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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.99 OF 2022

Aju C. S. Sindolli
60 years, Businessman
Indian National,
presently r/o House No.524/4,
Danva Road, Thivim Bardez Goa.

... Petitioner

Versus

1. State of Goa
Through the Public Prosecutor,
High Court of Bombay at Goa,
Porvorim, Goa

2. The Police Inspector,
Economic Offences Cell,
Panaji, Goa

3. Paul Saldanha,
R/o House No.351/5,
Green Field Society,
Nerul Bardez Goa.

... Respondents

Mr. Vibhav R. Amonkar, Advocate *for the Petitioner.*

Mr. S. G. Bhobe, Public Prosecutor *for Respondents No.1 to 2.*

Mr. Nuno Noronha, Advocate *for Respondent No.3.*

**CORAM: PRASANNA B. VARALE &
BHARAT P. DESHPANDE, JJ.**

Date: 14th September 2022

ORAL JUDGMENT (Per: *Bharat P. Deshpande, J*)

Rule. Rule made returnable forthwith.

2. Heard the parties with consent.

3. The petitioner approached this Court under Section 482 of CrPC and Article 226 of the Constitution of India praying for a writ, order or directions thereby quashing FIR No.192/2015 dated 02.12.2015 registered with respondent no.2 and consequently criminal proceedings initiated pursuant thereto, on the ground that the petitioner and respondent no.3/informant settled their dispute.

4. Heard learned counsel Shri Vibhav Amonkar appearing for the petitioner and Mr. S. G. Bhobe, learned Public Prosecutor for respondents no.1 and 2 and Shri Nuno Noronha, learned counsel appearing for respondent no.3.

5. With the assistance of learned counsel appearing for the parties we have gone through a copy of the chargesheet and relevant documents as well as the affidavit filed by respondent no.3.

6. Learned counsel Shri Amonkar appearing for the petitioner

strenuously urged that though FIR was lodged against the applicant which culminated into filing of a chargesheet, subsequently the petitioner and the informant/respondent no.3 settled their dispute out of the court and therefore the petitioner has approached this Court since the offence alleged against him in the chargesheet is non-compoundable offence. He invited our attention to a specific pleading in the petition wherein it has been claimed that FIR was lodged purely on misunderstanding and misapprehension and the petitioner alongwith respondent no.3 discussed about it. The petitioner represented to respondent no.3 about true and factual position and accordingly both of them amicably resolved to withdraw/compound all criminal pending cases including the present FIR. Such averments are found in paragraphs 6, 8 and 9 of the petition.

7. Learned counsel Shri Amonkar then placed reliance in the case of *Gian Singh vs. State of Punjab & Another*¹ and *Narender Singh and Others vs. State of Punjab And Another*² to buttress his submissions regarding settlement of the dispute and powers of this Court to quash proceedings even after filing of the chargesheet and when the matter has been resolved amongst the parties in connection with commercial transaction and as such

1 (2012) 10 SSC 203

2 (2014) 6 SCC 466

the exercise of undergoing full-fledged trial would be futile exercise.

8. Mr. Bhobe, the learned Public Prosecutor appearing for the State opposed the said application on the ground that the FIR was lodged in the year 2015 and after full-fledged investigation, chargesheet is already filed in the year 2017 before the learned Chief Judicial Magistrate's Court at Panaji. Therefore, it is not proper to quash the entire proceedings including FIR at this stage when the police machinery was used by the informant for investigations and filing of the chargesheet.

9. Learned counsel for respondent no.3 submitted that though she is ready and willing to compound the matter by quashing FIR, the contentions raised by her in a Civil Suit bearing Civil Suit no.57/2016 filed against the petitioner for recovery of the same amounts would not be affected by the outcome of the present compounding. In paragraph 9 of the affidavit, respondent no.3 submitted that she is giving conditional consent for compounding the offence.

10. We have considered all the relevant contentions raised by the respective parties and after perusal of pleadings in the petition

and more particularly, affidavit filed by respondent no.3, we consider it appropriate not to exercise our inherent jurisdiction under Section 482 of CrPC and/or under Article 226 of the Constitution of India in granting the prayer in the petition for the reasons disclosed below.

11. The Hon'ble Apex Court in the case of ***Gian Singh*** (supra) was dealing with the reference and this aspect is found in paragraph 52 as under:-

“The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code.”

12. While answering the above aspect, the Apex Court discussed earlier decisions having different views and then arrived at the conclusion which is found from paragraphs no.53 onwards. However, relevant observations are in paragraphs 54, 55, 56, 57 and 61 which read thus:

'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, conceditur 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.'

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'61. The position that emerges from the above discussion can be summarised thus: 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 criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what 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. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing,

particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, 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 with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.'

