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

+ **CRL.M.C. 1511/2020 & CRL.M.As. 7665-7666/2020**

KUSH BHASIN & ANR Petitioners

Through: **Mr. Vineet Malhotra, Adv.**

versus

STATE & ANR. Respondents

Through: **Ms. Meenakshi Chauhan, APP**
for the State with Insp. Gurnail
Singh, EOW
Mr. Rajesh Anand, Adv. for the
complaint - Mr. Siddharth
Kasana

CORAM:

HON'BLE MR. JUSTICE C .HARI SHANKAR

JUDGEMENT (ORAL)

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06.07.2020

(Video-Conferencing)

CRL.M.C. 1511/2020

1. On the complaint of the second respondent Siddhartha Kasana, FIR No.0093 was registered, by the Economic Offences Wing (EOW), against the petitioners, alleging commission of offences, by them, under Sections 406, 409, 420 and 120B read with Section 34 of the Indian Penal Code, 1860 ("IPC").

2. The second petitioner is the father of the first petitioner, and the second respondent was the complainant in the aforesaid FIR.

3. The allegations, in the FIR, may be paraphrased thus: The second respondent was the executive director of a company known as MSD Aviation Pvt. Ltd. He alleged that the first petitioner had represented, to him, that he was a pilot, and that both the petitioners assured the second respondent that, if he were to invest in Jakarta, Indonesia, he would reap handsome profits on the investment. The second respondent alleged that he fell into a trap and was, by the petitioners, induced to invest in Jakarta. For this purpose, he also claimed to have been induced to incorporate the company M/s MSD Aviation Pvt. Ltd. (hereinafter referred to as “MSD Aviation”) in February, 2011, of which the second respondent was the executive director and the first petitioner was the Director (Operations). The FIR alleges, further, that, till March, 2013, an amount of ₹ 8 crores had been invested, by the second respondent, in the account of the first petitioner in various banks. It is further alleged that, in November, 2012, the petitioners handed over, to the second respondent, a cheque for ₹ 9 crores, as security in lieu of the investments made by the second respondent, but that the said cheque was dishonoured. This, according to the FIR, had resulted in wrongful enrichment of the petitioners at the expense of the second respondent. Alleging that, on seeking to communicate, with the petitioners, he had been threatened, the second respondent sought initiation of criminal proceedings against the petitioners, which resulted in the registration of the aforesaid FIR, under Section 406/420/120B read with Section 34 of the IPC.

4. The FIR also refers to another complaint, against the petitioners, by one Laishram Subhash Singh, allegedly on similar grounds. However, it appears that, after having made the said complaint, the complainant Laishram Subhash Singh has not cooperated with the investigation. Ms. Meenakshi Chauhan, learned APP, acknowledges that even his whereabouts are not known as on date.

5. That apart, Mr. Vineet Malhotra, learned Counsel for the petitioners, submits that it was legally impermissible to register a single FIR, in respect of two transactions, for which he relies on the judgment of a Division Bench of this Court in *State v. Khimji Bhai Jadeja*¹.

6. It appears that, during the course of investigation into the matter, the petitioners and second respondent have settled the disputes between themselves, in furtherance of which Memorandum of Understanding (MoU), dated 3rd June, 2020, has been drawn up. The aforesaid MoU states that both parties realised that the disputes are primarily civil in nature and that the petitioners had agreed to pay, to the second respondent, a total amount of ₹37 lakhs towards full and final settlement of all disputes of any kind whatsoever. Of the said amount, an amount of ₹ 10 lakhs was to be paid immediately on signing of the agreement and the balance amount of ₹ 27 lakhs was to be paid consequent to quashing of the FIR, in these proceedings. Mr. Rajesh Anand confirms that the balance amount of ₹ 27 lakhs also

¹ 161 (2019) DLT 431

stands paid today. It is not necessary to set out the remaining clauses of the agreement, inasmuch as Mr. Rajesh Anand, learned Counsel for the second respondent, is present, who makes a statement that the aforesaid agreement was arrived at, by his client, voluntarily and without any coercion or undue pressure.

