
(2013) 07 DEL CK 0211

Delhi High Court

Case No: Criminal M.C. 3367 of 2012

Gurdeep Singh Sudan
and Others

APPELLANT

Vs

State (Govt. of NCT of
Delhi) and Another

RESPONDENT

Date of Decision: July 11, 2013

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 154, 154(1), 156(3), 169, 170
- Penal Code, 1860 (IPC) - Section 120B, 406, 420

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Ramesh Gupta and Mr. Jatan Singh, for the Appellant; Navin Sharma, APP for State Mr. Arun Bhardwaj and Mr. P. Chaudhary, Advocate for R-2, for the Respondent

Final Decision: Disposed Off

Judgement

Kailash Gambhir, J.

By this petition filed u/s 482 of Code of Criminal Procedure (herein after referred to as Cr.P.C.), the petitioners seek setting aside of the orders dated 30.11.2010 passed by the learned Additional Sessions Judge, Saket Court, Delhi and order dated 08.08.2011 whereby the learned ACMM, Saket Court, Delhi directed the registration of the FIR No. 152/2011 under Sections 406 /420 /120-B IPC at P.S. Crime Branch (EOW), South District, New Delhi. Addressing arguments on behalf of the petitioners, Mr. Ramesh Gupta, learned Senior Advocate submitted that the order passed by learned ACMM is in utter defiance of the directions given by the learned Additional Sessions Judge vide order dated 30th November 2010, whereby the learned ACMM was directed to examine the report of the Crime Branch, hear the complainant afresh and then pass a reasoned and a speaking order on the application moved by respondent No. 2 u/s 156(3) of Code of Criminal Procedure Contention raised by learned Senior Counsel was that ignoring the

said direction of the superior court, learned ACMM in great haste gave direction to the police to investigate the matter after registration of the FIR, after taking a view that the prima facie case of cheating is made out against the petitioners. Learned Senior Counsel further submitted that in the said impugned order, no reference is made to the reasoning given by the police in the Closure Report wherein the police took a view that there is no dishonest inducement on the part of the petitioners to entice the complainant to buy the property in question. The Closure Report also mentions that in the Sale Deed, it was specifically mentioned that Ms. Fixwell Pushincords (P) Ltd. will bear all the liabilities prior to the date of the said transaction and further it was the liability of petitioners' company to pay the "Sales Tax Dues". Learned Senior Counsel for the petitioners further submitted that the entire sale transaction on behalf of the petitioners was taken care of by their attorney holder and in the GPA, as per clause 3, the attorney was entrusted the job of honouring the pending sales tax issues with various sales tax authorities. Learned Senior Advocate also submitted that the petitioners did not suppress any fact from respondent No. 2, as the said clause in the GPA was well within the knowledge of respondent No. 2. Learned Senior Advocate also argued that the petitioners had no knowledge about any order of attachment passed by the sales tax department as the same was never brought to their notice. Learned Senior Counsel further submitted that even in the Sale Deed dated 11.01.2005, it was clearly stipulated that the vendor shall remain responsible for the payment of any dues whatsoever as were found pending prior to the date of execution of sale deed and, therefore, at no stage petitioners had any intention to escape from the liability of the said sales tax dues. Learned senior counsel also submitted that the petitioners had already filed an appeal against the order dated 04.09.2012, passed by the Sales Tax Department and the petitioners will not shirk from their liability if ultimately, they fail to succeed in the said appeal. Learned Senior Counsel also argued that at least three separate complaints were filed by respondent No. 2 with the police, and in all the three complaints closure report has already been filed, but these facts were suppressed by respondent No. 2 from the court. Had all these facts been disclosed by respondent No. 2, the learned ACMM, Saket Court, Delhi would not have given directions to police to register an FIR against the petitioners. In support of his contentions, the learned Senior Counsel has placed reliance on the following judgments:

1. [Abhinandan Jha and Others Vs. Dinesh Mishra,](#)
2. [Dr. Narendra Nath Vs. State and Another,](#) .
3. [Dr. Rajni Palriwala Vs. Dr. D. Mohan and Another,](#)
4. [Thermax Ltd. and Others Vs. K.M. Johny and Others,](#)

