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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 707/2020, CRL.M.A. 1428/2021

MS. SANGEETA VERMA

.....Petitioner

Through: Ms. Archana Lakhota & Mr.
Agniresh Singh, Advs.

versus

STATE & ANR.

.....Respondents

Through: Mr. Shoaib Haider, APP for State
with SI Ramavtar, PS Hauz Khas.
Ms. Rashmi Chopra, Adv. for R2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

16.10.2024

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1. By way of present petition, the petitioner seeks quashing of FIR No. 1093/2015 registered under Sections 419/420/468/471 of IPC at PS Hauz Khas, Delhi at the behest of her brother, respondent No.2 and all the consequent proceedings arising therefrom.

2. Learned counsel for the petitioner submits that a settlement had been arrived at between the petitioner and respondent No.2 and in this regard places reliance on a deed of settlement dated 24.06.2018. He further submits that the petitioner had earlier approached this Court by means of Crl. M.C. No. 172 of 2019, however, that petition was withdrawn because the respondent No.1 had not yet submitted a report under Section 173 Cr.P.C.

It is submitted that the factum of settlement being arrived at between the parties also came to be noted in the order dated 02.08.2019 passed by the Supreme Court in SLP (Crl.) Diary No. 22844 of 2019 which was permitted



to be withdrawn with liberty to approach this Court, whereafter the present petition came to be filed.

3. Learned Counsel for the petitioner contends that the petitioner has already fulfilled her end of the settlement agreement and this Court vide judgement dated 04.12.2018 passed in TEST.CAS. 58/2015 granted Letters of Administration to the respondent No.2 on the basis of the settlement arrived at between the parties and also recorded the undertaking that both the parties shall abide by the terms of the said agreement.

It is further contended that the quashing of FIR was not subject to the sale of the property and the same is evident from the fact that respondent No.2 had made a representation dated 13.10.2019 to respondent No. 1 to close the investigation and furnish a report in terms of Section 173 of the Code of Criminal Procedure 1973.

4. Learned APP for the State submits that the impugned FIR came to be registered on the complaint of the respondent No.2 who alleged that Smt. *Swadesh Verma* (mother of the parties) was operating a locker bearing No. 1161 in the Central Bank of India, Panchsheel Club Branch, New Delhi jointly with respondent No.2. She passed away on 16.08.2013. Subsequently, when the respondent No.2 went to operate the locker, he came to know that the locker was opened on 19.08.2013 under the signatures of *Smt Swadesh Verma*, after she had already expired and he alleged that it was the petitioner who forged the signatures of her mother and emptied the said locker.

Learned APP, while referring to the Status Report, submits that the admitted signature and questioned signature were sent to FSL for expert opinion as per which the two signatures were not made by the same person.



5. Learned counsel for the respondent No.2 has opposed the present petition and submits that the so-called settlement arrived at between the parties was never given effect to because the petitioner has not kept her end of the bargain and has disregarded the terms of the settlement with respect to property bearing No. S-135, Panchsheel Park, New Delhi wherein the parties had undertaken to take steps to sell the said property.

It is submitted that as per the terms of the agreement the same was to be given effect to within 12 months, extendable by not more than 6 months. However, the petitioner has refused to abide by the terms of the settlement deed within the time schedule or even thereafter.

It is further submitted that on the previous occasion when the petitioner had sought quashing of the same FIR, it was withdrawn by the petitioner, since the respondent No.1 had not submitted their report under Section 173 Cr. P.C. The report has still not been submitted and hence there is no change in circumstances.

Lastly, it is submitted that the petitioner has been involved in the serious offence i.e., forgery of the signatures of her mother and using these forged signatures to clandestinely take out the valuables which were lying therein.

6. I have heard the learned counsel for the parties and have gone through the records.

7. The petitioner and the respondent No.2 are siblings. Their father and mother passed away on 27.10.2012 and 16.08.2013 respectively. Thereafter, difference arose between the parties with respect to their respective shares in the property at S-135, Panchsheel Park, New Delhi. Respondent No.2 had filed a petition for grant of Letters of Administration being Test. Cas. 58 of



2015 to which the petitioner had filed objections.