7. The agreement stands signed by the petitioners as well as the second respondent, as well as by two witnesses. Both learned Counsel, for the petitioners as well as the second respondent, submit that their clients would remain bound by the covenants of the agreement.

8. Consequent to issuance of notice in this matter, a status report has been filed by the ACP, in which it is acknowledged that an amount of ₹ 3,84,29,600/- was returned, to MSD Aviation, by the party, in Indonesia, into whose account the amount had been earlier paid.

9. Ms. Meenakshi Chauhan, learned APP, while acknowledging the fact that the dispute appears to have been settled between the Petitioners and the second respondent, and the fact that Laishram Subhash Singh, who was also alleged to have made a complaint against the petitioners, is not cooperating with the investigation, or pursuing the complaint made by him, expresses some surprise at the registration of the FIR in 2016 when, according to the status report, moneys paid by MSD Aviation Pvt. Ltd. have been returned to the account of the MSD Aviation Pvt. Ltd. much prior thereto.

10. Mr. Rajesh Anand, learned Counsel for the second respondent clarifies this position by stating that moneys had been collected, by the petitioners, towards investment in mining as well as in real estate, and that the amounts that were returned pertained to the amounts collected for investment in mining. The moneys collected for investment in real estate, he submits, had not been returned, but, in order to achieve a quietus in the matter, and keeping in mind the fact that the dispute was essentially civil in nature, the parties have decided to bury the hatchet.

11. In *Parbatbhai Aahir v State of Gujarat*², the Supreme Court has enunciated, authoritatively, the following guiding principles in the matter of quashing of criminal proceedings, *inter alia* on the basis of settlement between the parties:

“16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. *The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.*

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

² (2017) 9 SCC 641

16.4. While the inherent power of the High Court has a wide ambit and plenitude *it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.*

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, *revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.*

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. *Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.*

16.7. As distinguished from serious offences, *there may be criminal cases which have an overwhelming or predominant element of a civil dispute.* They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. *Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*

16.9. In such a case, the High Court may quash the criminal proceeding *if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice;* and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences

involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. *The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.*”

(Emphasis supplied)

12. On an overview of the facts, I am of the opinion that the impugned FIR deserves to be quashed, in view of the settlement between the petitioner and the second respondent. I did have my initial misgivings as to whether **Parbatbhai Aahir**² would militate against such quashing, but it does not appear to be so. There is no allegation, even in the status report filed by the first respondent, to the effect that the petitioners were involved in any other such incident, except in respect of the complaint by the second respondent, and allegedly, by Laishram Subhash Singh. It cannot, therefore, be said that the petitioners’ indiscretions have any widespread economic or societal ramifications. Nor can they be analogized to murder, rape, offences involving mental depravity, or the like. The offence essentially relates to a commercial and financial relationship entered into, between the petitioners and the second respondent, and the MoU between them acknowledges that the dispute has, primarily, civil flavour. The moneys taken from the second respondent have been returned in part, and, for the rest, accounts have been settled between the petitioners and the second respondent. *Ex facie*, in the circumstances, continuation of the investigation and criminal proceedings, consequent to the registration of the aforesaid FIR No.

0093 dated 14th June, 2016, registered at PS EOW, would be of no avail, and is unlikely to result in conviction.

13. In my view, therefore allowing the said proceedings to continue would be oppressive to the petitioners and the second respondent, and would also result in avoidable drain on precious judicial time.

14. In the circumstances, in exercise of the powers conferred by Section 482 of the Criminal Procedure Code, 1973, this Court quashes FIR 0093 dated 14th June, 2016 registered at PS EOW.

15. Ms. Meenakshi Chauhan, learned APP insists that costs should be imposed in the present case; however, for the present I refrain from doing so.

16. The petition is, accordingly, allowed.

17. It is clarified that the present order is limited to closure of FIR 0093 dated 14th June, 2016, registered at PS EOW, and would not impact, or influence, any other proceedings in which either of the parties may be involved.

C. HARI SHANKAR, J.

JULY 06, 2020/kr