2. Opposing the present petition, Mr. Arun Bhardwaj, the learned Senior Counsel appearing for respondent No. 2, submitted that the order dated 30.11.2010 passed by the learned Additional Sessions Judge, Saket Court, Delhi and the subsequent order dated 08.08.2011, passed by the learned ACMM, Saket Court, Delhi have attained finality as no

appeal or revision was ever preferred by the petitioners to challenge the said orders. Learned Senior Counsel also submitted that the present petition filed by the petitioners is barred by limitation as even for invoking inherent powers of this Court u/s 482 Cr.P.C., the petitioners were required to approach this Court within the period of limitation as prescribed for filing an appeal or at best within prescribed period of limitation for filing of a revision petition. Learned Senior Counsel further submitted that the order of attachment dated 24.12.1997 passed by the Office of Excise & Tax was well within the knowledge of the petitioners as the same was duly received by Mr. Lal Singh, Manager of M/s. Fixwell Pushincords Pvt. Ltd.

3. Learned Senior Counsel for respondent No. 2 further submitted that the petitioners were well aware of the said outstanding sales tax dues, the fact that was suppressed from respondent No. 2 at the time of execution of the Agreement to Sell dated 30.10.2004, as well as even at time of execution of Sale Deed dated 11.01.2005. Learned Senior Counsel also submitted that neither in the Agreement to Sell, nor in the Sale Deed, any such disclosure was made with regard to the said outstanding liability of the said company towards sales tax dues or with regard to the order of attachment dated 24.12.1997, passed by the Office of Excise & Tax. Learned Senior Counsel further submitted that in fact, the petitioners had played a serious fraud by cheating respondent No. 2, not only by suppressing the said vital fact but also by misrepresenting that the property in question being free from all encumbrances, claims, demands, liens, mortgages, decrees, litigations or any order of attachment whatsoever that may affect the marketability and sale of the property. Learned Senior Counsel further submitted that the order of attachment was known to the petitioners can be well exemplified from the fact that in the Power of Attorney executed by the petitioners in the name of Mr. Y.P. Sharma, the authority was conferred upon him to deal with any outstanding dues related to the company.

4. Learned Senior Counsel further submitted that the respondent No. 2 came to know about the attachment of the said property when he had approached the office of Tehsildar to seek mutation of the said property, it was disclosed by them that the said property was under attachment with the Haryana Sales Tax Department. Learned Senior Counsel further submitted that respondent No. 2 had paid an amount of Rs. 1,08,73,605/- towards the tax liability of the petitioners so as to get the said property free from attachment. Learned Senior Counsel further submitted that no proper investigation was carried out by the police although respondent No. 2 has filed a complaint on 24.09.2005 before the Joint Commissioner of Police (Crime), Police Headquarters, New Delhi. Learned senior counsel further submitted that respondent No. 2 had filed another complaint with the office of Deputy Commissioner of Police, (Crime Branch), New Delhi on 04.06.2012 for the proper investigation of the case and for arresting the accused persons but no action was taken by the police and it was apprehended that the police is in hand in glove with the accused persons.

5. Learned Senior Counsel submitted that the petitioners have not approached this Court with clean hands by misrepresenting the fact that the petitioners were not heard by the Revisional Court. Learned Senior Counsel submitted that not only the petitioners were heard by the Revisional Court but even the petitioners had filed a reply opposing the revision petition filed by respondent No. 2. Learned Senior Counsel also submitted that learned ACMM, Saket Court, Delhi fully complied with the directions given by the learned Additional Sessions Judge, Saket Court, Delhi as in the order dated 08.08.2011, the learned ACMM, Saket Court, Delhi has clearly stated that he had gone through the documents on record and, therefore, it cannot be said that the closure report filed by the police was not taken into consideration by the learned ACMM, Saket Court, Delhi. Learned Senior Counsel also submitted that the complaint filed by respondent No. 2 clearly discloses the commission of cognizable offence by the petitioners and, therefore, the learned ACMM, Saket Court, Delhi has rightly directed registration of the FIR against the accused persons and for investigation of the crime by the SHO, PS Economic Offences Wing, Delhi. Based on these submissions, the learned senior counsel for respondent No. 2 urged that the present petition filed by the petitioners be dismissed with heavy costs. Learned senior counsel for respondent No. 2, in support of his arguments, placed reliance on the following judgments:-

