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

\+ CRL.M.C. 7804/2024

MADHURI JAIN GROVER & ORS. .....Petitioners

Through: Mr. Mohit Mathur, Senior Advocate, Mr Giriraj Subramanium, Mr Akhilesh Talluri, Ms. Veda Singh, Mr. Ravi Pathak, Mr Joy Banerjee, Mr Parmod Sharma, Ms Reea Mehta, Mr Siddhant Juyal, Mr. Simarpal Singh Sawhney, Ms Aditi Tuteja, Advocates

versus

STATE OF NCT OF DELHI THROUGH STANDING COUNSEL (CRIMINAL). & ANR.

.....Respondent

Through: Mr. Raghuinder Verma, APP for State.
Mr. Swapnil Shrivastava, Advocate for R-2.
Mr. Anil Soni, CGSC, Mr. Devvrat Yadav, GP and Ms. Ishika Soni, Advocates.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% **11.11.2024**

1. The instant petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS") read with Section 482 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioners seeking quashing of the FIR bearing no. 0036/2023 dated 10th May, 2023

registered at Police Station – Economic Offences Wing, Delhi (hereinafter "EOW") for offences punishable under Sections 406/408/409/420/467/468/471/120B of the Indian Penal Code, 1860 and all the consequential proceedings arising therefrom, in terms of the Settlement Agreement dated 30th September, 2024.

2. Mr. Mohit Mathur, learned senior counsel appearing on behalf of the petitioners submitted that the instant petition was filed on behalf of the petitioner nos. 1 and 2, supported by the affidavit filed by the Power of Attorney holder namely Mrs. Neeru Grover and petitioner no. 3, supported by the affidavit of his *Pairokar* namely Mr. Siddharth Gupta.

3. Today, when the matter was called in the morning, this Court had taken a strong objection as to how criminal proceedings may be adjudicated in a petition which is supported by the affidavits filed by the Power of Attorney/*Pairokar* and not by the petitioners themselves. In response to the same, the learned senior counsel for the petitioner nos. 1 and 2 prayed for some time to file affidavits of the petitioners supporting the petition and took a passover. In view of the same, the matter was directed to be taken at 2.15 P.M.

4. Learned senior counsel appearing on behalf of the petitioners appeared at 2.15 PM and submitted that affidavits on behalf of petitioner nos.1, 2 and 3 have been filed in support of the petition vide Diary nos.5136179/2024, 5136259/2024, 5136299/2024. He has handed over hard copies of the aforesaid affidavits during the course of arguments, which are taken on record.

5. It is submitted that the aforesaid FIR was registered on the complaint of the respondent no.2 Company/M/s Resilient Innovations Private Limited

which was incorporated on 20th March, 2018, under the Companies Act, 2013 and having its registered office at 3rd Floor, Ramnath House, 18, Community Centre, opposite Jet Airways, Yusuf Sarai, New Delhi – 110049, which operates under the flagship brand name *'BharatPe'*.

6. It is submitted that the aforesaid FIR was registered by the EOW on the complaint made on 7th December, 2022, by the respondent no.2 Company. As per the contents of the said FIR, the petitioner nos. 1, 2 and 3 were working with the respondent no.2 Company. It is submitted that the respondent no. 2 Company made certain allegations against the petitioners pertaining to some transactions relating to input tax credit, payment of penalty under the Goods and Services Tax regime (hereinafter "GST"), payments to vendors and other matters pertaining to the management and affairs of the Company when the petitioner nos.1, 2 and 3 were at the helm of affairs of respondent no.2 Company.

7. It is submitted that apart from the aforesaid FIR, there are several other civil legal proceedings pending between both the parties i.e. petitioners and the respondent no.2 Company, details of which are mentioned in paragraph 7.3 of the instant petition.

8. Learned senior counsel appearing on behalf of the petitioners submitted that the petitioners and the respondent no.2 Company have arrived at a settlement on 30th September, 2024, wherein, all the disputes and legal proceedings pending between petitioners and the respondent no.2 Company have been mutually settled in terms of the Settlement Agreement dated 30th September, 2024 which is appended as *Annexure P-3* to the instant petition.

