

## Deepak Bhardwaj & Anr. vs State on 9 March, 2001

**Equivalent citations: 2001IIIAD(DELHI)265, 90(2001)DLT826**

**Author: S.N. Kapoor**

**Bench: S.N. Kapoor**

ORDER

Usha Mehra, J.

1. I had the opportunity to go through the order passed by S.N. Kapoor, J. Unfortunately I cannot subscribe to his views. I respectfully disagree with the reasoning and conclusion arrived at by brother S.N. Kapoor, J.

2. The petitioners herein have sought quashing of the FIR bearing no.252/98/ u/s 420/120-B IPC dated 9th May, 1998 registered at Police Station R.K.Puram. The quashing of the (SIC) has been sought, primarily on the ground that the parties have settled their dispute by entering into a memorandum of settlement pursuant to which the (SIC) paid back the principal amount beside, interest, compensation and other charges to the complainant totalling Rs.1,90,00,000/- (One crore ninety lakhs). Since the settlement has been arrived at between the parties and the offence alleged in the FIR being compoundable, therefore under Section 320 Cr.P.C. permission be granted. It would be just and proper if the parties are not dragged to the court to face a trial in a criminal charge which has lost its objective.

3. The essence of the FIR is: the complainant Mr. V.K.Williams, a member of the Mount Carmel School Society and Principal of Mount Carmel School needed more space to start a new school. Accordingly Mr. Williams who was acquainted with petitioners talked it over to them about space for new school. Petitioner No. 1 informed Mr. Williams that he had founded Shikcha Bharati Education Society (hereinafter called the society) which was running Shikcha Bharati Senior Secondary School. The school building was built on a land admeasuring 13 min (2-16) 14/1 (2-13) situated in village Palam Tehsil Mahrauli, New Delhi. Petitioners told him that their school was not running to their satisfaction and that they were willing to sell the land to Mr.Williams. Land was offered for Rs.2.5 crores. Six Memorandum of understanding ( in short MOU) were executed to keep the cost below 50 lakhs for each MOU to enable the (SIC) to get the Income Tax Form 34-A. As per the first MOU complainant paid a sum of Rs.20,00,000/- by cheque no 364053 drawn on State Bank of Patiala. Anand Niketan to Mr.Deepak Bhardwaj against the total sale consideration of Rs.45,00,000/- for the purchase of land bearing (SIC) no.28/8. For land pertaining to Khasra no.28/7/1 the complainant paid Rs. 35,00,000/- in the name of Shiksha Bharati Education Society

as against the sale consideration of RS.45,00,000/-. The third Memorandum of Understanding pertaining to Khasra No.7/1(28) 8 m (0-12) an amount of Rs.35,00,000/- was paid to Smt. Ramesh Kumari vide cheque no. 360452 dated 28.4.97.

4. Parties entered into agreements vide Six Memorandum of Understandings three executed by petitioner no.1 and the remaining three by petitioner No.2.

5. Pursuance to these six MOU the complainant made payment to the tune of Rs.1,50,000/- (one crore fifty lakhs). It is also allged that a sum of Rs.10,00,000/- in cash was paid in July, 1997. The petitioner no.1 signed another Memorandum of Understanding with a time frame of completing the formalities for handing over and laking over the management and the building Along with the land of school run by Shiksha Bharati Education Trust.

6. As per the term of the agreement the petitioners were to get income tax clearance from the competent authority. They were also to clear all the arrears pertaining to property tax, telephone bills and electricity etc. The petitioners in furtherance of these memorandums and performance of the Memorandum of Understanding for, "Time frame of taking over", appointed Mrs. Williams as Manager of the Society on 20th June, 1997. Petitioners however could not procure the income tax clearance which was a pre-requisite for execution of the sale deed. When the complainant found that the petitioners were dilly-dillying with the execution of the sale-deed, he wrote letter to the petitioners demanding completion of formalities as per the terms of MOU.

