

Radha Prakash & Anr vs State & Anr on 7 March, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 1046/2022 & CRL.M.A. 8748/2022
8749/2022

RADHA PRAKASH & ANR.

Through: Mr. Kirit S. Javali
with Petitioner No.1 in pers
versus

STATE & ANR.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

% 07.03.2024

1. This petition has been filed by the Petitioners under Article 226 of the Constitution of India read with Section 482 Cr.P.C. for quashing of FIR No. 143/2021 dated 22.09.2021 registered under Sections 406/420/468/471/34 IPC at PS: Economic Offences Wing including the proceedings emanating therefrom.

2. It is the case of the prosecution that Complainant Rishabh Jain, Director, Solarworld Energy Solutions Ltd. filed a complaint alleging that accused Ved Prakash and his wife Radha Prakash approached the Complainant through his promoter/Director Sushil Jain and informed that their company M/s Karmic Energy Private Ltd. has huge debt in the form of loan from State Bank of India, which was obtained for installation of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/03/2024 at 21:12:13 Biomass based Power Plant of 5MW and they were facing severe financial crunch in running the power plant. They further represented that they had back-to-back Power Purchase Agreement with Chhattisgarh State Power Distribution Company Limited. It was also represented that Accused had taken loan of Rs.24 crores from SBI and their house and personal/corporate guarantee were collaterals towards repayment of the loan. They also informed the Complainant that Accused company had an obligation to pay Rs.12.50 crores to SBI under One-Time Settlement, in tranches.

They induced the Complainant to take over majority shareholding in M/s Karmic Energy Private Limited through transfer of equity shares from existing shareholders in lieu of payment of debt under the OTS with CBI.

3. It is further stated in the Status Report that Accused persons were unable to raise funds for making payment towards OTS and approached the Complainant to fund the company and also represented that they had obtained extension from the bank on the promise of payment of Rs.65 lacs immediately. On their promises and assurances, regarding the plant and transfer of 60% equity, Solarworld Energy Solutions transferred Rs.65 lacs to the Accused company for repayment of part payment towards OTS. However, despite the transfer, Accused did not accept the transfer of 60% equity. Complainant negotiated and signed an MOU on 24.07.2020 entitling Rishabh Jain and Radha Prakash to equal Board rights. Thereafter, Rishabh Jain and Kartik Teltia (nominee) were inducted into the Board on 13.08.2020. On 15.09.2020, accused persons voluntarily without informing the Complainant, removed both as Directors in the AGM. Further, no information in any form was conveyed to the Complainant regarding the removal as Directors from the Board. Accused kept misleading the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/03/2024 at 21:12:13 Complainant into believing that they were complying with the MOU and kept asking them for money to pay the loan and to pay the creditors of the Company. Since Complainant was not aware of this development, money was being funded towards salaries of security guards, valuation reports, fee for loan applications and even loan instalments of Rs.1.124 crore towards the instalment of OTS was paid in December, 2020. Accused persons even mislead a Government institution i.e. IREDA and SBI and CSPDCL (Chhattisgarh State Power Development Corporation Ltd.) were led to believe that Complainant and Kartik Teltia were Directors in the Company. The alleged persons in a pre-planned manner lured the Complainant and in the process, made him part with an amount of Rs. 4 crore.

4. It is the case of the Petitioners that Petitioner No.1 is the Director of Petitioner No.2. Petitioner No.2 is represented through Radha Prakash. This petition was originally filed seeking quashing of the aforesaid FIR on merits. However, during the pendency of the present petition, Petitioners and Complainants have arrived at an amicable settlement of all their disputes and a Settlement Agreement dated 01.08.2023 was executed, incorporating the terms of settlement. As per the agreement, Petitioners agreed to pay a sum of Rs.3,77,50,000/- to the Complainant, in full and final settlement of all his claims and dues, which according to the Petitioners stands paid.

5. Matter was adjourned for the State to verify the settlement between the parties. Status Report dated 26.02.2024 has been filed confirming the settlement between the parties albeit in the Status Report, on account of a typographical error, the date of Settlement Agreement has been mentioned as 01.02.2023.

6. Respondent No.2 has joined Court proceedings virtually and is This is a digitally signed order.

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7. 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 This is a digitally signed order.

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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.

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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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/03/2024 at 21:12:13 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."

8. In a later judgment in the case of *Narinder Singh and Others v. State of Punjab and Another*, (2014) 6 SCC 466, the Supreme Court reiterated the proposition and relevant paragraphs are as follows:-

"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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/03/2024 at 21:12:13 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."

9. It is a settled law that inherent powers under Section 482 Cr.P.C. are required to be exercised to secure the ends of justice and/or prevent abuse of the process of the Court. The Supreme Court in the case of *Nikhil Merchant v. Central Bureau of Investigation and Another*, (2008) 9 SCC 677, has observed that despite the ingredients and the factual content of an offence of cheating being punishable under Section 420 IPC, the same has been made compoundable under sub-section (2) of Section 320 Cr.P.C., with the leave of the Court. Co-ordinate Benches of this Court in *Syed Sarfraz Ahmad @ Bablu v. State & Anr.*, CRL.M.C. 263/2022 decided on 05.04.2022 and *Shri Madhu Sudan & Ors. v. State & Anr.*, CRL.M.C. 4008/2019 decided on 17.08.2023, have quashed FIRs under similar provisions predicated on This is a digitally signed order.

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10. From the conspectus of the aforesaid judgments, one of the principles that can be succinctly culled out for exercise of inherent powers under Section 482 Cr.P.C. is that the inherent jurisdiction is to prevent abuse of process of Court and/or to secure ends of justice as ends of justice are higher than ends of mere law and this is premised on the principle that inherent powers have been vested to do real, complete and substantial justice. This is of course not without a caveat that Courts must steer clear of intervention in cases, which involve heinous or serious offences involving mental depravity or economic offences and those which fall in the category of offences relating to murder, extortion, dacoity, cases under the Arms Act, 1959 etc.

11. Parties have mutually settled all their disputes. Respondent No. 2 has made a categorical statement that he has received the entire money and thus, he does not wish to pursue the complaint. In these facts and circumstances, chances of conviction are bleak and it would be in the interest of justice to terminate the criminal proceedings.

12. Accordingly, FIR No. 143/2021 dated 22.09.2021 registered under Sections 406/420/468/471/34 IPC at PS: Economic Offences Wing is hereby quashed including proceedings emanating therefrom.

13. Petition along with pending applications stand disposed of in the aforesaid terms.

JYOTI SINGH, J MARCH 7, 2024/kks This is a digitally signed order.

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