9. Learned senior counsel appearing on behalf of the petitioners, on instructions, submitted that all the parties undertake to abide by all the terms

and conditions of the settlement. He also apprised the Court that all the civil proceedings/disputes have been withdrawn by the respective parties in terms of the aforesaid Settlement Agreement. It is further submitted that since the parties have settled their disputes amicably and the respondent no.2 Company is not interested to pursue the criminal proceedings against the petitioners, the aforesaid FIR and all the consequential proceedings emanating therefrom may be quashed.

10. Mr. Swapnil Shrivastava, learned counsel appearing on behalf of the respondent no.2 Company supported the arguments advanced by the learned senior counsel appearing on behalf of the petitioners and submitted that the respondent no.2 Company has settled the matter/disputes amicably and now there is no dispute left with the petitioners.

11. It is also submitted that in view of the Settlement Agreement dated 30th September, 2024, the respondent no.2 Company does not wish to pursue the criminal proceedings and apprised the Court that all the other disputes of civil in nature have also been settled and respective parties have withdrawn the respective proceedings from the respective Courts. Therefore, he prayed that the aforesaid FIR and all the consequential proceedings emanating therefrom may be quashed.

12. *Per contra*, Mr. Verma, learned APP appearing on behalf of the State vehemently opposed the instant petition and in support of his arguments referred to paragraph nos. 3, 3A, 3B, 24, 25, 26 and 58 of the Status Report filed on 7th October, 2024 and submitted that the said paragraphs *inter alia* are regarding payment of GST, however, he has not denied that the petitioners have filed a certificate from the GST Department alongwith the compliance affidavit dated 10th October, 2024.

13. Mr. Verma, learned APP submitted that vide order dated 24th October, 2024, this Court had directed the respondent no.1/State to seek instructions or file a report from the Income Tax Department as there were certain doubts about valuation of the shares of the company. With respect to the same, the learned APP has handed over an affidavit dated 9th November, 2024 along with status report and reply dated 7th November, 2024 of the Income Tax Department which is taken on record.

14. Learned APP submitted that pursuant to the aforesaid direction of this Court, the State had written to the Income Tax Department and the Income Tax Department, vide its reply dated 7th November, 2024, in paragraph no. 4 has stated as under:-

> "*4. In view of the above facts and background, I am directed to submit as below-*
> *1.It is relevant to mention that the aforesaid information shared by your office requires detailed verification of facts and investigations spanning across various entities and jurisdictions as per the provisions of the Income Tax Act, 1961. The Income Tax Department is neither a party to the said petition filed before the Hon'ble High Court nor is privy to the investigations being conducted by EOW and therefore, does not have any locus standi, and any comment before taking detailed investigations under the Income-tax Act would be premature. Such investigations are conducted by the office of DGIT (Investigation). Only after the investigations are carried out and resultant assessments are completed, this office would be in a position to comment whether any loss/evasion of income tax/corporate tax was caused and quantify the same. The information share by you is being forwarded to the DGIT (Investigation) for necessary action.*
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> *ii.The Central Board of Direct Taxes and Delhi Police had entered into a structure 'Nodal Officer' mechanism for share of information. As per this mechanism, the nodal officer*

appointed from CBDT is Commissioner (Investigation), CBDT [email –citinv-cbdt@nic.in, Phone -011 23092177], while the nodal officer for Delhi Police is Special CP, Crime and EOW. It is requested that the detailed findings of the investigation along-with supporting documents may be shared using the above mechanism.

iii. This office is having PAN jurisdiction of only two entities i.e. Resilient Innovations Private Limited and Ashneer Grover [PAN: AJZPG0291K]. As per the complaint it is revealed that the fraud was committed using several entities and non-existing vendors. The complete details of these entities are not shared with the letter. In the absence of such details, the jurisdiction of such entities cannot be ascertained. Further, the details of time period during which this fraud was committed has not been mentioned. It is requested that the relevant details may be provided.."

15. Learned APP submitted that in view of the aforesaid extracts of paragraph no. 4, any outcome of the instant petition may not have any effect on the proceedings of the Income Tax Department, if any.

16. Mr. Verma, APP submitted that in view of the above facts and circumstances there is no merit in the instant petition and the same may be dismissed as no case is made out for quashing of the aforesaid FIR and further proceedings on the ground of the settlement. However, he submitted that in case this Court is inclined to allow the instant petition and proceeds to quash the FIR in question in view of the settlement arrived at between the parties, costs may be imposed upon the petitioners as the FIR was registered in the year 2023 and more than one year of judicial time as well as EOW's time is wasted.

