



\$~84

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

+ **CRL.M.C. 3923/2024**

GAURAV MALHOTRA AND ORS Petitioners

Through: Mr. Hakim Khan, Mr. Narender and
Mr. Naresh Kumar, Advocates with Petitioners in
person.

versus

**THE STATE GOVT.OF NCT OF DELHI
AND ANR.**

..... Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for
the State with Insp. R.L. Meena and Insp.
Harender Singh, PS: Karol Bagh.
Mr. Rishabh Gupta, Advocate for R-2 with
Respondent No. 2 in person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

%

15.05.2024

CRL.M.A. 14981/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 3923/2024

3. This petition is filed on behalf of the Petitioners under Section 482 Cr.P.C. seeking quashing of FIR No. 285/2017 dated 21.09.2017 under Sections 103/104 of the Trade Marks Act, 1999 and Section 63 of the Copyright Act, 1957 registered at PS: Karol Bagh and proceedings emanating therefrom. Charge Sheet has been filed in the Trial Court.
4. As per case of the prosecution, present FIR was registered on a complaint by Respondent No.2, Authorized Representative of Nike Innovate



C.V., a subsidiary of Nike Inc., which designs, markets and sells footwear, apparels and related goods under the trademark NIKE and its formative marks globally, alleging that Petitioners were illegally manufacturing, selling and distributing counterfeit products under the trademarks NIKE, NIKE PRO, NIKE+ and other formative trademarks of the complainant in respect of identical goods such as shoes, sportswear/garments, slippers and allied and cognate goods. This was in violation of the intellectual property rights of Respondent No.2 under the Trade Marks Act, 1999 and Copyright Act, 1957. After conclusion of investigation, chargesheet was filed by the police against the petitioners. During the pendency of the proceedings before the Trial Court, petitioners filed a plea-bargaining application, which is pending and is next listed on 10.07.2024. It is further stated that in the meantime, parties have now mutually settled all their disputes and executed a Settlement Agreement on 19.04.2024, incorporating the terms of settlement. Petitioners have undertaken that they shall refrain from infringing, in any way and for any reason whatsoever, in India or anywhere in the world, either in the present or at any time in the future, NIKE trademarks and NIKE IP Rights or any sign that is confusingly similar thereto, in particular by using, manufacturing, selling, soliciting, displaying, advertising or dealing in counterfeit products. Petitioners shall not challenge or aid any third-party in challenging the NIKE trademarks or NIKE IP Rights and their respective entities in India or internationally. Further, Petitioners shall within 30 days of the settlement provide NIKE full information in writing about any and all other sellers indulging in sale of counterfeit NIKE products, of which they have knowledge. Petitioners shall also take necessary steps to effect prompt and immediate destruction of all



the counterfeit goods seized during the raid and bear expenses towards such destruction charges or any other incidental charges including transportation and shall ensure destruction of all the counterfeit goods within 30 days. Petitioners have agreed to pay a sum of Rs.1,50,000/- to Respondent No. 2 (equivalent to approx. USD 1800) as damages, costs, compensation and settlement amount. Consequences of breach of terms and conditions of settlement have been provided in the agreement.

5. Issue notice.
6. Learned APP accepts notice on behalf of the State.
7. Mr. Rishabh Gupta, learned counsel accepts notice on behalf of Respondent No. 2.
8. Petitioners and Respondent No.2/Complainant are present in Court and are identified by the Investigating Officer Insp. R.L. Meena PS: Karol Bagh. Respondent No.2 states that he has no objection to the quashing of the FIR as all disputes have been settled and settlement amount has been paid. Learned APP for the State submits that since it is a commercial dispute and parties have settled the matter, State has no objection to the quashing of the FIR. It is stated on behalf of the Petitioners that the seized counterfeit goods are in the possession of the Police and steps will be taken to destroy them in terms of the Settlement Agreement.
9. The Supreme Court in ***Gian Singh v. State of Punjab and Another, (2012) 10 SCC 303***, observed that while exercising inherent powers under Section 482 Cr.P.C. in respect of quashing of an FIR where parties have entered into amicable resolution of the disputes, one of the considerations would be whether it would be unfair or contrary to the interest of justice to continue the criminal proceedings despite the compromise and if the answer



to the question is in the affirmative, the High Court would be well within its jurisdiction to quash the criminal proceedings, in order to ensure that the disputes are put to an end and peace is restored as securing the ends of justice is the ultimate guiding factor. This was of-course with a caveat that heinous and serious offences of mental depravity or offences like murder, dacoity etc. cannot be fittingly quashed even though the victim or the victim's family settles the disputes with the offender. Relevant paragraphs of the judgment are as follows:-

“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.

xxx

xxx

xxx

58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity,



the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.

xxx

xxx

xxx

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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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.”

10. Parties have mutually settled their disputes. In view of the settlement between the parties and the categorical stand of Respondent No.2/ Complainant Mr. Nirmal Singh, Authorized Representative of Nike Innovate C.V., a subsidiary of Nike Inc. that he does not want to pursue the complaint, no useful purpose will be achieved in continuing the criminal proceedings emanating from the present FIR as the chances of conviction are bleak and it would be in the interest of justice that the proceedings are terminated. This Court is fortified in its view by the decisions of this Court in ***Vijay Kumar Chawla and Anr. v. State & Anr., CRL.M.C. 4651/2023***, decided on 11.07.2023 and ***Mrs. Sonia Gulati and Ors. v. The State and Anr., CRL.M.C. 464/2024***, decided on 19.01.2024, wherein Courts have quashed FIRs under similar provisions, predicated on settlements between the parties, in the interest of justice.

11. Accordingly, FIR No. 285/2017 dated 21.09.2017 under Sections 103/104 of the Trade Marks Act, 1999 and Section 63 of the Copyright Act, 1957 registered at PS: Karol Bagh is quashed along with the charge sheet and all proceedings emanating therefrom. Needless to state that Petitioners



will comply with their obligations under the Settlement Agreement including destruction of the seized counterfeit goods and the concerned IO shall permit them to do so.

12. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

MAY 15, 2024/shivam