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

\+ CRL.M.C. 951/2022

RAJEEV SRIVASTAVA AND OTHERS ..... Petitioners

Through: Mr. Usman G. Khan with Mr.Rishi K. Awasthi, Advocates.

versus

STATE OF NCT OF DELHI AND ANOTHER ..... Respondent

Through: Insp. Neeraj Kumar with SI Vishvendra Singh, PS Mayur Vihar, Delhi.

% *Date of Decision: 26.04.2023*

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

JUDGMENT

DINESH KUMAR SHARMA, J. (Oral)

1. Present petition has been filed u/s 482 Cr.P.C. seeking quashing of case FIR No. 0071/2020 dated 20.02.2020 registered under sections 420/409/120B, IPC at PS Mayur Vihar, Phase-I, East Delhi. The said FIR was lodged by respondent No. 2 namely Amit Khanna who is the Authorized signatory of M/s Skynet Enterprises Pvt. Ltd., against the petitioner Nos. 1, 2 and 3 herein and one Manoj Srivastava who were

the Directors of the petitioner No. 4 company namely M/s Assotech Ltd over the issue of dishonour of cheque.

2. It has been submitted that the accused Manoj Srivastava was declared a Proclaimed Offender by the Ld. Judge, JMIC, Gurgaon, in another case bearing CIS No. 2844/2016 vide order dated 23.01.2017. It has been further submitted that the accused Manoj Srivastava was also an accused in another case bearing ST No. 487/2017, whereby vide order dated 14.01.2022, the Ld. ASJ -09, Gwalior, convicted him of offences under sections 409/420/120B IPC and sections 166 (5) and 188 of the Companies Act and sentenced him to RI for five years for offences u/s 409 r/w 120B of IPC and a fine of Rs. 1000/-, and in default of fine RI for 3 months; RI for four years for offences u/s 420 r/w 120B of IPC and a fine of Rs. 1000/-, and in default of fine RI for 3 months. Further, for offences u/s 166(5) of Companies Act a fine of Rs. 1,00,000/- was imposed and in default thereof, SI for 3 months and further fine of Rs. 5,00,000/- for offences u/s 188 of Companies Act was imposed and in default thereof, SI for 6 months. The present quashing petition seeks quashing of the present FIR qua the present petitioners herein.

3. Briefly stated the facts as per the FIR are that in 2013, the complainant/ respondent invested a sum of Rs. 50,00,000/- in the upcoming projects of the Petitioner No. 4 company on the various terms and conditions as mentioned in the Articles of Agreement dated 01.05.2013.

4. Thereafter, certain payments/ interests as per the agreement were made by the Petitioners in lieu of repayment of the investment and the initial investment was further extended by a period of two years.
5. Petitioner No. 4 company issued certain postdated cheques in favour of the complainant/ respondent in lieu of repayment of the principal amount and the interest accrued thereon. Details of which are as follows:
    i. Cheque No. 038915 dated 01.05.2016 for an amount of Rs. 9,00,000/- of Corporation Bank.
    ii. Cheque No. 038916 dated 01.05.2016 for an amount of Rs. 25,00,000/- of Corporation Bank.
    iii. Cheque No. 038917 dated 01.05.2016 for an amount of Rs. 25,00,000/- of Corporation Bank.
6. The abovementioned cheques were presented by the complainant/ respondent in its bank, however the same were returned with the remark 'Account Blocked' vide return memo dated 23.06.2016.
7. It is submitted that meanwhile the petitioner No.4 company namely Assotech Ltd. went into provisional liquidation. This Court in Co. Pet. No. 357/2015 titled as ***Manmohan Singh Bhalla vs. Assotech*** **Ltd.** vide its order dated 08.02.2016 appointed the Official Liquidator as the Provisional Liquidator. It is submitted that it is a matter of record that since the petitioner No. 4 Company went into provisional liquidation, hence, the accounts of the petitioner No. 4 Company through which the cheques were issued, were blocked by the bank.

