

Smt. Anita Maria Dias vs The State Of Maharashtra on 19 January, 2018

Equivalent citations: AIR 2018 SC (SUPP) 159, 2018 (3) SCC 290, (2018) 1 MADLW(CRI) 811, (2018) 4 MH LJ (CRI) 665, (2018) 1 RECCRIR 983, (2018) 70 OCR 21, (2018) 1 NIJ 312, (2018) 1 CRILR(RAJ) 167, 2018 (2) SCC (CRI) 50, (2018) 1 UC 239, (2018) 2 SCALE 330, (2018) 185 ALLINDCAS 255 (SC), (2018) 2 ALLCRILR 810, 2018 CRILR(SC&MP) 167, (2018) 3 CURCRIR 65, 2018 CALCRILR 1 243, (2018) 103 ALLCRIC 593, 2018 CRILR(SC MAH GUJ) 167, 2018 ALLMR(CRI) 1357, (2018) 2 CRIMES 18, AIRONLINE 2018 SC 583

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Bench: Ashok Bhushan, A.K. Sikri

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 199 OF 2018
(@ SPECIAL LEAVE PETITION (CRIMINAL) NO. 978 OF 2018
@DIARY NO. 40579 OF 2017)

SMT. ANITA MARIA DIAS & ANR.

VERSUS

THE STATE OF MAHARASHTRA & ANR.

JUDGMENT

A.K. SIKRI, J.

Delay condoned. Leave granted.

2) Respondent No. 2 is the complainant who has lodged the FIR against the appellants bearing Crime No. 267 of 2012 registered by Chatushrungi Police Station, Pune, Maharashtra for the offence punishable under Sections 406, 420, 467, 471 and 34 of Indian Penal Code (IPC). The appellants are original accused Nos. 2 and 3 in the said criminal proceedings. They are the Directors of M/s. Karl Logistics (for short 'said Company'), a company registered under the provisions of Companies Act,

1956 and is engaged in the business of logistics and iron ore supply and equipped with all necessary approvals and registrations for doing the business. Said Company also had legal authority to load and unload the iron ore and, for that purpose, the Government of Goa had allocated a plot at Kothambi vide letter No. 111/435/2010-Mines/2214. M/s. Consistent was doing business with the said Company for quite some time and Mr. Vilas Birajdar (Proprietor of M/s. Consistent) introduced respondent No. 2 to the appellants since he had interest to invest. Accordingly, Memorandum of Understanding (for short 'MoU') came to be executed between M/s. Karl Logistics (signed by appellant No. 2 on its behalf), M/s. Platinum Buildcon (signed by respondent No.2 on its behalf) and M/s. Consistent (signed by Mr. Birajdar on its behalf). According to the terms, it was agreed that M/s. Platinum Buildcon will invest an amount of Rs. 1.50 crores with M/s. Karl Logistics for period of one month and would be entitled to profit of Rs.90 lakhs in addition to its investment of 1.50 crores or Rs. 200 per tonne whichever is maximum. All payments were to be made through M/s. Consistent and the entire amount was to be paid within one week time from signing of the MoU. M/s. Karl Logistics also extended security Cheque No. 208225 drawn on State Bank of India of Rs.2.40 crores in advance to M/s. Consistent, who was to act as insurance for both the parties.