7. It is alleged that on 5th March, 1998 complainant came to know that for the land in question notification under Section 4 & 6 of the Land Acquisition Act (hereinafter called the Act) had already been issued by the Government. This fact was not brought to the notice of the complainant, therefore, complainant found himself being cheated. According to him petitioners dishonestly induced him in this transaction and thus by fraud cheated him of a sum of Rs.1,50,00,000/- .

8. Legal Notice was sent by A.D./UPC dated 31st March, 1998 by Mount carmel School society and Carrom William Charitable Trust, Anand Niketan, New Delhi which is reproduced as under:

1. You, the addressee no. 1, 2 & 3 have represented yourself to be absolute owner in possession of 13 bighas of land out of which you, the addressee No.1 has claimed to be the sole owner in possession of land measuring 3 Bighas in Khasra No.28/8, 3 Bighas in Khasra No.7/2/8 m and further claimed the Shiksha Bharti Education Society (hereinafter referred as the "society") to be owner in possession of 1 Bigha of land in Khasra No. 28/7/1.

2. Similarly you, the addresses No.2 represented to be the sole owner in possession of 3 Bighas 1 Biswas in Khasra No.28/8 (0-8) & 14/1 )2-13), 1 Bigha 3 in Khasra No. 28-13 )(1-3) and 1 Bigha 16 Biswas in Khasra No.28/8 (0-3) 13 (1-13).

3. You the addressee No.1, 2 & 3 have thereafter claimed to have constructed a house as per (SIC) No.525/BGQ/83/1248 dated 18th November 1983. You the addressee

No. 1 and 2 have further represented to have allowed the (SIC) house as well as a 13 Bighas of land to be used by the society for running educational activities. You, the addressee No. 1 and 2 represented to be in the management of the said education social and are duly (SIC) having the approval of the managing committee for handing over the management of the said education society.

4. Our client, throughout represented by Shri V.K. William, an Educationist have agreed to purchase the (SIC) land and the structure along with the fittings and (SIC) and the other movables lying therein with a absolute right manage the society for a total consideration of Rs.2.50 crores.

5. You, the addressee No.1, 2 & 3 having confirmed their respective titled over the land & building and further assured the said lands & building to be unencumbered and free from, disputes as to their ownership and further the said lands and building were not subject matter of any case pending or adjudicated nor any dispute contemplated our client acting on the aforesaid (SIC) to be correct, agreed to pay to you, the addressee No.1, 2 & 3 an amount of Rs.2.50 crores on the terms and conditions mutually agreed and reduced in writing in the form of six Memo of Understanding. the details of six Memorandum of Understandings contains the same (SIC) and conditions except the details of payment. The following are the brief of three MOUs executed by you, the addressee No.1.

(a) MOU dated 28.4.97 signed on 9.5.97 with Carmel School Society in respect of land comprising Khasra No. 28/8 measuring 3 beghas in the revenue estate of Village Palam for a total consideration of Rs.45. lakhs out of which Rs.20.00 lakhs was paid by way of cheque no.3605434 dated 28.4.1997 drawn no.360534 dated 28.4.1997 drawn on state Bank of Patiala. Anand Niketan Extension counter, New Delhi leaving balance payment of Rs.25,00 lakhs to be paid at the time of registration of the sale deed in respect of the property mentioned therein.

(b) MOU dated 20.7.1997 signed on 9.5.97 with Carmel School Society in respect of land comprising Khasra No. 28/8 measuring 0-3 bigha, Khasra No.13 measuring 1 bigha 13 Biswas in the revenue estate of Village Palam for a total consideration of Rs.34 lakhs out of which Rs.2,00 lakhs was paid by the Mount Carmel School Society by way of cheque no.361366 dated 5.4.1997 drawn on State Bank of Patiala, Anand Niketan Extension Counter, New Delhi leaving a balance payment of Rs. 32,00 lakhs to be paid at the time of registration of the sale deed.

