

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

203

CRM-M-37423-2019 (O&M)

Date of decision: 03.03.2023

VEMURI SHYAM PARSHAD

....Petitioner(s)

Versus

STATE OF HARYANA AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Manoj Kumar Pundhir, Advocate for the petitioner

Mr. Tanuj Sharma, AAG Haryana

Ms. Ishita Jain, Advocate for respondent No.2

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 CrPC for quashing of FIR No.678 dated 18.11.2017, registered under Sections 406 and 506 of the Indian Penal Code, at Police Station Yamuna Nagar City, District Yamuna Nagar and all consequential proceedings arising therefrom.

Learned counsel for the petitioner contends that the matter pertains to a civil dispute of allegedly not receipt of goods from the complainant though admittedly part payment of Rs.39 lakhs was paid through RTGS on 30.10.2014 and as on date Rs.51,07,379/- is yet to be paid. The petitioner after arrest joined investigation and thereafter a compromise was arrived at on 06.02.2018, Annexure P-2, wherein it has

been mentioned that the petitioner has issued a cheque of Rs.50 lakhs and Rs.1 lakh had been given in cash and that the complainant will withdraw the FIR No.678 dated 18.11.2017. An affidavit also to the aforesaid effect was executed by the complainant on the same very day i.e. on 06.02.2018, Annexure P-3 and he admitted the factum of compromise before the Additional Chief Judicial Magistrate on 07.02.2018 and made a statement, whereafter the petitioner was also granted bail vide order dated 07.02.2018. There were commercial dealings with each other prior to this FIR as before the goods were sent from time to time and payments were made prior to the dispute having arisen. He submits that there is no ingredients of the offence as under which FIR has been registered are made out as there was no element of cheating, misappropriation or breach of trust and there is no allegation of falsifying and there is no evidence brought forth with regard to the allegation of the petitioner, who lives in Vijaywada in Andhra Pradesh having threatened the complainant. He relies on the judgment passed by this Court in **Anand Kumar Vs. State of Haryana**, 2018(4) RCR (Criminal) 457.

Learned counsel for respondent No.2 has appeared and on instructions submits that the complainant has affirmed receipt of the balance amount from the petitioner.

Learned State counsel submits that challan has been presented in the present case.

Heard.

It is worthwhile to refer to the compromise dated 06.02.2018,
Annexure P-2 arrived at between the parties which reads thus:-

“This memorandum of understanding is entered in to
between on this day of 6th February 2018 as follows:-

M/s Hari Om Impex represented by Manan Sahni S/o Sh.
Bharat Bhushan R/o H.No. 296-R, Model Town Yamuna
Nagar, Tehsil Jagadhri, Distt. Yamuna Nagar

1st party

And

M/s Winstreet Inter Trade represented by Vemuri Shyam
Parshad S/o Sh. V. S. Boss R/o Flat No. 402, Venkata
Meadowes, New Raja Rajeshwari Road, Patamata,
Pardesh Vijaywada, Andhra

2nd party

Whereas the 1st party had registered a crime vide FIR no.
678 dt. 18.11.2017 for the offence under section 406 &
506 of IPC in P.S. City Yamuna Nagar.

Whereas in this regard the police has arrested the 2nd
party on 05.02.2018 & taken in to the police custody for
further investigation.

Whereas due to intervention of the elders and well
wishers the matter has been settled out of court on the
following terms and conditions:-

1. That 2nd party has issue cheque bearing no. 000038 dt.
06.02.2018 of HDFC Bank Benz Circle Branch
Vijayawada favoring the 1st party for a sum of Rs.
50,00,000/- (Rupees Fifty Lacs only).

2. The 2nd party has also pay a sum of Rs.1,00,000/- in
cash to the 1st party.

3. On receipt of the said amount the 1st party will fully
co-operate to withdraw the FIR no. 678 dt. 18.11.2017
against the 2nd party.

4. The account of both the parties have been settled as
FULL AND FINAL SETTLEMENT AS ON DATE.

5. There are no other money transactions between the
parties whatsoever in nature and the same is being
settled.

In witness where of both the parties affixed there
signatures with free mind and consent and with proper
understanding.

The affidavit of the complainant-respondent no.2 dated

06.02.2018, Annexure P-3, reads thus:-

“I, Manan Sahni S/o Sh. Bharat Bhushan occupation Partner M/s Hari Om Impex R/o H.No. 296-R, Model Town Yamuna Nagar, Tehsil Jagadhri, Distt. Yamuna Nagar, do hereby solemnly declare and affirm as under:

1. I submit I am the deponent hear in and as such I know the facts of this affidavit.

2. I submit that I had registered a crime vide FIR no. 678 dt. 18.11.2017 for the offence under section 406 & 506 of IPC in P.5. City Yamuna Nagar against one M/s Winstreet Inter Trade represented by Vemuri Shyam Parshad S/o Sh. V. S. Boss R/o Flat No. 402, Venkata Medowes, New Raja Rajeshwari Road, Patamata, Vijaywada, Andhra Pradesh.

