

(Exemption From Filing Affidavit Of ... vs State & Ors on 14 December, 2022

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 2199/2022, CRL.M.A. 26285/2022 (exemption from personal appearance) & CRL.M.A. 26286/2022 (exemption from filing affidavit of petitioner No. 1)

NIRMALA JAIN & ANR.

..... Petiti

Through:

Mr. Ankur

Mahind

Mr. Shresth Choudhary &

Mr. Aditya

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Advocates

versus

STATE & ORS.

..... Respond

Through:

Ms. Richa Dhawan, APP

for the State with SI An

Kardam, PS Punjabi Bagh.

Mr. Umang Chopra, Adv.

for R-2 & 3 with R-2 & 3

in person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% 14.12.2022

1. The present petition is filed seeking quashing of the FIR No. 342/2004, dated 28.04.2004, under Sections 406/420/464/506/120B/34 of the Indian Penal Code, 1860 (IPC), registered at Police Station Punjabi Bagh. The FIR was lodged on the complaint of Mr. Gurcharan Singh Batra and Mr. Jasbir Singh, who are arrayed as respondent Nos. 2 and 3.

2. Learned counsel for the parties submit that the FIR was lodged at the instance of respondent No. 2 due to dispute over agreement for sale of property which led to misunderstanding. The dispute between the parties was essentially civil in nature which ultimately culminated into an arbitral award dated 30.03.2022, which was passed in terms of the settlement between the parties. They submit that all the terms of the settlement have already been complied with.

3. The parties are present in person duly represented by their learned counsel and are also identified by the Investigating Officer. The petition is supported by the duly sworn affidavits of the parties.

4. Learned Additional Public Prosecutor for the State, however, opposes the quashing of the FIR and submits that the chargesheet has already been filed in the present case.

5. Offence under Section 464 of the IPC is non-compoundable whereas offences under Section 406, 420 & 506 of IPC are compoundable.

6. It is well settled that the High Court while exercising powers under Section 482, CrPC, can compound offences which are non-compoundable under CrPC 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 Courts exercising jurisdiction under Section 482 for quashing of proceedings on the ground of settlement. In *Narinder Singh & Ors. V. State of Punjab & Anr.* reported as (2014) 6 SCC 466, the Supreme Court has 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 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."

7. Similarly, in *Parbatbhai Aahir & Ors v. State of Gujarat & Anr.* reported as (2017) 9 SCC 641, the Supreme Court has 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.

Signing Date:19.12.2022 16:50:33 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."

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8. Keeping in view the aforesaid principle and the nature of dispute and the fact 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 it is a fit case where discretionary jurisdiction can be exercised and the proceedings are quashed.

9. However, keeping in mind the fact that chargesheet has already been filed in FIR No. 342/2004 and the State machinery has been put to motion, this Court feels that ends of justice would be served if the parties are put to cost.

10. In view of the above, FIR No 342/2004 and all consequential proceedings arising therefrom are, therefore, quashed, subject to payment of cost of Rs.5,000/- (Rupees Five Thousand Only) be deposited with the Advocates Welfare Fund within a period of three weeks.

AMIT MAHAJAN, J DECEMBER 14, 2022 'hkaur'