1. [Puneet Jain Vs. SEBI and Another,](#)
2. [State of Haryana and others Vs. Ch. Bhajan Lal and others,](#) ;
3. [State of Orissa and Another Vs. Saroj Kumar Sahoo,](#) ;
4. [State of Bihar and Another Vs. P.P. Sharma, IAS and Another,](#) ;
5. [Sasi Thomas Vs. State and Others,](#) ;
6. [Union of India and others Vs. B.R. Bajaj and others,](#) ;
7. [Satvinder Kaur Vs. State \(Govt. of N.C.T. of Delhi\) and Another,](#) ;
8. [M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar and another,](#) ;
9. Sheela Rani v. State of U.P. & Another, (2005) 13 SCC 409;
10. [Rukmini Narvekar Vs. Vijaya Satardekar and Others,](#) ;
11. [Lalmuni Devi Vs. State of Bihar and Others,](#)
12. Nagpur Steel & Alloys Pvt. Ltd. v. P. Radhakrishna Alias Rajan & Ors., 1997 SCC (Cri.) 1073;
13. [Rajesh Bajaj Vs. State NCT of Delhi and Others,](#) ;

14. [Harnam Singh Vs. Everest Construction Co. and Others, ;](#)
15. [Shakson Belthissor Vs. State of Kerala and Another, ;](#)
16. [Kedar Narayan Parida and Others Vs. State of Orissa and Another, ;](#)
17. [K. Karunakaran Vs. State of Kerala and Another, .](#)

6. I have heard learned counsel for the parties at considerable length and given my thoughtful consideration to the arguments advanced by them. I have also gone through the impugned orders and other documents placed on record by both the parties.

7. Before I deal with the rival contentions raised by the parties, it will be necessary to give brief conspectus of facts of the present case. M/s. Fixwell Pushincords Pvt. Ltd. was a absolute owner of a piece of plot bearing No. 393, situated at Udyog Vihar, Phase III, Dundahera, Gurgaon (Haryana), measuring 4003 sq. meters or thereabout with a constructed area of 30,000 sq. ft. or there about, which was allotted by Haryana State Industrial Development Corporation (HSIDC).

The three directors of the said company had appointed one Mr. Yash Pal Sharma, as their duly constituted Power of Attorney to enter into the said sale transaction for the sale of the said plot and also to deal with various banks and authorities with regard to the loans of the said company and their statutory dues. The negotiations between respondent No. 2 and Attorney of the said company for the sale of the said property took place and during such negotiations, it was revealed by the Attorney of the said company that there were some liabilities which were to be cleared before the said property could be sold to respondent No. 2/complainant. It was also revealed that the said property was lying mortgaged with the Syndicate Bank. There were some outstanding dues of HSIDC, Provident Fund Commissioner, Haryana and the Provident Fund Commissioner, Delhi. After discovery of the said facts, respondent No. 2 made an endeavour to negotiate directly with the Syndicate Bank and workout onetime settlement with the Syndicate Bank so as to get the said property released from the loan of the bank. Respondent No. 2 was duly apprised of the said liabilities of the seller company, and thereafter, he had agreed to purchase the said property for a total sale consideration amount of Rs. 5,50,00,000/-. It was also agreed between the parties that respondent No. 2 shall make initial payment of Rs. 62,00,000/- to the seller company so as to facilitate them to clear their statutory liabilities. Accordingly, an Agreement to Sell dated 30.10.2004 was executed between the parties for sale of the said property in favour of respondent No. 2 and based on the said Agreement to Sell, Sale Deed dated 11.01.2005 was duly executed between the parties so as to transfer the ownership of the said plot in favour of respondent No. 2. Pursuant to the execution of the sale deed, respondent No. 2/complainant was shocked to receive a notice from the Haryana Sales Tax Department thereby raising a demand towards outstanding sales tax dues for an amount of Rs. 1,08,73,605/- in the name of the said seller company. It is also the case of respondent No. 2/complainant that the said property

