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IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 21.05.2024****+ CRL.REV.P. 702/2022 & CRL.M.A. 10263/2024****PANKAJ RAI**

..... Petitioner

Through: Mr.Bahar U Barqi, Adv.

versus

STATE

..... Respondent

Through: Mr.Aman Usman, APP with SI
Sumit.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the judgment dated 13.10.2022 (hereinafter referred to as the 'Impugned Judgment') passed by the learned Principal District & Sessions Judge, South-West District, Delhi (hereinafter referred to as the 'PD&SJ') in CA No.306/2018, titled *Pankaj Rai v. State*.

2. By the Impugned Judgement, the learned PD&SJ has upheld the judgment dated 21.07.2018 passed by the learned Metropolitan Magistrate-01, South-West District, Dwarka Courts, Delhi (hereinafter referred to as the 'Trial Court') in the case arising out of FIR No.91/2007 registered at Police Station: Palam Village, IGI Airport, Delhi, convicting the petitioner herein of offence under Sections 419/420/471 of the Indian Penal Code, 1860 (in short, 'IPC').



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3. The facts giving rise to the present petition are that the complainant-Mr.Virender Malhotra was working as a Flight Captain with SpiceJet. On 19.06.2007, the complainant received a bill of Citibank Credit Card in his name. As he had never applied for any credit card, he contacted the customer care service of Citibank. He was informed that the bill was of someone else and, therefore, he can ignore the same. However, as there was also a reference to a purchase of tickets of SpiceJet in the bill, the complainant made further inquiry and came to know that four passengers, who had procured tickets using said credit card, were to travel through SpiceJet flight on 24.07.2007 from Delhi to Varanasi. He alerted the officials of SpiceJet and four passengers, who reported for check-in, were detained. The said passengers revealed that the booking had been made by them through the petitioner herein. On further inquiry, it was found that the petitioner had obtained the credit card by misusing the documents of the complainant.

4. As noted hereinabove, the petitioner was convicted for the offence under Sections 419/420/471 of the IPC *vide* judgment dated 21.07.2018 passed by the learned Trial Court; and by the Order on Sentence dated 03.08.2018, the petitioner was ordered to undergo Simple Imprisonment of Two years and deposit a fine of Rs.10,000/-.

5. The said judgment of conviction has been upheld by the Impugned judgment of the PD&SJ, however, the learned PD&SJ has reduced the sentence to Simple Imprisonment of one year and a fine of Rs.10,000/-.

6. The petitioner filed by the present petition challenging the



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Impugned Judgment.

7. During the pendency of the present petition, the petitioner filed a copy of the 'Memo of Understanding/Compromise Deed' dated 27.07.2023, executed between the petitioner and the Complainant. The same records that the parties in order to maintain/preserve the peace and harmony between them, have entered into the compromise. It also records that the complaint has not suffered any loss because of the petitioner and the complaint was registered due to some misunderstanding.

8. On 15.09.2023, the complainant appeared before the Court through virtual conferencing, and stated that he does not wish to pursue the matter any further as the matter has been settled between the parties.

9. Thereafter, the petitioner has filed an application seeking invocation of powers of this Court under Section 482 of the Cr.P.C. to set aside/quash the proceedings against the petitioner on the basis of a settlement with the complainant.

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

11. He further submits that the petitioner has been facing trial since the year 2007 and has already undergone incarceration of



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approximately 84 days. He has already made the payment of the fine that was imposed by the Impugned Judgment. He submits that there are no other criminal cases pending against the petitioner.

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.

13. He further submits that the conviction cannot be set aside by this Court in the exercise of its powers under Section 482 of the Cr.P.C. or even otherwise. He submits that concurrent findings of the two Courts cannot be set aside merely on the basis of the settlement. He submits that in the present case, the offence that the petitioner is convicted for are pre-meditated.

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

15. 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



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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”.

16. 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 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



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High Court may also in the exercise of that power, reduce the sentence awarded to the accused instead of quashing the conviction.

17. In the present case, the petitioner is not only found guilty of having misused the identity documents of the complainant, but also of having obtained the credit card in the name of the complainant on the basis thereof, therefore, it cannot be said to be a case merely civil in nature.

18. At the same time, this Court also finds that the petitioner has been facing trial since the year 2007, and was eventually sentenced to undergo simple imprisonment of only one year along with fine. The petitioner has already undergone incarceration for a period of 84 days and has deposited the fine. The petitioner was a young man of around 29-30 years at the time of the commission of offence. He has not been reported to be involved in any other criminal case. The petitioner is stated to have, in fact, moved on in his life, and is now stated to be serving as a pilot in an airline.

19. Applying the principles enunciated by the Supreme Court in the above judgments to the facts of the present case, in my opinion, though this is not a fit case for exercising the powers under Section 482 of the Cr.P.C. for setting aside the judgment of conviction of the petitioners, however, in the peculiar facts of the case, and as observed by the Supreme Court in **Ramgopal** (supra), that “*handing out punishment is not the sole form of delivering justice*”, the sentence of the petitioner is reduced to the period undergone subject to the condition that the petitioner shall deposit costs of Rs.1,00,000/- with ‘Delhi Police Martyrs Fund’, [Bank Name: UCO Bank, IIPA, ITO,



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New Delhi, A/c No. 18200110036907], within a period of four weeks from today, and file a proof of such deposit with the Registry of this Court and also supply a copy thereof to the IO, within the said period.

20. The petition and the pending application are disposed of in the above terms.

NAVIN CHAWLA, J

MAY 21, 2024/Arya/AS

Click here to check corrigendum, if any