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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 21.05.2024*

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CRL.M.C. 3340/2024**ATUL PRAKASH & ORS.**

..... Petitioners

Through: Mr.Niwas Kumar, Adv.

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Shoaib Haider, APP with
SI Naresh Kumar.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of FIR No.811/2002 registered at Police Station: Dabri, South-West District, Delhi under Sections 420/465/471 read with Section 120B of the Indian Penal Code, 1860 (in short, 'IPC'); and the judgment of conviction dated 09.09.2022 and Order on sentence dated 20.02.2023, passed by the learned Metropolitan Magistrate-04, South-West District, Dwarka Courts, Delhi (in short, 'Trial Court'), on the basis of a settlement arrived at between the petitioners and the complainant.

2. Brief facts leading up to the filing of the present petition are that the above FIR was registered on the complaint of the respondent no.2 herein stating that he is the Director of M/s Daffodils Text Craft Pvt.



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Ltd., which is engaged in the business of manufacturing, trading, and export of various types of fabrics. It was further alleged that the petitioner no.3-Jai Prakash was an employee of the complainant, who introduced the complainant to accused no.1 in the FIR, that is, Surender, and the petitioner no.1 herein, namely Atul Prakash, stating that they are known to him for the last 15 years and took guarantee for them and their firm, M/s Maya Overseas. It is stated that the aforesaid accused persons stated to the complainant that one Mr.Bijoy Kumar is the proprietor of M/s Maya Overseas, and he is based in Germany. It is stated that Sh.Surender represented himself as the Production Manager, while the petitioner no.1 herein represented himself as the Business Executive of M/s Maya Overseas. The complainant asserted that based on the above representations, the Complainant agreed to supply fabric to M/s Maya Overseas, on cash and credit facility. It is further stated that the payments were made in time till 29.06.2002, however, later, during the period 29.06.2002 to 21.08.2002, the accused persons had placed purchase orders and took delivery of the fabric material worth Rs.11,45,700/-, but deferred the payments on the pretext that the proprietor of M/s Maya Overseas, would be coming from Germany in a month or two and that all dues shall be cleared then. It is stated that the accused persons misrepresented that the alleged proprietor would be coming with a big purchase order from Germany worth Rs.50 lakhs, and based on the said assurance, the complainant through his company kept on supplying the fabrics to them. It is also the case of the prosecution that thereafter in the month of September, 2002, the petitioner no.3, Jai Prakash, went on leave



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and never returned to the office of the complainant's company. When the complainant tried contacting the Sh.Surender and the petitioner no.1, they could not be traced, and when the complainant visited the office premises of the accused persons, it was found out that the said firm had shifted to some unknown location. It is alleged that when the complainant met the owner of the premises, it was revealed that the accused persons had stated to the owner that the proper lease agreement shall be executed when their alleged proprietor would come from Germany, however, he never turned up, and the owner of the said premises got the place vacated from them.

3. It is stated that during the investigation, it was also revealed that the accused persons had given a fake name and address of the proprietor of the firm, and on inquiry from the Citizen Cooperative Bank Ltd., it was found out that the name of the proprietor is one Brahmanand Sharma, that is, petitioner no.2 herein. The address furnished by him was also stated to be fake. It is further alleged that the account was opened by using a forged copy of the driving licence in the name of the petitioner no.2, Brahmanand Sharma.

4. Based on the above, the prosecution alleged that the accused persons have committed the offence punishable under Sections 420/465/471 read with Section 120B of the IPC, for which FIR no. 811/02 was registered at the Police Station: Dabri, South-West District, Delhi.

5. The petitioners were convicted by the judgment dated 09.09.2022 for the offence under Sections 420/465/471 read with Section 120B of the IPC by the learned Trial Court; and by an Order



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dated 20.02.2023, the learned Trial Court has sentenced the petitioners to undergo simple imprisonment for a period of two years for the offence under Section 420 of the IPC, one year for the offence under Sections 465/471 of the IPC, and two months for the offence under Section 120B of the IPC. The sentences have been directed to run concurrently. They have also been directed to pay the compensation of Rupees Six lacs (Rs. two lacs each) to the complainant/respondent no.2 under Section 357(3) of the Cr.P.C.

6. The petitioners, post their conviction and sentencing by the learned Trial Court, have entered into a Memorandum of Understanding/Settlement dated 19.03.2024 with the respondent no.2, paying the compensation amount to the respondent no.2.

7. The petitioners have then filed the present petition seeking the quashing of the subject FIR, the judgment of conviction by the learned Trial Court, and the Order on sentence.

8. The respondent no.2 appeared in person before this Court on 20.05.2024, and stated that he has no objection if the judgment of conviction against the petitioners is set aside based on the abovementioned settlement being arrived at between the parties.

9. The learned counsel for the petitioners submits that the above FIR arose out of a civil dispute with respect to the supply of fabric by the respondent no.2 to M/s Maya Overseas, which was the firm of Mr.Surender Kumar. He submits that the petitioners were merely the employees of the said firm. He submits that respondent no.2 also in his testimony before the learned Trial Court stated that it was Mr.Surender Kumar who was the in-charge of/highest authority in the



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business of the firm, namely M/s Maya Overseas. He submits that Mr.Surender Kumar had unfortunately died during the course of the trial, in the year 2015.

10. Placing reliance on the judgment of the Supreme Court in ***Ramgopal & Anr. v. The State of Madhya Pradesh*** (2022) 14 SCC 531, he submits that as the offence charged against the petitioners is not heinous, but merely civil in nature, this Court, while exercising its power under Section 482 of the Cr. P.C. may quash the FIR and the consequent conviction of the petitioners.

