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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 31st October, 2018

+ CRL.M.C. 4590/2015 and Crl.M.A.16437/2015

SARITA & ORS.

..... Petitioners

Through: Mr. Vipin Nandwani,
Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Amit Ahlawat, APP for the
State with ASI Prem Ram Arya,
PS Hari Nagar.
Mr. Bhupinder Singh, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first information report (FIR) No.582/2013 was registered by Police Station Hari Nagar on 29.11.2013 on the complaint of the second respondent (the complainant), it involving allegations against the petitioners of they having committed offence punishable under Section 420 read with Section 34 of Indian Penal Code, 1860 (IPC). As per the case set out in the said FIR, the complainant had been induced, pursuant to false representation made by the petitioners, to part with money in the total sum of Rs.20,60,000/- fraudulently and with dishonest intention by the petitioners acting in concert with each other, the case statedly now pending trial before the court of Metropolitan Magistrate.

2. By the present petition invoking inherent power and jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Article 227 of the Constitution of India prayer is made for the proceedings arising out of the said FIR to be quashed. The State has submitted its status report, while the second respondent has submitted reply, both opposing the prayer for quashing.

3. It appears that on 08.01.2014, the complainant on one hand, and the first and second petitioners, on the other, had executed a document styled as "*compromise deed*". At that stage, bail application (No.155) of the first and second petitioner was pending before the court of sessions. It appears that, as per the terms of the said compromise deed, the complainant had agreed to amicably settle the dispute with the first and second petitioners upon consideration of their paying to her a total amount of Rs.8,50,000/-, out of which Rs.2,50,000/- was to be paid at the time of hearing on the bail application and the balance in equal four installments after every 45 days, the complainant agreeing to co-operate for seeking quashing of the FIR or for compounding of the case, clarifying that she would not demand any further money from them, i.e., first and the second petitioners. Reference to the said compromise was made before the court of Sessions on 09.01.2014 and, on that basis, protection against arrest with prior notice of fifteen days was granted disposing of the application for anticipatory bail.

4. It is pointed out that the third petitioner also moved an application for anticipatory bail (application No.467) which came up

before the court of Sessions on 21.01.2014. It was brought to the notice of the sessions court by the counsel for the third petitioner that the matter had been compromised and some amount had already been paid to the complainant and, on that basis, interim protection had been granted to the co-accused (first and second petitioners), by order dated 09.01.2014. Thus, the application of the third petitioner was also disposed of with similar directions as in the case of others by order dated 21.01.2014.

5. Reliance is placed by the petitioners on documents in the nature of affidavit, undertaking and receipt, each dated 02.08.2014 also executed by the complainant with reference to the compromise deed dated 08.01.2014. In the said documents, she acknowledged having received total sum of Rs.7,50,000/- by various modes, from the first and second petitioners, also adding the name of the third petitioner and submitting that the balance amount payable was Rs.1,00,000/- only.

6. On above noted facts, a petition (Crl.M.C.3546/2014) was filed earlier under Section 482 Cr.P.C. seeking the FIR to be quashed on the ground of settlement. The petition was, however, withdrawn and disposed of accordingly by order dated 23.09.2014, it having been submitted that the matter was compoundable, charge sheet having already been filed. The petitioners, thereafter, moved the Metropolitan Magistrate by an application under Section 320 Cr.P.C. which was not entertained because the complainant was not agreeable to the compounding.

7. The present petition has been filed against the above backdrop, it being the submission of the petitioners that the complainant having agreed to settle the matter amicably, and having derived monetary advantage out of such settlement, she has turned dishonest and is insisting on further payment to be made by the third petitioner. It is the submission of the petitioners that continuation of the criminal case, in such circumstances and against these facts, would be an abuse of the process of law.

8. The petition is resisted by the complainant with reference to the documents described as one handwritten undertaking given for and on behalf of the third petitioner at the time of aforementioned settlement with other petitioners to the effect that he would be returning by tenth of the month (the document having been handed over, as per the complainant, on 09.01.2014) and that he would discharge of “his liabilities”. The document concededly was handed over by Gurmeet Kaur wife of the second petitioner written in her hand and under her signatures. It is the version of the petitioners that this document was handed over (not on 09.01.2014 but) earlier before the police prior to the execution of settlement/compromise deed dated 08.01.2014. It is the argument of the petitioners that the said document is being misused by the complainant to distort the facts and present events in a wrong chronology with dishonest intention of extorting more money.

9. The above noted versions of the two sides give rise to questions of facts. It cannot be decided in the present proceedings under Section 482 Cr.P.C. with certainty, without formal inquiry, as to whether the

undertaking for and on behalf of the third petitioner to discharge his liability was given prior to the execution of the compromise deed dated 08.01.2014. Concededly, the third petitioner was not party to the compromise deed dated 08.01.2014. In fact, at that stage he was not represented directly or indirectly. The settlement reflected by the said document concerns primarily the first and second petitioners only. It is *prima facie* doubtful if the complainant who was alleging having been cheated of a total amount of Rs.20,60,000/- by the petitioners would have agreed to settle the matter upon payment only of Rs.8,50,000/- by the first and second petitioners without the third petitioner also being held accountable. The document relied upon by the complainant in reply cannot be trashed without she being given an opportunity to prove the facts concerned the circumstances in which such document came to be executed and handed over. The contents of the said document *prima facie* support her version that the compromise deed dated 08.01.2014 was restricted to the case against the first and second petitioners only, it having been held out as an assurance to assure that the third petitioner would also pay the remainder to her to resolve the case in entirety to her satisfaction.

10. The proceedings under Section 482 Cr.P.C. are not appropriate proceedings for holding inquiry into the questions of facts. It would be proper, in these circumstances, to leave the matter to be agitated by both the sides in the pending proceedings before the metropolitan magistrate. [*Rajiv Thapar and Ors. Vs. Madan Lal Kapoor, (2013) 3 SCC 330*].

11. For the foregoing reasons, and in the circumstances, this court declines to exercise jurisdiction under Section 482 Cr.P.C. and Article 227 of the Constitution of India at this stage to put to an end to the criminal case.

12. The petition is disposed of with these observations. This disposes of pending application as well.

R.K.GAUBA, J.

OCTOBER 31, 2018

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