3. I submit that the said Vemuri Shyam Parshad was arrested by the police on 05.02.2018 & taken in to the police custody for further investigation.

4. I submit due to intervention of the elders and well wishers the matter has been settled out of court on the following terms and conditions.

(a) That the said Vemuri Shyam Parshad has issue cheque bearing no. 000038 dt. 06.02.2018 of HDFC Bank Benz Circle Branch Vijayawada favoring the deponent for a sum of Rs. 50,00,000/- (Rupees Fifty Lacs only). (b) That Vemuri Shyam Parshad has also pay a sum of Rs. 1,00,000/- in cash to the deponent. (c) On receipt of the said amount the deponent will fully co-operate to withdraw the FIR no. 678 dt. 18.11.2017 against the Vemuri Shyam Parshad.

(d) The account of both the parties have been settled as FULL AND FINAL SETTLEMENT AS ON DATE.

(e) There are no other money transactions between the parties whatsoever in nature and the same is being settled.”

Statement of the complainant as recorded before the learned

ACJM, Jagadhri, dated 07.02.2018, Annexure P-4 reads thus:-

“Statement of Manan Sahni son of Sh. Bharat Bhushan, resident of 296R, Model Town, Yamuna Nagar.

On SA

Stated that compromise of our company with the accused has taken place. I have no objection if bail is granted to accused. I am complainant in this case and partner of Partnership Firm. I hereby produce affidavit regarding compromise.

RO& AC

Statement recorded in my presence

sd/-
Manan Sahni

sd/-
ACJ (SD) CJM Jagadhri YNR
07.02.2018”

It is but obvious that there were commercial dealings between the petitioner and the complainant prior to lodging of this FIR, as the goods were sent from time to time and payments were made, however a dispute arose. Be that as it may, admittedly part payment amounting to Rs.39 lakhs was made on 30.10.2014 through RTGS and during the pendency of the FIR, on 06.02.2018 a compromise was arrived at, Annexure P-2, as per which the petitioner issued a cheque of Rs.50 lakhs and Rs.1 lakh had been given in cash to the complainant, who was to co-operate to withdraw the FIR in question. An affidavit was also duly executed by the complainant on the same very day i.e. on 06.02.2018, Annexure P-3 to the aforesaid effect and made a statement before the Additional Chief Judicial Magistrate on 07.02.2018 affirming the factum of compromise, whereafter the petitioner was also enlarged on bail vide order of even date. However,

In the case of **Anand Kumar** (Supra) FIR was registered under Sections 406, 420, 467, 468, 471, 506, 120-B IPC as 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. This Court quashed the FIR and subsequent as the complainant through his counsel accepted that the total amount, but subsequently tried to re-agitate the issue.

In the case of **Deepak Arora Vs State of Haryana and another** 2015(7) RCR (Criminal) 649, this Court held that if as per the

compromise the respondent-complainant did not appear to make a statement after accepting the payments towards full and final settlement, as is the case in hand wherein except for admitting receipt of the amount in terms of the compromise, no statement has been made for quashing of the FIR, inspite of the fact that in the compromise and affidavit dated 06.02.2018, complainant-respondent had specifically stated that he will cooperate in withdrawal of the FIR in question.

This Court in the case of **Sukhwinder Singh and others vs. State of Punjab and another**, CRM-M-22240-2014, decided on 25.05.2015 has held that after accepting the compromise and receiving the amount, respondent No.2, cannot now resile from the statement, thus, to do complete justice the continuation of the proceedings were found to be an abuse of process of the Court and the petition was allowed.

In **Mohd.Shamin Vs Smt.Nahid Begum**, 2005(1) RCR (Criminal) and **Ruchi Aggarwal Vs Amit Kumar Aggarwal**, 2004(4) RCR(Criminal) 949, wherein even though the respondents resiled from the compromise after receipt of the amount agreed to therein, Hon'ble The Supreme Court of India quashed the FIR, in view of their conduct, finding the continuation of the proceedings an abuse of process of Court.

Considering the aforesaid facts and circumstances of the case and bearing in mind the law laid down by Hon'ble The Supreme Court of India in the case of **State of Karnataka Vs. L. Muniswamy and others**, AIR (1977) SC 489, this Court finds that permitting the proceedings to continue in the present FIR would be an abuse of the process of Court, thus,

present petition deserves to be allowed, in the exercise of the wholesome power under Section 482 CrPC.

Resultantly, the present petition is allowed FIR No.678 dated 18.11.2017, registered under Sections 406 and 506 of the Indian Penal Code, at Police Station Yamuna Nagar City, District Yamuna Nagar and all consequential proceedings arising therefrom, are quashed qua the petitioner.

(AMAN CHAUDHARY)
JUDGE

March 03, 2023

S.Sharma(syr)

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