11. He further submits that the petitioners have been facing trial since the year 2002, and the petitioner nos.2 and 3 have already undergone incarceration of approximately 11 months and 3 months, respectively. He submits that there are no other criminal cases pending against the petitioners.

12. On the other hand, the learned APP, placing reliance on the judgments of the Supreme Court in ***Narinder Singh & Ors. v. State of Punjab & Anr.***, (2014) 6 SCC 466; ***Manohar Singh v. State of Madhya Pradesh & Anr.***, (2014) 13 SCC 75; and ***Bhagwan Narayan Gaikwad v. The State of Maharashtra & Ors.***, (2022) 14 SCC 459; and of a Full Bench of the Bombay High Court in ***Maya Sanjay Khandare & Anr. v. State of Maharashtra*** 2021 SCC OnLine Bom 3, submits that the conviction cannot be set aside merely on the basis of the settlement arrived at between the accused and the complainant. He submits that post the conviction, in a case of an offence that is non-compoundable in nature, the only discretion with the Court, at best, is to reduce the sentence awarded to the convicted person.



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13. I have considered the submissions made by the learned counsels for the parties.

14. In **Ramgopal** (supra), the Supreme Court was considering a case where the appellant had been convicted under Sections 294/323/326 read with Section 34 of the IPC, and had been ordered to undergo a sentence of three years under Section 326 read with Section 34 of the IPC by the learned Trial Court. On appeal, based on the settlement, the learned Appellate Court had compounded the offence under Sections 294/323 read with Section 34 of the IPC, acquitting the appellant therein, however, maintaining the conviction under Sections 326 and 34 of the IPC, since the offence was non-compoundable, and reducing the sentence from Rigorous Imprisonment of three years to one year. The High Court, instead of quashing the conviction based on the compromise, merely reduced the sentence to the period undergone. In the given facts, the Supreme Court held that the High Court had erred in not exercising its power under Section 482 of the Cr.P.C., and observed as under:

“11. True it is that offences which are “non-compoundable” cannot be compounded by a criminal court in purported exercise of its powers under Section 320 CrPC. Any such attempt by the court would amount to alteration, addition and modification of Section 320 CrPC, which is the exclusive domain of legislature. There is no patent or latent ambiguity in the language of Section 320CrPC, which may justify its wider interpretation and include such offences in the docket of “compoundable” offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the



framework of Section 320 CrPC is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 CrPC. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 CrPC in aid to prevent abuse of the process of any court and/or to secure the ends of justice.

12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 CrPC, even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyse the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post-conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 CrPC



*would be to secure the ends of justice. There can be no hard-and-fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 CrPC may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466 and *State of M.P. v. Laxmi Narayan*, (2019) 5 SCC 688.*

14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a “settlement” through duress, threats, social boycotts, bribes or other dubious means. It is well said that “let no guilty man escape, if it can be avoided”.

15. The Supreme Court, in reaching the above conclusion, has also taken note of the judgment of the Supreme Court in *Narinder Singh* (supra), which has been relied upon by the learned APP, wherein also the Supreme Court has held that normally the High Court should, post the conviction, refrain from exercising its power under Section 482 of the Cr.P.C., however, has also held that there cannot be an absolute bar on the exercise of such power by the High Court. The power has to



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be exercised sparingly and keeping in view the nature of the offence alleged. While it should not be exercised where the conviction is for heinous crimes or the crime against the society at large, in case of an offence predominantly of a private or civil nature, the High Court may be justified in exercising such power at a stage of post-conviction. The High Court may also in the exercise of that power, reduce the sentence awarded to the accused instead of quashing the conviction.

16. In *Manohar Singh* (supra), the Court was considering the powers of an Appellate/Revisional Court which are held to be restricted only to oversee whether the conviction can be upheld or not.

17. In the present case:-

- (a) the offence charged against the petitioners was predominantly civil in nature arising out of a commercial transaction between the parties;
- (b) the main accused, even as per the complainant, that is Surender Kumar, unfortunately died during the trial;
- (c) the trial started in the year 2002, therefore, the petitioners have already suffered the ignominy of standing as an accused for 22 years;
- (d) the respondent no.2, appeared in person before this Court and expressed his no objection to the conviction and sentence being set aside; and,
- (e) the petitioner nos.2 and 3 have already undergone sentence of approximately 11 months and 3 months, respectively.

18. Applying the principles enunciated by the Supreme Court in the above judgments to the facts of the present case, in my opinion, this is



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a fit case for exercising the powers under Section 482 of the Cr.P.C. for quashing the FIR and the consequential conviction of the petitioners and the Order on Sentence. As observed by the Supreme Court in ***Ramgopal*** (supra), “*handing out punishment is not the sole form of delivering justice*”.

19. Accordingly, it is directed that the judgment of conviction dated 09.09.2022 and Order on Sentence dated 20.02.2023 passed in FIR No. 811/2002 registered at Police Station: Dabri, South-West District, Delhi against the petitioners shall stand quashed subject to the petitioners depositing costs of Rs.50,000/- each with ‘*Delhi Fire Service Benevolent Fund, Axis Bank Ltd, the Statesman House, 148, Barakhamba Road, New Delhi, Saving Account No.924010014344677, IFSC Code, UTI800000007*’, within a period of eight weeks from today, and filing proof of such deposit with the Registry of this Court as also supplying a copy thereof to the IO, within the said period.

20. The petition is allowed in the above terms.

NAVIN CHAWLA, J

MAY 21, 2024/Arya/AS

[Click here to check corrigendum, if any](#)