was already lying attached by the order dated 24.12.1997 passed by the Office of Excise & Tax and this order of attachment was duly served by the department on the Manager of the seller company on 30.12.1998. It is also the case of respondent No. 2/complainant that he had made the entire payment of said outstanding sales tax dues to Haryana Sales Tax Department so as to get the said property free from attachment as the said seller company and its directors never came forward to clear their outstanding liability towards the sales tax dues. As far as respondent No. 2/complainant is concerned, it is alleged that the seller company and its directors have played a fraud upon him by not disclosing the claim of Haryana Sales Tax Department with regard to the outstanding sales tax dues and also the fact that the said property was lying attached vide an order dated 24.12.1997. Placing reliance on Clause 3 and 6 of the sale Deed dated 11.01.2005, it has been pointed out that as per the said clauses, it has been underhandedly stated that the said property was free from all encumbrances, claims, demands, liens, mortgages, decrees, litigations and the vendor has already cleared taxes, dues and demand of the said property after the date of the execution of the Sale Deed. It is also the case of respondent No. 2/complainant that all other outstanding liabilities were disclosed by the said seller company but this liability of the Haryana Sales Tax Department and the order of attachment was deliberately suppressed by the Directors of the said company and in this manner they had played a fraud in cheating the respondent No. 2/complainant. It is also the case of respondent No. 2/complainant that prior to the filing of the complaint before the learned ACMM, Saket Court, Delhi he had filed a complaint before the Crime Branch but they did not take any step to register an FIR. It is also the case of respondent No. 2/complainant that directors of the seller company have executed a general Power of Attorney in favour of Mr. Yash Pal Sharma to take steps to resolve pending sales tax matter and therefore, the accused persons cannot claim that they were not aware of their liabilities towards sales tax dues.

8. On the other hand, the case of the petitioners is that they were not guilty of any kind of concealment or suppression on their part in not disclosing the pending liability of outstanding sales tax dues. It is also the case of the petitioners that in fact they had paid an amount much in excess of their sales tax liability and therefore, they have been disputing the demand raised by the Haryana Sales Tax Department towards the alleged sales tax dues. It is also the case of the petitioners that they had already filed an appeal challenging the order dated 04.09.2012 passed by ETO. The said appeal filed by the petitioners is pending consideration before the Joint Excise & Taxation Commissioner (Appeal), Faridabad. It is also the case of the petitioners that the execution of general Power of Attorney in favour of Mr. Y.P. Sharma, was well known to respondent No. 2 and therefore, he cannot claim that the said recovery of sales tax dues was not within the knowledge of respondent No. 2. It is also the case of the petitioners that the order of the attachment dated 24.12.1997 was never received by them and the same was not within their knowledge at the time of execution of the Agreement to Sell and the Sale Deed. It is also the case of the petitioners that respondent No. 2 had filed three complaints in the year 2005 and a detailed inquiry was conducted by the PS-Economic Offences Wing,

Delhi Police, after summoning the petitioners as well as respondent No. 2 and thereafter, a detailed closure report in the year 2006 was filed by the concerned Investigating Officer with clear opinion that no cognizable offence was made against the petitioners and the nature of the dispute between the parties was merely a civil dispute. It is also the case of the petitioners that without disclosing the details of the earlier complaint before the Economic Offence Wing and also the factum of closure report, respondent No. 2/complainant filed a fresh complaint u/s 200 Cr.P.C. along with an application u/s 156(3) Cr.P.C. after a gap of more than three years when already vide order dated 26.11.2009, the learned ACMM, Saket Court, Delhi had declined the request of respondent No. 2/complainant for registration of FIR against the petitioners or for conducting the investigation into the said complaint. It is also the case of the petitioners that the said order dated 26.11.2009 was challenged by respondent No. 2/complainant before the learned Additional Sessions Judge, Saket Court, Delhi and vide order dated 30.11.2010, the learned ASJ had set aside the order dated 26.11.2009 passed by the learned ACMM and gave a clear direction to the learned ACMM to pass speaking order on the said application of respondent No. 2/complainant u/s 156 (3) Cr.P.C. before proceeding further in the matter. It is also the case of the petitioners that pursuant to the said direction of the learned ASJ, the learned ACMM called for the report from the Economic Offences Wing, Delhi Police and again a detailed report dated 08.08.2011 was filed by the Economic Offences Wing, Delhi Police taking a view that there was no dishonest inducement on the part of the petitioners at the time of the execution of the Sale Deed and no cognizable offence is made out against the petitioners. It is also the case of the petitioners that ignoring the said closure report filed by the Economic Offences Wing, Delhi Police, the learned ACMM in utter alacrity passed the impugned order dated 08.08.2011, thereby directing Economic Offences Wing, Delhi Police to register FIR against the petitioners and investigate the matter. It is also the case of the petitioners that the learned ACMM has brazenly violated the direction given by the learned ASJ by not passing a speaking order and not referring to the said closure report dated 08.08.2011, nor any reasons given as to how the learned ACMM has disagreed with the reasoning of the Economic Offences Wing, Delhi Police in their status report dated 24.07.2012.