The impugned FIR No. 1093/2015 under Sections 419/420/468/471 of IPC came to be registered on 01.10.2015 on the complaint of respondent No.2. It was alleged that the mother of the parties used to operate a locker bearing No. 1161 at Central Bank of India, Panchsheel Club branch. She expired on 16.08.2013. However respondent No.2 later found out that her locker was operated on 19.08.2013 on the basis of a forged signature of her mother. It was alleged that some silver bricks and jewelry were missing from the locker.

Subsequently, a settlement was arrived at between the petitioner and respondent No.2 on 24.06.2018 wherein it was agreed between the parties to quash the FIR in question. The relevant terms are being reproduced below for convenience: -

Litigation:

That the following cases are pending between the First. Party and the Second Party and the parties will take steps in the following order in furtherance of this settlement:-

(i) FIR No. 1093/2015, Us. 419/420/468/471 IPC filed by the First Party in P.S. Hauz Khas against the Second Party. In the said case, Second Party will file quashing petition seeking quashing of the said FIR based on the present compromise and the First Party will give his no objection to the quashing petition. The Second party agrees to pay the costs for this matter.

(ii) Suit No:2454/2015 pending before the District Court, Saket; The said suit shall be withdrawn by the First Party in terms of the present compromise between the parties.

(iii) Complaint filed by the Second Party dated 19.8.2015 at the Malviya Nagar Police Station against the First Party shall also be withdrawn.

(iv) Probate Case No: 58/2016 pending before the Honble High Court of Delhi: In the said: probate case the Second Party shall withdraw her



objections and agree to grant of Letters of Administration in terms of this Settlement between the First Party and the Second Party.

8. Subsequent to the aforesaid settlement, a joint application was moved under the provisions of Order 23 Rule 3 read with Section 151 CPC before the Court in Testamentary Case No. 58 of 2015, seeking to place the compromise on record and allow the application of the respondent No.2 on the basis of this settlement.

A co-ordinate Bench of this Court vide judgement took note of settlement between the parties and vide order dated 04.12.2018 granted Letters of Administration to respondent No.2. The undertaking of the counsels of the petitioner and respondent No.2 that the settlement terms would be complied with was also taken on record.

The respondent No.2 had withdrawn CS No. 8667/16 which was pending for the ADJ South on the basis of the abovementioned settlement which is reflected in the order dated 24.11.2018.

The petitioner had earlier filed Criminal Misc Petition No. 172 of 2019 seeking quashing of the present FIR. However, considering that the police had not yet submitted an appropriate report under Section 173 Cr.P.C., the same was withdrawn vide order dated 22.01.2019.

The petitioner had also approached the Supreme Court challenging the order dated 22.01.2019 in SLP (Crl) bearing Diary No. 22844/2019 which was permitted to be withdrawn on 02.08.2019 with liberty to approach this Court in light of the settlement arrived at between the parties.

9. The above stated facts would reveal that the respondent No.2 had always treated the settlement to be a binding one. He had withdrawn the civil suit instituted by him. He had also given an undertaking to abide by the



terms of the settlement when he was granted the Letters of Administration on the basis of the settlement deed. The petitioner had held up her end of the agreement by co-operating in the grant of the Letters of Administration to respondent No.2.

In fact, the respondent No.2 had also made a representation dated 13.10.2019 to the SHO, P.S. Hauz Khas, requesting for closure of investigation on account of the settlement.

This clearly indicates that efforts were made to comply with the settlement agreement by both parties. While the petitioner co-operated in the grant of Letters of Administration to the respondent No.2, the respondent No.2 has refused to honor the settlement agreement.