13. In the case of **Narender Singh** (supra), the Apex Court was considering powers of High Court under Section 482 of CrPC *vis-a-vis* the offences punishable under Section 307 of IPC. After considering the decision in the case of **Gian Singh** (supra), the Apex Court observed from paragraph 13 onwards that the question is as to whether the offence under Section 307 of IPC

falls within the aforesaid parameters. After the discussion, the Apex Court while summing up laid down the principles by which a High Court would be guided in giving adequate treatment to the settlement within the parties and exercising its powers under Section 482 of the Code while accepting a settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings. Such directions are found from paragraph 29, 29.1 to 29.7 which read thus:

'29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases

would be to secure:

- (i) ends of justice, or
- (ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the

High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even

the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.'

14. The learned Additional Public Prosecutor placed reliance in the recent decision in the case of ***M/s. Niharika Infrastructure Pvt. Ltd v. State of Maharashtra***³. The Apex Court after discussing all earlier decisions including the above referred decisions in the case of ***Gian Singh*** (supra) and ***Narender Singh*** (supra), reiterated its earlier considerations including the one

3 AIR 2021 Supreme Court 1918

found in the case of ***Bhajan Lal***. Keeping in mind about settled propositions and more particularly the observations in paragraph no.56 and paragraph no.61 in the case of ***Gian Singh*** (supra) wherein the Apex Court has observed that while exercising inherent powers, the High Court would be entirely dependent on the facts and circumstances of each case and it is neither permissible nor proper for the Court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482 of CrPC. No precise and inflexible guidelines can also be provided. Thus, each case has to be decided on its own facts and material and more particularly the aspect of settlement between the parties as tried to be claimed in the present petition.

15. Briefly, facts of the matter on the basis of which FIR was lodged against the petition needs to be disclosed. On the basis of a complaint lodged by the respondent no.3, FIR no.192 of 2015 was registered by the police and later on it was taken over by Economic Offences Cell, North Goa, Panaji, for the offence punishable under Section 406 and 420 of IPC.

16. The main allegations of respondent no.3/informant in the FIR are that the petitioner induced the informant to invest in different schemes on promise of 8% returns every month.

Accordingly, the informant invested an amount of ₹42,00,000/- somewhere in the year 2014. Subsequently, the petitioner promised to sell a property to the informant and collected an amount of ₹28,20,000/- and misappropriated the said amount for his personal use. Thereafter, the petitioner again took an amount of ₹67,000/- from respondent no.3/informant with a promise to buy auctioned iron ore from Directorate of Mines & Geology and misappropriated the said amount for his personal use. Therefore, the petitioner by making false promise and inducing the informant, misappropriated an amount of ₹75,98,566/- and thereby committed offence punishable under Section 406 and 420 of IPC.

17. It is matter of record that complaint/FIR was lodged on 02.12.2015 and thereafter chargesheet was filed in the Court of CJM at Panaji which is registered as Criminal Case No.22/2017. Thus, the basic contentions in the complaint is regarding inducement, misappropriation of funds and cheating. No doubt it is a commercial transaction and purely between two persons, the question of quashing of such proceedings needs to be considered on the basis of contentions raised in the petition so also affidavit filed by respondent no.3/informant, so as to find out whether there is actual settlement of the dispute between the

parties.

18. Petitioner in his petition and more particularly in paragraph no.6 onwards claimed that the complaint was lodged purely on misunderstanding and misapprehension in the mind of the informant and that the dispute is now amicably settled between the parties.

19. Therefore, it is necessary to look into the affidavit filed by respondent no.3 so as to find out whether the contentions raised in the petition regarding misunderstanding and misapprehension in the mind of the complainant while filing the complaint is made out in the affidavit.

20. Bare perusal of the affidavit filed by respondent no.3 today clearly goes to show that he is giving conditional consent for compounding of the said offence thereby keeping open his contentions raised in the Special Civil Suit No.57/206 filed by him against the petitioner for the recovery of the same amount which he has alleged as misappropriated by the petitioner.

21. In the entire affidavit filed by respondent no.3, there is no whisper to the contentions raised in the petition and more

specifically found in paragraph 6 of the petition that such complaint was filed by respondent no.3 purely out of misunderstanding and misapprehension.

22. We clearly observe on perusal of the affidavit of respondent no.3 that in fact there is no compromise arrived at between the parties as far as the present FIR and chargesheet is concerned. Respondent no.3 nowhere states on oath that she filed the said complaint purely on misunderstanding and misapprehension of the facts. Contrary to the above facts, affidavit in fact reiterates the contention of the respondent no.3 that amount of ₹75,98,566/- was misappropriated by the petitioner by cheating and inducing. It is necessary to quote few paragraphs of the affidavit of respondent no.3 for the purpose of better understanding of the matter.

