order was passed on 08.12.2015 in presence of the counsel representing the complainant:-

*“Present: Mr. Preetinder Singh Ahluwalia, Advocate for the petitioner.
Mr. Rajiv Doon, AAG, Haryana for the respondent/State along with Inspector Sukhvinder Singh.
Mr. Karan Vir Nanda, Advocate and Mr. Mohan Sharma, Advocate along with the complainant.*

During the course of hearing, the dispute between the petitioner and the complainant, who is present in person, regarding the purchase of three Flats, has been resolved.

The complainant states that he wants his principal amount to be refunded.

In response, learned Counsel for the petitioner undertakes to refund a sum of total Rs.39 Lacs by way of demand draft to the complainant towards full and final settlement regarding the purchase of three Flats.

List on 22.12.2015 for further consideration.

To be taken up in the Urgent List.

In the meanwhile, the petitioner along with the I.O. would get the accounts defreezed so as to enable the preparation of the aforesaid demand draft.

December 08, 2015

**(JASWANT SINGH)
JUDGE”**

Thereafter, on the subsequent date i.e. 25.02.2016, again in presence of the counsel representing the complainant, the following order was passed:-

*“Present:- Mr. Preetinder Singh Ahluwalia, Advocate
for the Petitioner.
Mr. Kuldip Tiwari, Additional Advocate
General, Haryana assisted by
Inspector Sukhwinder Singh.
Mr. Karanvir Nanda, Advocate
for the Complainant.*

JASWANT SINGH, J (ORAL)

*Principal Director controlling the affairs of
the company on whose behalf the alleged cheating is
alleged to have been committed with the
investor/complainant has prayed for grant of anticipatory
bail in case FIR No.292 dated 10.08.2015 for offences
punishable under Sections 406, 420, 467, 468, 471, 506
and 120-B and 506 of Indian Penal Code and Section 3/32
of HPIDFE Act, 2014.*

*As per allegations in the FIR the private
company engaged in the business of construction and sale
of flats, has sold three flats to complainant without
disclosing that the land upon which they are to be
constructed was under mortgage with the bank.*

*That this Court while issuing notice of motion
and granting interim protection vide order dated
14.10.2015 had taken into account the readiness and
willingness of the petitioner to amicably settle the claim of
the complainant.*

*On the next date of hearing on 08.12.2015,
the issue raised by the complainant regarding purchase of
three flats stood resolved on the undertaking by the
petitioner to refund a total sum of Rs.39 lacs to the
complainant towards full and final settlement regarding
the purchase of said three flats.*

*At the time of hearing today, learned Counsel
for the complainant has been handed over the remaining
amount of Rs.3,15,000/- by way of demand draft*

no.005847 dated 23.02.2016 of Bank of India and thus the entire Rs.39 lacs stands refunded to the complainant. He very graciously states that the entire claim of the complainant regarding the purchase of aforesaid three flats stands settled and relinquished.

Learned State Counsel assisted by Inspector Sukhwinder Singh submits that in view of the aforesaid stand, the custodial interrogation of the petitioner is no longer required.

In view of the above, interim protection/pre-arrest bail granted vide order dated 14th of October, 2015 is made absolute.

Petition stands disposed of.

February 25, 2016

**(JASWANT SINGH)
JUDGE"**

Counsel for the petitioner(s) has submitted that the payment of the aforesaid amount of Rs.39 lacs was made to the complainant with a clear understanding that the same is towards full and final settlement regarding the purchase of 03 flats by the complainant and, therefore, the present petitions are filed praying for quashing of the FIR on the basis of the settlement arrived at between the parties. It is further submitted that during the pendency of the present petitions, the complainant/respondent No.2 has refused to acknowledge the compromise and has also refused to appear before the trial Court to record statement.