9. Before I embark upon the merits of the case, it would be appropriate to discuss the preliminary issue of maintainability of the present revision petition raised by the counsel for the respondent no. 2. As per the learned Senior Advocate for respondent no. 2, this petition has not been filed within a prescribed period of limitation required for filing a Revision petition or an appeal and therefore, the present petition cannot be held maintainable in the eyes of law. It is a settled legal position that there is no prescribed period of limitation under the limitation Act for invoking the inherent powers of this court. Nothing can prevent the High Court from exercising its extraordinary powers u/s 482 Cr.P.C. in imparting justice. Dealing with the inherent powers of this court u/s 482 of Cr.P.C., Hon"ble Apex court has time and again held that where there is an abuse of process of law or any prejudice is caused to either of the parties and the interference of the High Court is absolutely necessary, nothing contained in the statute can limit or affect

the exercise of the inherent powers by the High Court.

10. It is equally true that a party should not remain complacent or reckless while challenging any order of the subordinate court and any unexplained delay or ambivalence on the part of such a party, in the given facts of the case can debar his remedy u/s 482 Cr.P.C. But in any case the ultimate test which must prevail upon the courts is the principle of *ex debito justitiae*. The powers possessed by the High Court u/s 482 Cr.P.C. are very wide and the very plenitude of such powers require great caution in its exercise and the same must be exercised to impart real and substantial justice, for the administration of which alone the Court exists. In a case where the Court is satisfied that there is a great miscarriage of justice or abuse of the process of the Court is writ large on the very face of it or there is a bizarre violation of any statutory provision in passing any order and there is no specific remedy provided under law to challenge such an order or there is a need for immediate intervention to secure the ends of justice, in such extraordinary circumstances, it is but the duty of the Court to interfere in the exercise of inherent powers vested u/s 482 of the Code of Criminal Procedure or in the exercise of extraordinary power of judicial superintendence vested under Article 227 of the Constitution of India.

11. However, intentions of the legislature behind engrafting this special provision in the statute cannot be defeated. The court examining the delay while deciding a petition u/s 482 Cr.P.C. must examine and weigh the propensity of the offence or wrong been done to any party. Here the principles of natural justice would come into play. The interest of justice demands that the court should protect the oppressed and punish the offender. Therefore, if any discrepancy is noticed in the order passed by the lower court, the high court is duty bound to rectify and decipher the error by directing certain necessary steps which would be appropriate for a just decision. The ends of justice are higher than the ends of law and justice must reign supreme. Justice has to be done to all the contending parties and its dispensation by the courts must be based on consideration of the entirety of facts and circumstances of case. A person must invoke the provision of Section 482 Cr.P.C. within a reasonable period of time. The law of limitation prescribes for filing of an appeal within 60 days and revision within 90 days, but what would constitute reasonable period of time would vary from case to case and no straight-jacket formula can be laid down in this regard when remedy under 482 Cr.P.C. is availed and the ultimate parameter is to do justice between the parties and it is for the court to see in the facts of each case whether to invoke such powers, irrespective of the stage of the case. (See: [Puneet Jain Vs. SEBI and Another](#),)

12. In [Gian Singh Vs. State of Punjab and Another](#), , the Hon"ble Apex Court held as under:

23. The Court then observed that the considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the

straitjacket of a rigid formula.