8. It has been submitted that thereafter, M/s Assotech Limited preferred a Scheme of Compromise for its revival and this Court vide its order dated 11.02.2019, *inter alia* accepted the Action Plan of M/s Assotech Limited and directed Sh. Sanjeev Srivastav Ex-Managing Director of M/s Assotech Limited to supervise the completion of its pending construction of projects and further appointed Mr. Justice N. K. Mody, (Retd.) as the Ld. Court Commissioner to monitor the Action Plan and submit its report. The said Order also provides that no coercive steps be taken against the petitioner company or its management to recover any dues for nine months from the said date.
9. Subsequently, the respondent No. 2 lodged the present FIR against the petitioners for non-repayment of money invested by the complainant company and the subsequent dishonour of the abovementioned cheques. Respondent No. 2 preferred a complaint bearing CC No. 1658/2016 before the Ld. CMM, PHC, New Delhi u/s 138 r/w section 141 of NI Act, against the petitioners herein.
10. Ld. Counsel submits that however, while the proceedings were underway, the petitioner No. 4 Company and the complainant/ Respondent No.2 entered into a settlement vide MoU dated 27.11.2021, wherein it has been mutually agreed between the parties that the petitioner No.4 company through its AR/Director Mr. Sanjeev Srivastava (petitioner No.2 herein) shall pay a sum of Rs. 90,00,000/- (Rs. Ninety Lakhs Only) towards full and final settlement of all the claims of the complainant/ Respondent No. 2 on the following terms and conditions:

"1. That the party of the first part has unequivocally agreed to pay a total amount of Rs. 90,00,000/- (Rupees Ninety Lakhs only) to the party of the second part towards full and final settlement (Settlement), which shall be paid by the party of the first part to the party of the second part as per the break-up provided herein below:

a) Second party confirms the receipt of an amount of Rs. 45,00,000/- (Rupees Forty-Five Lakhs only) on 27.11.2021.

b) An amount of Rs. 11,25,000/- by 30th December, 2021 with advance post-dated cheque for the said amount.

c) An amount of Rs. 11,25,000/- by 30th January, 2022 with advance post-dated cheque for the said amount.

d) An amount of Rs. 11,25,000/- by 28th February, 2022 with advance post-dated cheque for the said amount.

e) An amount of Rs. 11,25,000/- by 30th March, 2022 with advance post-dated cheque for the said amount.

2. That the party of the first part through its directors assured the party of the second part that all the four post-dated cheques of Rs. 11,25,000/- each shall be cleared on their due dates, upon presentation by the party of the first part.

3. That the Second Party also agrees, understands and acknowledges to return all the previous allotment booking documents to the party of the first part upon receiving the entire agreed amount of Rs. 90,00,000/- and thereafter, all such Allotment/Securities/PDC's shall be considered null and void for all purposes.

4. The second party undertakes, represents and confirms that it has not created any lien, mortgage, charge, third party rights etc. and/or encumbrance of any nature whatsoever over the said Allotment/Securities in favour of any third party.

5. That it has been agreed and understood by both the parties that this "MOU" constitutes the full, final and binding settlement between the parties in relation to all claims of the Second Party against First party, its directors, promoters, agents, representatives, employees etc., subject to fulfillment of the terms and conditions agreed upon herein above and upon payment of entire agreed amount to the party of the first part.

6. That the parties hereto confirm that they have arrived at this understanding mutually, voluntarily, and out of free will and without any pressure or coercion or threat on either of them from the other party.

7. The terms of this MOU shall prevail over all/any other/ earlier agreements/ settlements/ arrangements/ understanding whether written or oral arrived at between the parties at any time, however, subject to fulfillment of agreed terms and conditions of this MOU.

8. That the Second Party hereby undertakes that upon receiving the entire amount of Rs. 90,00,000/- from the party of the first part, it shall withdraw all its claims, demands, notices, action on applications/complaints/suits/petitions etc. including the FIR bearing No.0071/2020 registered at PS Mayur Vihar Phase I, and Complaint filed under Section 138 of the NI Act bearing CC No. 1658/2016, pending before any authority/courts/forums, and allegations against the First Party with respect to or arising out of the aforesaid investment and/or the same shall be deemed to have been fully satisfied and liability discharged, which may have arisen or became due, if any.

9.That till the fulfillment of the terms and conditions of this MOU and more particularly till 30th March, 2022 i.e. the payment of the last post-dated cheques, all the cases/complaints shall be kept under abeyance.

10. Further, upon receiving the amount of Rs. 78,75,000/- the Second Party shall make all necessary settlements/file affidavits *and fully cooperate and support the First party in quashing of the pending FIR bearing No.0071/2020 registered at PS Mayur Vihar Phase I, and Complaint filed under Section 138 of the NI Act bearing CC No. 1658/2016, pending before Patiala House Court New Delhi.*

11. That the final installment payment of Rs.11,25,000/- shall be made to the party of the second part on the day of quashing or on 30th March, 2022 whichever is earlier.

12. That in case the party of the first part fails to adhere to the payments schedule agreed upon and committed the breach of this MOU, the party of the second part shall be at liberty to seek restoration of all its claims/cases and further to take all or any of the legal actions/remedies available to it."