(c) MOU dated 28.4.27 signed on 9.5.97 with Carmel School Society by you, the addressee no.1 in the capacity of General Secretary of the addressee no.3 in respect of land comprising Khasra No. 28/7/1 measuring 1 bigha in the revenue estate of Palam for a total consideration of Rs.46 lakhs out of which Rs.35,00 lakhs was paid by the Mount Carmel School Society by way of cheque no.360455 dated 28.4.1997 drawn on State Bank of Patiala, Anand Niketan Extension counter, New Delhi leaving a balance

payment of Rs.11,00 lakhs to be paid at the time of legistration of the sale deed in respect of property mentioned therein.

The details of the three MOUs executed by you, the Addressee no.2 are as follow:

(a) MOU. dated 28.4.97 with Carmel School Society in respect of land comprising Khasra No.7/1(2-8), 8 m (0-12) total measuring 3 bighas in the revenue estate of Palam for a total consideration of Rs.46 lakhs out of which Rs.35,00 lakhs was paid by the Mount Carmel School Society by way of cheque no.360455 dated 28.4.1997 drawn on State Bank of Patiala, Anand Niketan Extension Counter, New Delhi leaving a balance payment of Rs.11.00 lakhs to be paid at the time of registration of the sale deed.

(b) MOU dated 20.7.97 with Karan Williams Charitable Trust in respect of land comprising Khasra No.28/8 measuring 0-8 bigha, Khasra No.14/1 measuring 2 Bighas 13 Biswas, total measuring 3 Bighas 1 Biswa in the revenue estate of Palam for a total consideration of Rs.46 lakhs out of which Rs.2,00 lakhs was paid by the Karan Williams Charitable Trust by way of cheque no.361367 dated 5.7.1997 drawn on State Bank of Patiala, Anand Niketan Extension Counter, New Delhi leaving a balance payment of Rs.44,00 lakhs to be paid at the time of registration of the sale deed.

(c) MOU dated 26.7/97 with Carmel School Society in respect of land comprising Khasra No.28/13 Biswas in the revenue estate of Palam for a total consideration of Rs.23 lakhs out of which Rs.10.00 lakhs was paid by the Mount Carmel School Society by way of cheque no.360432 dated 24.4.1997 drawn on State Bank of Patiala, Anand Niketan Extension Counter, New Delhi leaving a balance payment or Rs.11.00 lakhs to be paid at the time of registration of the sale deed.

6. Our clients in total have made payments to the tune of Rs.1.50 crores and has also paid a further sum of Rs.10 lakhs in cash by July, 1997. Having received the aforesaid payment, you, the addressee No.1 acting as General Secretary of the society has signed another MOU with a time frame of taking over containing various formalities to be completed for handing over and taking over the management of the school run by Shiksha Bharti Education Trust. You, the addressee no. 1, 2 & 3 have categorically agreed as per stipulation No.5 of each of aforesaid six MOUs to get Income Tax clearance from the competent authority and further to clear all the arrears pertaining to property tax, telephone bills and electricity bills up to 31st March, 1997 and also to pay all the salaries and honorarium and also to account for the security amount received from the students and staff before April, 1997 for school as well as hotel. The Addressee No.1, 2 & 3 have further agreed to inform our clients about their having done all the (AIC)formalities so as to deniable our client to get the sale deed executed on the payment of the balance sale consideration of Rs.90.00 lakhs. You, the addressee No.1, 2 & 3 have also agreed in the Memo of Understanding executed to work out the time frame of the school as well as transfer all the (SIC) and assets to our clients on or before 31st March, 1998.

7. However, despite repeated requests and reminders, you, the addressee No. 1, 2 & 3 have failed to procure the income tax clearance which is pre-requisite for execution of the sale deed in respect of the land and the structure thereon details of which are mentioned above and in each of six MOUs.

8. You, the addressee No. 1, 2 & 3 in furtherance of the aforesaid memorandum and in part performance of the MOU for "Time Trame of Taking Over", have appointed Mrs. William as Manager of the society on 20th June, 1997 but have not performed the remaining acts on one pretext or other.

9. As now learnt, you, the addressee No. 1, 2 & 3 having received substantial amount are new purposely delaying fulfillment of above formalities and for that reason alone, the same could not be procured. However since the due performance of MOU dated 1.7.1997 does not require this pre requisite our client willing to secure the balance payment so that in terms of said MOUs, the management of the school is handed over to our client forthwith. Our client even otherwise, are ready and willing to perform their part of each of above referred seven MOUs.