Counsel for the petitioner(s) has relied upon the judgment **"Mohd. Shamim vs Smt. Nahid Begum", 2005(1) RCR (Criminal) 697**, wherein the Hon'ble Supreme Court has held as under:-

“10. Before us, there is no denial or dispute as regard the factum of entering into the aforementioned settlement dated 14.11.2002. In the said deed of compromise it has categorically been averred that the same had been entered into on the intervention of S.N. Gupta, Additional Sessions Judge, Delhi. It has also been accepted that out of sum of Rs. 2,75,000/-, a sum of Rs. 2,25,000/- has been paid to the First Respondent herein and the balance amount of Rs. 50,000/- would be paid at the time of complainant's making statement and no objection for quashing the FIR, which was retained in the court as per the direction of the court. It has further been averred that no dispute remained between the parties regarding the payment of dower amount (Meher), dowry articles, including the alleged jewellery gift etc.

11. In view of the fact that the settlement was arrived at the intervention of a judicial officer of the rank of the Additional Sessions Judge, we are of the opinion, the contention of the First Respondent herein to the effect that she was not aware of the contents thereof and the said agreement as also the affidavit which were got signed by her by misrepresentation of facts must be rejected. In the facts and circumstances of this case, we have no doubt in our mind that the denial of execution of the said deed of settlement is an afterthought on the part of the Respondent No. 1 herein.

12. Ex facie the settlement between the parties appears to be genuine. If the contention of the First Respondent herein is to be accepted, she would not have accepted the sum of Rs. 2,25,000/- and in any event, she could have filed an appropriate application in that behalf before the Court of S.N. Gupta, Additional Sessions Judge, Delhi. What was least expected of her was that she would return the said sum of Rs. 2,25,000/- to the Appellants herein.

13. Section 406 is a compoundable offence with the permission of the court. It is true that Section 498A Indian Penal Code is not compoundable.

*14. This Court in **Ruchi Agarwal v. Amit Kumar Agrawal & Ors.**, 2004(4) RCR(CrL) 949 (SC) : [2004(8) Supreme 525], in almost a similar situation has quashed a criminal proceeding against the husband, stating :*

"...Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

8. In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue..."

15. In view of the conduct of the First Respondent in entering into the aforementioned settlement, the continuance of the criminal proceeding pending against the Appellants, in our opinion, in this case also, would be an abuse of the process of the court. The Respondent No. 1, however, would be entitled to withdraw the sum of Rs. 50,000/- which has been deposited in the court. We, therefore, in exercise of our jurisdiction under Article 142 of the Constitution of India direct that the impugned judgment be set aside. The First Information Report lodged against the Appellants is quashed. The Appeal is allowed. However, this order should not be treated as a precedent.

Appeal allowed."

It is, thus, submitted on behalf of the petitioner(s) that despite the fact that the total amount of Rs.39 lacs received by the complainant @ Rs.13 lacs per flat, he is now backing out of the compromise, therefore, the conduct of the respondent be noticed that after receiving the money, he has refused to make statement with respect to the compromise.

Counsel for the petitioner(s) has further relied upon the judgment ***“Sandip Somany vs State of Haryana and another”***, 2016(2) **Law Herald 1305**, wherein in similar circumstances, a complainant after refusing to acknowledge the compromise, this Court relying upon the aforesaid judgment of the Hon'ble Supreme Court has held that continuation of the proceedings in pursuance to the FIR is nothing but misuse of process of law *qua* the accused, who on representation of the said complainant have entered into the compromise and made the payment.

Counsel for the petitioner(s) has further argued that as per the allegations in the FIR, there are no direct allegations against the petitioner – Rajni Rampal and Karan Kumar and they have been implicated in the present case, only on account of the fact that they are wife and son of the Director i.e. the petitioner – Anand Kumar.

Reply by way of similar affidavits of the Deputy Superintendent of Police, State Crime Branch, Headquarter, Panchkula dated 06.02.2017, are filed separately in both the present petitions.

In the affidavit, it is stated that after registration of the FIR, the investigation was carried out by Inspector Sukhwinder Singh, State

Crime Branch, Ambala and this Court vide order dated 29.10.2015 passed in CRM-M No.30523 of 2015 had granted anticipatory bail to the petitioners – Rajni Rampal and Karan Kumar and the petitioner – Anand Kumar, who had filed CRM-M No.35327 of 2015 seeking anticipatory bail had paid the entire principal amount of Rs.39 lacs to the complainant till its final disposal on 25.02.2016. However, it is prayed that the petitions be dismissed.