11. It has been submitted that pursuant to the above settlement, the petitioner preferred a quashing petition bearing Crl. MC 404/2022 before this Court seeking quashing of CC No. 1658/2016 and this Court vide its order dated 31.01.2022 & 05.04.2022 quashed the said complaint on the basis of the above MoU dated 27.11.2021.

12. Ld. Counsel submits that in terms of the above settlement, the entire settled amount of Rs. 90,00,000/- has been paid to the respondent No. 2 /complainant. Ld. Counsel submits that the same has been recorded in the order dated 05.04.2022. It has been submitted that the present dispute arose due to misunderstanding, however since the parties have now amicably resolved all their disputes and have no grievance remaining against each other, thus continuing with the present FIR will serve no useful purpose and will cause prejudice to the petitioners.

13. The petitioners are present in person and the complainant is appearing through VC. The parties have been duly identified by the IO. The complainant who is appearing through VC states that he has received the complete settled amount of Rs. 90,00,000/-. He submits that he has entered into the settlement voluntarily, out of his free will, without any fear, force or coercion. He states that in terms of the settlement, he has no grievance remaining against the petitioners. He states that he has no objection if the present FIR No. 0071/2020 and all the consequent proceedings emanating therefrom are quashed. He states that pursuant to the settlement dated 27.11.2021, the complaint case u/s 138 r/w 141 NIA, bearing CC No. 1658/2016 also has been quashed by this Court vide order dated 05.04.2022. He states that he is making the statement voluntarily, without any fear, force or coercion.

14. I have considered the submissions. Admittedly, the dispute between the parties arose due to dishonour of cheques and is predominantly private in nature. The parties have amicably settled all their disputes and differences vide MoU dated 27.11.2021 on the mutually agreed terms and conditions contained therein. Further, in terms of the MoU, the settled amount of Rs. 90,00,000/- has duly been paid to the respondent No.2/complainant. The complainant no longer wishes to pursue the present complaint. Even the complaint u/s 138 r/w 141 NIA bearing CC No. 1658/2016 has been quashed by this Court vide its order dated 05.04.2022 on the basis of the amicable settlement between the parties arrived on 27.11.2021. Since, nothing remains in

the present dispute, which has been amicably settled, the present FIR and the consequent proceedings emanating therefrom are liable to be quashed as no fruitful purpose would be served by keeping the present FIR and the proceedings arising thereof pending.

15. Section 482 of the Code saves the inherent power of the High Court to prevent abuse of the process of any court or to secure the ends of justice. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the Court must evaluate whether the ends of justice would justify the exercise of the inherent power. The decision as to whether a criminal proceeding or FIR 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. The main aim is to do real, complete and substantial justice. It has repeatedly been held that if the dispute is private in nature and the parties have entered into a settlement and there is a remote or bleak chance of conviction, it is better to put a quietus to the litigation so as to prevent the abuse of the process of the Court and to secure the ends of justice.

16. The Hon'ble Supreme Court in ***Parbatbhai Aahir v. State of Gujarat***, (2017) 9 SCC 641, *inter alia* held as under:

> *"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;"

17. **In *Sunil Tomar vs. The State of NCT of Delhi & Anr,* (2022) SCC OnLine Del 1027, regarding part quashing of FIR, it was *inter alia* held as under:**

"9. Partial quashing or part quashing of FIR only qua the petitioner/accused with whom the complainant has compromised or settled the matter can be allowed and while quashing, it must be appreciated that the petitioner/accused cannot be allowed to suffer based on a complaint filed by the respondent, when subsequently, all disputes have been settled between the parties. Reliance can be placed on Poonam Khanna vs. State & Ors. In Crl. M.C. No.3690/2016 Dated 30.01.2018."

18. As per the status report the present petitioners being the Directors and working as agents on behalf of the petitioner No. 4 company were responsible for the offences committed by petitioner No. 4 company. Learned Additional PP has thus insisted for some cost to be imposed upon the petitioners.

19. Accordingly, a cost of Rs.10,000/- each is imposed upon the petitioners to be deposited with Delhi High Court Legal Services.

20. In view of the totality of facts and circumstances of the case, the case FIR No. 0071/2020 dated 20.02.2020 registered at PS - Mayur Vihar, Phase - I, New Delhi, under Sections 420/409/120B, IPC and all criminal proceedings emanating therefrom are quashed qua petitioners.

21. The present petition stands disposed of.

DINESH KUMAR SHARMA, J

APRIL 26, 2023/sc