We on behalf of our client call upon you, the addressee No. 1, 2 & 3 to hand over the management of the society with absolute right to manage the school being run on the aforesaid land & building on being secured of balance payment in terms of MOU dated 1st July, 1997 and further to complete formalities pre-requisite for due performance of above six MOUs for execution of sale deed in respect of properties mentioned therein, within the period of seven days from the receipt of this notice, failing which our clients has already given instruction to us to initiate appropriate proceeding for due performance of each of seven MOUs as discussed above, of course, at your cost & consequences (underlinings are mine).

9. After this registered (SIC) (SIC) lodged police (SIC) which was registered as (SIC) No.25(SIC)/98 under Section 120/120-B (SIC) at police station R.K.Puram. New Delhi, dated 9th May 1998. On 12th May, 1998 (SIC) No. paid (SIC)a sum of Rs.10,00,000/- by way of cheque in the name of the complainant pursuant to the (SIC) executed in between the petitioners and complainant dated 12th May, 1998. Petitioner No.1 also gave all (SIC) before the investigating officer admitting that he owed Rs.15,00,000/- to the complainant and that his wife petitioner No.2 owed Rs.56,00,000/-. (Rupees One Crore Ninty Lakhs) as against Rs.1,00,000/- (Rupees One Crore Fifty Lakhs only) received. They also undertook that those cheques on presentation would be encashed. Beside issuing the cheques and the Understandings as mentioned above, the petitioner no.1 also hypothecated his property bearing no 125, Lajwanti Garden, New Delhi by depositing the title deed for the same with the Investigating Officer. Complainant agreed that the moment those cheques were encashed the title deed and the possession of the said property would be restored back to petitioner no. 1. The complainant also under took by way of affidavit that on encashment of these cheques he would get FIR/his complaint quashed.

10. As per the Memorandum of Understanding dated 12th May, 1998 the complainant was to withdraw his (SIC) or get it quashed on encashment of the cheques issued by (SIC). Salient (SIC) of the said Memorandum of Understanding dated 12th (SIC) (SIC) as under:

"This Deed of understanding is made and executed on this the (SIC) of May, 1998 between Sh.Deepak (SIC) son of Sh. P.S. (SIC) President of (SIC) Anand Niketan New Delhi here(SIC) called the 1st Party, through his Advocate Sh Ramesh Gupta and his son (SIC) and Mouni Carmel School Society, Anand Niketan, New Delhi through Sh.V.k.Williams, hereinafter called the party of the 2nd Part.

This has reference to the (SIC) Memorandum of Understanding between the parties and the case (SIC) no.252/98 o/s 420/120-B IPC PS R.K.Puram, New Delhi.

That the first party has already executed an Affidavit wherein it is admitted by the first party that it has issued various cheques as per the details given in the Affidavit and the first party undertakes that these cheques would be encashed on presentation on the date mentioned on these cheques.

That the second party also undertakes to withdraw the (SIC) as mentioned above on encashment of the cheques as mentioned in the affidavit of the party no.1.

That the party no.2 also undertakes and assures the party no.1 that he would be willing to move petition before the competent court of law for quashing of the proceedings, immediately on realisation of the amount. The party no.2 also undertakes to return the title deeds of the property as mentioned in the affidavit of the party no. 1, after the amount is realised, and undertakes that the title deeds would not be (SIC) in any manner whatsoever.

In witness whereof , but the parties have signed this Deed of understanding on this the 12th day of May, 1998."

11. It is an admitted case of the parties that those cheques amounting to Rs.1.90 Crores have since been encashed.

12. Section 320 of the Code of Criminal Procedure deals exhaustively with the subject of the composition of offence, the persons who may compound, the nature of offences compoundable, the stage when composition will be made, and the condition under which composition may be effected in the case of some of the offences. From a plain reading of Section 320 Cr.P.C. it is manifest that if an offence under Section 420 IPC is committed it can be compounded at the instance of the person cheated subject to the permission of the Court.