3) According to the appellants, in breach of the MoU dated November 28, 2011 and, more particularly, in violation and defiance of the term requiring respondent No. 2 to pay the entire amount of Rs. 1.50 crores within one week from the signing of the MoU, respondent No. 2 deposited the amount with M/s. Consistent in several instalments. Further, respondent No. 2 did not deposit the entire amount of Rs.1.50 crores but an amount of Rs.1.46 crores. According to respondent No. 2, since no positive response was received as per the MoU, he tried to pursue Mr. Birajdar as well as the appellants for compliance of the MoU and return of money. Accordingly, two post dated cheques were issued by the appellants viz. Cheque No. 208255 dated February 6, 2012 and Cheque No. 208256 dated February 10, 2012 for an amount of Rs. 60 lakhs and Rs.1.46 lakhs respectively. It is contended that the said cheques are signed by appellant No. 1 and the appellants assured that these would be honoured on the due dates mentioned thereupon. According to respondent No. 2, he deposited Cheque No. 208255 on December 6, 2012 with his banker, however, the same was returned and when the appellants were informed about the same, he was instructed to deposit the same again. But it met the same fate. Respondent No. 2 initiated proceedings under Section 138 of the Negotiable Instruments Act bearing CC No. 19227 of 2012 in the Court of Ld. Judicial Magistrate, First Class, Pune, Maharashtra. Thereafter, on August 2, 2012, he also lodged FIR bearing Crime No. 267 of 2012 with Chatushrungi Police Station, Pune, Maharashtra for the offence punishable under Sections 406, 420, 467, 471 and 34 of IPC alleging that the appellants and original accused No.1/Mr. Birajdar has committed fraud.

4) The appellants moved the application for anticipatory bail in the aforesaid proceedings which was granted by the High Court of Judicature at Bombay. In the meantime, the parties started negotiating with each other. These settlement talks were fructified into a settlement dated November 2, 2012 when consent terms came to be executed between the parties. As per this settlement, the appellants were required to deposit an amount of Rs. 1,42,50,000/- in two instalments with the Registry of the High Court and this amount was to be invested in Fixed Deposits/Bonds, pending trial.

5) In accordance with the said settlement, the appellants deposited Rs.87 lakhs in the Registry of the High Court. As the appellants were not in a position to deposit further amount as agreed, due to their precarious financial condition, they approached respondent No. 2 again to work out the possibility of deciding the dispute once and for all. Discussions ensued and the parties were again successful in settling the matter. It was agreed that respondent No. 2 would be entitled to withdraw the deposited amount of Rs.87 lakhs along with interest accrued thereon and, in addition, the appellants would also pay a further sum of Rs.5 lakhs. It was also agreed that both the parties would approach the High Court invoking its inherent jurisdiction for quashing the FIR lodged by respondent No.2 against the appellants. To this end, the appellants as well as respondent No. 2 filed the petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) for quashing of FIR. However, it has been dismissed by the High Court primarily on the ground that the affidavit which was filed by respondent No. 2 before the High Court was defective and further that respondent No. 2/complainant was not in a position to give answers consistent with the settlement. The High Court has also observed that since allegations against the appellants are that they have connived and together cheated the complainant, it is not a fit case for quashing the FIR.

6) Insofar as first reason given by the High Court is concerned, learned counsel appearing for respondent No. 2 made a categorical statement before us on instructions from respondent No. 2 that he has, in fact, settled the matter on terms which are being taken note of above. He has further stated that respondent No. 2 has no objection if the proceedings arising out of the aforesaid FIR are quashed. We find that the matter is settled by the complainant out of his free will.

7) In a case like this, where the proceedings are still at initial and nascent stage, the High Court should have exercised its discretion in quashing the proceedings. Law in this behalf is well settled by catena of judgments of this Court including *Parbatbhai Aahir & Ors. v. State of Gujarat & Anr.*¹ and *Gian Singh v. State of Punjab & Anr.*². We may also quote the following passage from the case of *Narinder Singh & Ors. v. State of Punjab & Anr.*³:

“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 1 (2017) 9 SCC 641 2 (2012) 10 SCC 303 3 (2014) 6 SCC 466 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.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be

liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

8) As a result, this appeal succeeds and is allowed and proceedings arising out of FIR bearing Crime No. 267 of 2012 lodged with Chatushrunji Police Station, Pune, Maharashtra are hereby quashed.

.....J. (A.K. SIKRI)J. (ASHOK BHUSHAN)
NEW DELHI;

JANUARY 19, 2018.