24. A three-Judge Bench of this Court in [Madhu Limaye Vs. The State of Maharashtra](#), , dealt with the invocation of inherent power u/s 482 for quashing interlocutory order even though revision u/s 397(2) of the Code was prohibited. The Court noticed the principles in relation to the exercise of the inherent power of the High Court as under:

- (1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

25. In [Raj Kapoor and Others Vs. State and Others](#), , the Court explained the width and amplitude of the inherent power of the High Court u/s 482 vis-a-vis revisional power u/s 397 as follows:

10...The opening words of Section 482 contradict this contention because nothing of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In Madhu Limaye's case this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution would be to say that the bar provided in Sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal

proceeding initiated illegally, vexatiously or as being without jurisdiction. In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a tertium quid, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.: (SCC p. 556, para 10) .The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.

I am, therefore clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this Court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified.

... 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 cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominantly civil favour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

13. Adverting to the merits of the case, one important fact clearly emerges that respondent No. 2/complainant had set the criminal machinery in motion sometimes in the year 2005 by filing three separate complaints to the Joint CP, DCP and ACP. The complaint to the Joint Commissioner of Police by respondent No. 2 dated 10.10.2005, complaint to the D.C.P. Economic Offence Wing, Delhi Police by respondent No. 2 dated 13.10.2005 and complaint to the ACP by respondent No. 2 dated 26.10.2005. It is also an undeniable fact that a detailed inquiry was conducted by the police and, after such inquiry only, the closure report was filed by the police with the findings that no cognizable offence is made out against the accused persons. In the complaint filed by respondent No. 2 u/s 200 Cr.P.C. along with an application u/s 156(3) Cr.P.C., one even does not find a whisper of these complaints which were earlier filed by respondent No. 2, and nor there is any reference to the closure report filed by the Economic Offence Wing, Delhi Police. In Paragraph 17 of the complaint, the complainant only states that the complaint was filed with the Crime Branch, however, they did not take any action, nor they registered any FIR. There is thus clear suppression on the part of respondent No. 2/complainant in not disclosing the filing of the said complaints and the view taken by the police in recommending closure report before the trial court. This Court also does not find any explanation given by respondent No. 2/complainant for having waited for such a long period of four years from the date of earlier complaints and closure report which were then filed and filing of the said complaint u/s 200 Cr.P.C. along with an application u/s 156(3) Cr.P.C. on 19.11.2009 to be fitting in the given set of circumstances. The said complaint case was taken up by the learned ACMM on 26.11.2009, when the learned ACMM found that no ground is made out to register an FIR against the accused persons, and the matter was fixed for complainant's evidence on 25.05.2010. This order of learned ACMM was challenged by respondent No. 2/complainant in Revision Petition (Crl.) 306/2009. In the Revision Petition respondent No. 2/complainant stated that the said order was a non-speaking order as it did not reflect that the learned ACMM had applied her judicial mind to the averments made in the complaint and in a mechanical manner, a

cryptic one line order was passed thereby dismissing the application of respondent No. 2 u/s 156(3). The learned Revisional Court after hearing both the parties, found considerable merit in the said revision petition filed by respondent No. 2/complainant and by order dated 30.11.2010 remanded the matter back to the learned ACMM to hear the complaint afresh and pass a speaking order on the application u/s 156(3) Cr.P.C. before proceeding further. For better appreciation, it will be appropriate to reproduce Paragraphs 11 and 12 of the order of the Revisional Court dated 30.11.2010 as under:-

11. In the present case, however, it is seen that the Ld. ACMM has passed a non speaking order which does not reflect the reason due to which Ld. ACMM rejected the request u/s. 156(3) Cr.P.C.. It does not say if police report was called for and perused. Petitioner had stated that he had made a complaint to the Crime Branch but FIR was not registered. The Ld. ACMM should have called for the report of the Crime Branch and considered the same and then her order should reflect whether or not she also felt that cognizable offence was not made out prima facie. It does not say whey the request/plea of the petitioner was not accepted by the Ld. Trial Court.