13. Now the question for consideration is: Whether in the circumstances of this case permission under Section 320 Cr.P.C. should be granted? In order to determine whether the case could be considered to be compoundable or not the court has firstly; to look to the offence with the commission of which accused is charged in the complaint and not upon that which might have been spelt out of the complaint, secondly; what the court has to see is that it is a lawful compromise and not made under coercion or duress or similar other circumstances vitiating the compromise. It is when the composition is against public policy that permission may not be granted.

14. To constitute a valid composition there must be an arrangement of which the parties have settled their difference. In the present case admittedly complainant and the petitioners entered into property transaction vide (SIC) MOU. There (SIC) part performance of the agreement (SIC) Mrs. William was appointed manager of the Society on 20th June, 1997. The (SIC) raised by the complainant that he came to know of notification under Section 4 & 6 of the Act on 5th March, 1998 is belied from the reading of the legal notice issue by him. If the complainant had acquired the knowledge of notification under Section 4 & 6 of the Act for the first time on 5th March, 1998 complainant would have mentioned the same in the legal notice dated 31st March, 1998. On the contrary vide the said notice complainant only wanted handing over the management of the society with the absolute right to manage the school There is not whisper about petitioners having committed any forgery. It could at best be a case of cheating as defined under Section 415 IPC. After Mrs. William was appointed Manager of the Society on 28th June, 1997, it cannot be believed that complainant had not come to know about. The notification under Section 4, 5 & 6 of the Act. That is why no mention of the same was made in the legal notice dated 31.3.98. It will also not be out of place to mention that three of the MOUs were signed on 20th July, 1997 i.e. after the appointment of Mrs. William as Manager of the school & the society of the petitioners. By then complainant would have come to know about the notification hence case of forgery in the facts of this case (SIC) facie cannot be said to have been made out. On facts as (SIC) above, the case at hand is not covered under the definition of (SIC) as defined under Section 463 (SIC) of Section 464 and hence not covered under Section 468 IPC.

15. That (SIC) to Memorandum of Understanding dated 12th May, 1998 the petitioners paid back an amount of Rs.1.90 Crore as against Rs.1.50 crores received by them. This document, to my mind, amount to composition of offence. I am in agreement with the contention of Mr. Sandeep Sethi, Advocate of the petitioners that when the parti have amicably settled their dispute and differences, it would be an exercise in futility to file the challan in court and to proceed with the (SIC). It is, therefore, just and pioper if the parties are not dragged to the court to face a trial in criminal charge which has lost its objective. The obvious reason is that even if the challan is filed in the court, the complainant and his witnesses would resile from their previous statements, which would mean encouraging perjury. It is well settled principle of law that when the parties have come to a compromise, the court has to perform the judicial act of deciding whether in the interests of justice the parties should be allowed to compromise the office with which the accused is charged. Unless the offence is so serious that punishment is absolutely necessary, the court would well exercise its discretion in allowing a composition of the offence. The compromise in question is not against public policy. It would be highly improper (SIC) refuse permission because police has objected to it. It must be pointed (SIC) that perusal of the (SIC) filed by the state does not indicate that any objection by the quashing of the FIR has been raised. Even for the sake of argument it is presumed that there is objection by the Satate counsel still in the facts of this case FIR needs to be quashed as the parties have already compromised. Supreme Court in a recent judgment (SIC) & Ors. Vs. State of U.P. 2000 (6) Supreme 383 permitted compromise even in case under Section 147, 323/149 and 325/149 IPC and set aside the conviction.

16. For the reasons stated above, I am of the considered opinion that permission to compound the offence must be granted. Accordingly the FIR No.252/98 dated 9th May, 1998 registered at Police

Station R.K.Puram under Section 420/120-B IPC is ordered to be compounded and the proceedings emanating there from are ordered to be dropped.

(USHA MEHRA) JUDGE In view of the difference of opinion the matter be placed before Hon'bel the Chief Justice for appropriate directions.