10. Learned counsel for the respondent No.2 has contended that the petitioner has failed to act in terms of the settlement agreement. It has been contended that the petitioner refused to take steps to sell the property. However, a reading of the settlement deed as a whole would reveal that no such obligation was fastened upon the petitioner in the first place. In fact, clause 4(d) states that the parties are the absolute owners of the portion of property allotted to them and have complete, independent and full right to sell, dispose of or otherwise alienate the said property.

Clause 4(g) speaks of the distribution of the consideration if the property is sold as one complete unit, while Clause 4(h) gives the parties the first chance to purchase the share of the other party. It is pertinent to note that, again, no obligation to sell the property has been laid down.

Therefore, just because the petitioner has not agreed to the subsequent draft MoU prepared by the respondent No.2, that does not clothe him with the right to renege on the previous settlement agreement.



11. A solemn undertaking was given by the counsel of the parties to abide by the terms of the settlement before a Co-ordinate Bench of this Court in the proceedings relating to the grant of Letters of Administration. One of such terms specified in the deed was to get the present FIR quashed. An undertaking given to the Court cannot be taken lightly and breach of the same can give rise to civil contempt proceedings. An undertaking is a promise given by a party or his counsel during legal proceedings, usually with a view to obtain a concession. The Supreme Court recently in the case of Balwantbhai Somabhai Bhandari versus Hiralal Somabhai Contractor (deceased) rep. by lrs. & ors., reported as **2023INSC805**

72. It is true that every undertaking given by a party to a litigation may not be an undertaking to the court; there is a difference between an undertaking given to the other party and an undertaking given to the court. The breach of an undertaking given to the other party may not constitute the contempt of court. However, whether a particular undertaking is an undertaking to the court or to the opposite party must depend upon the facts and circumstances of each case and the language used. In the case on hand, it is not the case of the appellants that they had negotiated a settlement with the other side outside the court and reported the same to the High Court and the High Court proceeded to pass the order incorporating the undertaking given by the learned counsel upon instructions from the clients. Even if the parties, had negotiated a settlement outside the court and reported the same to the court and the court would have passed an order, in terms of such understanding, there would be no scope to warrant that the undertaking was not given to the court.

*73. An undertaking or an assurance given by a lawyer based upon which the court decides upon a particular course of action would definitely fall within the confines of “undertaking” as stipulated under Section 2(b) of the Act 1971 and the breach of which would constitute “civil contempt”. As held in *M. v. Home* (supra) relied upon by this Court in *Rama Narang* (supra) that if a party or solicitor or counsel on his behalf, so as to convey to the court a firm conviction that an undertaking is being given, that party will be bound and it will be no answer that he did not think that he was giving it or that he was misunderstood. The breach of an undertaking given to a court by a person in a pending proceeding on the faith of which*



the court sanctions a particular course of action is misconduct amounting to contempt.

12. The power of the High Court under Section 482 Cr.P.C. can be exercised to prevent the abuse of process of Court or to secure ends of justice. It is an inherent power of this Court, provided to meet the ends of Justice and such a proceeding is not in the nature of an appeal or revision. This power has to be exercised sparingly and for the purpose of doing real and substantive justice, and preventing abuse of process of law. A three Judge Bench of the Supreme Court in State of A.P. v. Aravapally Venkanna, reported as **(2009) 13 SCC 443** has expanded upon the ambit and the need for Section 482 Cr.P.C. by holding as follows:-

*5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle *quando lex a liquid aliquot concedit, conceditur et id sine quo res ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of*



which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of these powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice...

13. Considering the fact that the settlement was arrived between the parties in the year 2018 pursuant to which the civil suit was withdrawn and Letters of Administration were granted on basis of the said settlement, the settlement puts no obligation on the petitioner to sell the property and keeping in mind the undertaking given by counsels of both the parties to a Co-ordinate Bench of this Court, it is directed that the aforesaid FIR and the consequent proceedings arising therefrom are hereby quashed.

14. With the above directions, the petition is disposed of.

MANOJ KUMAR OHRI, J

OCTOBER 16, 2024

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