17. Heard the parties and perused the material placed on record.

18. Before delving into the matter in hand, this Court finds it imperative

to set out the law and scope of exercise of inherent powers of this Court under Section 528 of the BNSS in order to quash an FIR.

19. The general jurisprudence of quashing an FIR based on compromise states that while exercising its inherent powers under Section 528 of the BNSS, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process.

20. There is no doubt that FIR pertaining to compoundable offences may be quashed, however, in case of non-compoundable offences such as Section 467 of the Indian Penal Code, 1860, the Court has to be slow and cautious in quashing the FIR.

21. In the instant case, the contents of the FIR show that the disputes among the parties emanate out of certain commercial/financial transactions. With respect to the same, this Court has referred to the judgment of the Hon'ble Supreme Court passed in ***Parbatbhai Aahir v. State of Gujarat,* (2017) 9 SCC 641**, wherein, it was observed that criminal cases arising out of commercial/financial dispute stand on a distinct footing than other heinous criminal offences, and the same may be quashed where parties have settled the dispute. The relevant portion of the same is as under:

> "*..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..*"

22. Although, certain offences in question are non-compoundable, however, the power of the High Court to quash the proceedings in such offences is well recognized by the Hon'ble Supreme Court and the said issue is no longer *res integra*. The said view is in accordance with the judgment of the Hon'ble Supreme Court passed in ***Gian Singh v. State of Punjab,*** **(2012) 10 SCC 303**, which was followed in ***Arun Singh v. State of U.P.*****, (2020) 3 SCC 736**. Relevant extracts of ***Gian Singh (Supra)*** is as under:

> "*...**57.** Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.*
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> ***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…"

23. In light of the aforesaid discussions on law, and having heard learned counsel for the parties as well as perusing the contents made in the petition, Status Reports filed by the State, compliance affidavit filed by the petitioners, reply of the Income Tax Department in pursuance of the order dated 24th October, 2024 and the statements made by the learned counsel appearing for respondent no.2 Company that the respondent no.2 Company does not wish to pursue the criminal proceedings further along with the admitted fact that all the other civil proceedings have already been

withdrawn by the respective parties, this Court is of the view that no purpose would be served in continuing with the criminal proceedings in question as the parties have settled the matter and keeping the investigation/proceedings pending would be futile and waste of judicial time.

24. As far as the issue of GST is concerned, whereby, the respondent No. 2 Company has alleged that the petitioners, during their tenure, have illegally availed the input tax credit on behalf of the Company under the GST regime, the petitioners have placed on record a letter bearing F No. IV(6)DGGI/RRU/INV/08/2021-22/3764 (DIN : 202207DNN1000022222A) issued in June, 2022, wherein, in paragraph no. 10, it has been stated by the department that they have received the entire payment of GST and thus, the proceedings initiated against the respondent no. 2 Company is closed. Therefore, this Court is of the view that there is no dispute regarding the said aspect as well.

25. At this stage, it is pertinent to state that the Income Tax Department is at liberty to investigate the matter, if required, in view of the paragraph no. 4 of its reply dated 7th November, 2024.

26. Keeping in view the fact that parties have settled the matter, undertaking given by the petitioners as well as the law laid down by the Hon'ble Supreme Court, no useful purpose would be served by keeping the matter pending.

27. In light of the above discussions on facts as well as on law, FIR no. 0036/2023 dated 10th May, 2023 registered for the offences punishable under Sections 406/408/409/420/467/468/471/120-B of the Indian Penal Code, 1860 at Police Station - Economic Offences Wing and all the consequential proceedings arising therefrom are quashed, subject to the deposition of the

cost of Rs.1,00,000/- (One lakh) in the account of Army Central Welfare Fund, Saving Account no. 520101236373338 (IFSC- UBIN0530778), Bank Name - Union Bank of India, Branch - Chandni Chowk, Delhi – 110006 within a period of two weeks. The receipt to the payment of the aforesaid cost shall be furnished before the concerned Investigating Officer within two weeks.

28. The parties shall remain bound by the terms and conditions of the aforesaid Settlement Agreement.

29. Accordingly, the instant petition is allowed and stands disposed of.

30. Pending applications, if any, stands dismissed.

CHANDRA DHARI SINGH, J

NOVEMBER 11, 2024
NA/ryp

Click here to check corrigendum, if any