



\$~71

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

+ CRL.M.C. 7305/2024
MAHENDER KUMAR

.....Petitioner

Through: Mr. Nishant Tyagi, Adv.
with petitioner in person

versus

STATE OF NCT OF DELHI AND ANR.Respondents

Through: Mr. Laksh Khanna, APP
for the State
SI Parvesh Kumar, PS-
Jahngir Puri
Mr. Mukul Kumar Gupta,
Adv. for R2
R2 in person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

%

13.09.2024

CRL.M.A. 27870/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 7305/2024

3. The present petition is filed seeking quashing of FIR No. 0126/2024 dated 08.03.2024, for offences under Sections 392/34 of the Indian Penal Code, 1860 ('IPC') which was later on replaced with Section 408 of the IPC, registered at Police Station Jahangir Puri, including all consequential proceedings arising therefrom. The said FIR was registered on a complaint filed by Respondent No. 2.

4. It is averred that Respondent No.2/complainant used to run a scrap company by the name of *Bargurjar Enterprises* at Tikri Border and the petitioner used to work as an accountant in the said scrap company. On 06.03.2019, Respondent No. 2 had sent the petitioner to collect a payment of ₹13,99,200/- from a client



in Shahdara. It is alleged that, after collection of the said payment, the petitioner was looted by three unknown persons and they took away the payment collected by the petitioner along with his jacket, phone and purse. Respondent No. 2 suspected that the petitioner had told him a concocted story and no such incident ever happened and it was the petitioner only who took the money out of greed. The above-mentioned incident led to the registration of the present FIR.

5. The learned counsel for the petitioner submits that the FIR was registered on a misunderstanding. He submits that the petitioner is an employee in the company of Respondent No. 2 from the last one and a half years. He submits that with the intervention of family members and friends, the misunderstanding has been resolved.

6. The complainant is also present in the Court today and on being asked, states that he has no grievances against the petitioner and does not wish to pursue any proceedings arising out of the present FIR and has no objection if the same are quashed.

7. The present petition is filed on the ground that the matter is amicably settled between the parties by way of Memorandum of Understanding dated 10.04.2024, on their own free will, without any coercion, force or undue influence.

8. The parties are present before this Court in person and have been duly identified by the Investigating Officer.

9. Offence under Section 392 of the IPC is non-compoundable while offence under Section 408 of the IPC is compoundable in nature.

10. It is well settled that the High Court while exercising its powers under Section 528 of the Bharatiya Nagarik Suraksha



Sanhita, 2023 ('BNSS') (erstwhile Section 482 of the Code of Criminal Procedure, 1973) can compound offences which are non-compoundable under the Code on the ground that there is a compromise between the accused and the complainant. The Hon'ble Apex Court has laid down parameters and guidelines for High Court while accepting settlement and quashing the proceedings. In the case of **Narinder Singh & Ors. v. State of Punjab & Anr. : (2014) 6 SCC 466**, the Hon'ble Supreme Court had observed as under :-

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or*
- (ii) to prevent abuse of the process of any court.*

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.



29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.”

(emphasis supplied)

11. Similarly, in the case of ***Parbatbhai Aahir & Ors. v. State of Gujarat & Anr. : (2017) 9 SCC 641***, the Hon’ble Supreme Court had observed as under :-

“16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.



16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report 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 and no exhaustive elaboration of principles can be formulated.

*16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. **Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the***



overriding element of public interest in punishing persons for serious offences.

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; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

(emphasis supplied)

12. The pendency of the proceedings, in the opinion of this Court, would only cause harassment to the complainant. The parties state that the complaint was made against the petitioner on a misunderstanding. Once the complainant has settled with the petitioner, the chances of conviction are also reduced. In such circumstances, no useful purpose would be served by keeping the proceedings alive which would only cause harassment and heartburn.



13. Keeping in view the nature of the dispute and that the parties have amicably entered into a settlement, this Court feels that no useful purpose would be served by keeping the dispute alive and continuance of the proceedings would amount to abuse of the process of Court. I am of the opinion that this is a fit case to exercise discretionary jurisdiction under Section 528 of the BNSS.

14. However, keeping in mind the fact that the State machinery has been put to motion, ends of justice would be served if the petitioner is put to cost.

15. In view of the above, FIR No. 0126/2024 and all consequential proceedings arising therefrom are quashed, subject to payment of cost of ₹20,000/- by the petitioner, to be deposited with the Delhi Police Welfare Society, within a period of four weeks from today.

16. Let the proof of deposit of cost be submitted with the concerned SHO.

17. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

SEPTEMBER 13, 2024

“SS”