'6. I say that during the course of the proceedings of the afore - referred Case No. OA/85/2016/D, the Petitioner and me have now resolved our dispute amicably with respect to the police complaint dated 02/12/2015 which has been filed by me against the Petitioner before the Respondent No. 2, Police Inspector and also in connection to the proceedings under Section 138 of the Negotiable Instruments Act, 1881 being Case No. OA/85/2016/D pertaining to a false / fake Cheque bounce case instituted by the Petitioner against me, subject, to me keeping all my rights, contentions, issues, disputes etc. open for me to litigate with respect to

recovering from the abovenamed Petitioner my money amounting to the aforesaid sum of Rs. 75,98,566/- (Rupees Seventy Five Lakhs Ninety Eight Thousand Five Hundred and Sixty Six)Only which the Petitioner has misappropriated and cheated me of, with respect to which I have filed the afore-referred Special Civil Suit No. 57/2016/A before the Hon'ble Court of the Civil Judge, Senior Division 'A' Court at Panaji- Goa.'

7. I say that I give my consent to this Hon'ble Court compounding the offences charged against the Petitioner which are punishable under Section 406 and 420 of the Indian Penal Code, 1860 and also for quashing the FIR No. 192/2015 which has been registered against the Petitioner by the Respondent No. 2, Police Inspector in pursuance of my police complaint dated 02/12/2015.'

'8. I say that the consent given by me so that this the Hon'ble Court may proceed to compound the offences committed by the Petitioner under Section 406 and 420 of the Indian Penal Code 1860 with connection to which the afore - referred F.I.R. No. 192/2015 has been registered against the Petitioner abovenamed by the Respondent No. 2, Police Inspector shall have no bearing, connection and / or implication with the outcome of the Special Civil Suit No. 57/2016/A which has been filed by me against the abovenamed Petitioner for recovering the aforesaid sum of Rs. 75,98,566/- (Rupees Seventy Five Lakhs Ninety Eight Thousand Five Hundred and Sixty Six)Only from the abovenamed Petitioner, which aforesaid sum of money I have been wilfully and intentionally mis-appropriated and cheated of by the Petitioner and against the recovery of the aforesaid sum of Rs. 75,98,566/- (Rupees Seventy Lakhs Ninety Eight Thousand Five Hundred and Sixty Six)Only, the afore - referred Special Civil Suit No. 57/2016/A has

been filed by me, which is pending before the Hon'ble Court of the Civil Judge, Senior Division 'A' Court at Panaji – Goa.'

'9. I say that keeping all my rights, contentions, issues, disputes etc., open for me to litigate in the afore - referred Civil Suit 57/2016/A I hereby give my conditional consent to this Hon'ble Court compounding the offences under Section 406 and 420 of the Indian Penal Code, 1860 charged by the Respondent No. 2, Police Inspector against the abovenamed Petitioner in pursuance of my police complaint dated 02/12/2015 and also for quashing the F.I.R. No. 192/2015 registered by the Respondent No. 2, Police Inspector against the Petitioner on 02/12/2015.'

23. Respondent no.3 in the above affidavit clearly submitted that the petitioner cheated her and induced to part money on false promises. Respondent no.3 further claimed that the proceedings filed by the petitioner against her under Section 138 of Negotiable Instrument Act were pertaining to false/fake cheque bounce case. However, one thing is clear that that the tenor of the affidavit is not found in consonance with the pleadings in the petition and more particularly paragraph 6 of the petition claiming thereby that so called complaint filed by respondent no.3 was purely out of misunderstanding and misapprehension.

24. When we asked the counsel for respondent no.3 as to whether the amount allegedly misappropriated is received by him

under compromise, he submitted that no amount was exchanged between the parties at the time of arriving at so called settlement and his civil suit is pending adjudication before the Civil Court for recovery of said amount. Learned counsel for the petitioner also submitted that the petitioner is contesting the said suit on the ground that he is not entitled to pay any amount to the respondent no.3. Thus, from all angles we clearly observe that affidavit of respondent no.3 is filed only in camouflaged manner so as to obtain an order of quashing of proceedings from this Court and to get rid of the criminal proceedings even though the parties are litigating before the Civil Court for the same cause. The affidavit of respondent no.3, therefore, cannot be considered as an affidavit with regard to arriving at a settlement between the parties. Since the chargesheet is already filed and the matter is pending before learned CJM, we deem it fit and proper to reject the present petition for the said reasons.

25. The petition is dismissed.

26. Rule stands discharged.

BHARAT P. DESHPANDE, J

PRASANNA B. VARALE, J