It is worth noticing that both these petitions are pending since 2016 and till date, no reply has been filed on behalf of respondent No.2 despite availing number of opportunities.

Counsel for respondent No.2 has, however, submitted that the petitioner has only repaid the principal amount and he has a right to recover the interest thereon. It is also submitted that before the trial Court, the proceedings to declare the petitioner as proclaimed offender are pending.

In reply, counsel for the petitioner(s) has submitted that on 12.04.2016, this Court has directed the trial Court to submit the information regarding pendency of other cases against the petitioner or that the petitioners were ever declared as P.O., in the present case.

Counsel for the petitioner(s) has further submitted that thereafter on 28.05.2016, further proceedings in the present FIR were stayed by this Court in *CRM-M No.12521 of 2016*.

A perusal of the report submitted by the trial Court on 25.05.2016 show that no other case was pending against the accused – Anand Kumar and he was not declared as proclaimed offender in the

present FIR, however, it was submitted that none of the parties have appeared before the Chief Judicial Magistrate, Panchkula for recording their statements with respect to the compromise on 20.05.2016 or any other date prior thereto and no further application has been moved in this regard.

After hearing the counsel for the parties, I find merit in the present petitions for the following reasons:-

1. It is undisputed that the complainant/respondent No.2 – Anil Kumar Bhalla had received Rs.39 lacs i.e. @ Rs.13 lacs per flat for the purchase of 03 flats from M/s. Hanumanta Land Promoters Private Limited, in which the petitioner – Anand Kumar is a Director.

2. During the pendency of CRM-M No.35327 of 2015, filed by the petitioner – Anand Kumar, praying for anticipatory bail, an offer was made as noticed in the order dated 08.12.2015 that he will refund the amount of Rs.39 lacs by way of a demand draft to the complainant towards full and final settlement regarding the purchase of 03 flats and the Investigating Officer was directed to defreeze the account in order to enable the petitioner to prepare the demand draft.

Thereafter, on 25.02.2016, the complainant through his counsel accepted that the total amount of Rs.39 lacs stands refunded to the complainant and a demand draft of Rs.3,15,000/-, which was the remaining payment pending as on that date was also handed over to the complainant. This Court noticed the fact that counsel for the complainant had very graciously stated that “the entire claim of the complainant regarding purchase of the aforesaid 03 flats stands settled and relinquished.” Therefore, at a subsequent stage, the complainant cannot

re-agitate that he has not received the entire amount towards full and final settlement or that any amount towards interest is still pending.

It is worth noticing that the counsel representing the complainant in the present case also represented the complainant in the aforesaid anticipatory bail application i.e. CRM-M No.35327 of 2015 and had made the aforesaid submissions as noticed above.

3. *Till date, no reply on behalf of respondent No.2 has been filed despite availing number of opportunities, which itself show that the respondent/complainant probably has no defence to deny the fact of receiving the amount of Rs.39 lacs as full and final settlement arrived at between the petitioner(s) and the complainant and, therefore, the averments of the petitioner regarding the compromise goes unrebutted.*

4. *Even otherwise, in the affidavit filed by the Deputy Superintendent of Police, State Crime Branch, Headquarter Panchkula dated 06.02.2017, the payment of Rs.39 lacs made by the petitioner to the complainant is not denied.*

5. *In view of the judgment of the Hon'ble Supreme Court in Mohd. Shamim's case (supra), it is now well settled that if a party after accepting the amount in terms of a settlement and later on, backed out from the same, the continuation of criminal proceedings would be an abuse of process of Court.*

Similar view has been taken by the Hon'ble Supreme Court in "Ruchi Aggarwal vs Amit Kumar Aggarwal and others", 2004(4) RCR (Criminal) 949 (SC) as relied upon in Mohd. Shamim's case (supra).

In view of what has been discussed hereinbefore, both these petitions are allowed, the impugned FIR No.292 dated 10.08.2015

(Annexure P1) registered under Sections 406, 420, 467, 468, 471, 506, 120-B IPC and 3/32 of the Haryana Protection of Interest of Depositors in Financial Establishment Act, 2014 and subsequent proceedings arising therefrom are, accordingly, quashed.

(ARVIND SINGH SANGWAN)
JUDGE

28.09.2018
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No