12. In the facts and circumstances of the case, I allow the revision petition. The impugned order dated 26.11.2009 is set aside. File is remanded to the Ld. ACMM to hear the complainant afresh and pass a speaking order on the application u/s 156(3) Cr.P.C. before proceedings further. Petitioners are directed to appear before the Ld. ACMM on 07.12.2010.

(R. Kiran Nath)

ASJ-01 South/New Delhi

30.11.2010.

14. After the said matter was remanded back to the learned ACMM, the learned ACMM vide order dated 07.12.2010 called for the record from the Crime Branch regarding the action, if any, taken by them on the complaint dated 30.09.2005 and the reminder dated 24.07.2009. Thereafter, various dates were fixed for arguments on the said application of the complainant and after final arguments were heard the impugned order dated 08.08.2011 was passed by the learned ACMM. For better appreciation, it will be appropriate to reproduce the relevant extract of the order dated 08.08.2011 as under:-

From the perusal of the record, specially documents of sale, there is no mention of alleged liability of the accused No. 5 vis a vis HSIDC as mentioned in the order dated 13.08.2005. The alleged liability of Rs. 1, 08, 73, 605 was for the period 1985-86 to 1997-98. This period is quite prior to the period of sale of property.

In these circumstances, there prima facie exists ingredients of offence of cheating. The nature of evidence/documents i.e. the official records are such that they are beyond the reach of the complaint and could only be collected by the police officials. In these

circumstances, S.H.O. P.S. E.O.W. is directed to investigate the matter registration for FIR. Copy of the order be given dasti to the Naib Court P.S. EOW for compliance of the order. Status report and consideration on 02.09.2011.

15. The Economic Offence Wing, Delhi Police through their reply dated 08.05.2011, again reiterated their earlier view that there was no dishonest inducement on the part of the alleged company at the time of the execution of the Sale Deed and no cognizable offence is made out against the petitioners the accused persons.

16. Perusal of the impugned order dated 8.8.2011 would clearly reveal that the learned ACMM did not refer to the reply dated 8.8.2011 filed by the Economic Offences Wing Delhi Police and, therefore, it is quite manifest that the learned ACMM failed to take into consideration the reasons given by the Economic Offences Wing in filing the closure report by taking a view that no cognizable offence is made out against the accused persons. It is a trite law that it is incumbent upon the police to register an FIR, if the complaint discloses commission of a cognizable offence. The police machinery is set in motion by the complaint in terms of Section 154 of the Code of Criminal Procedure. u/s 154(1) of the Cr.P.C., every information relating to commission of a cognizable offence shall be reduced into writing by the concerned officer incharge of the police station and if the officer incharge of the police station is satisfied that the complaint whether made orally or reduced in writing discloses commission of a cognizable offence on the part of the accused persons, then he has no option but to reduce the information in writing and then to enter the same in a book to be kept in the police station. Where the officer incharge of the police station refuses to register an FIR in terms of Section 154(1) of the Code, then a person aggrieved can approach the District Head of the Police by sending him the substance of the information in writing and by post and on the receipt of such information if the concerned District Head/DCP/Superintendent of Police is satisfied that such information discloses the commission of a cognizable offence then he shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner as provided by the scheme of Code of Criminal Procedure. After registration of the FIR any officer of the police station, as entrusted with the job of carrying on the investigation, shall proceed with the investigation to find out whether any cognizable offence has been committed by the accused persons or not and for conducting such an investigation no order of the Magistrate having a jurisdiction over the concerned police station is required. u/s 156(3) of the Cr.P.C., any Magistrate as empowered u/s 190 of the Code may order such an investigation, where the Magistrate after going through the contents of the application moved u/s 156(3) of the Cr.P.C. takes a prima facie view that such complaint discloses a commission of cognizable offence. Once such a direction is given by the Magistrate to the police to conduct an investigation, then necessarily such investigation will be conducted by the police after the FIR is registered. After the investigation is carried out by the police, then it will submit a report before the concerned Magistrate u/s 173(1) of the Code. On receiving the police report, the Magistrate may take cognizance of the offence u/s 190(1)(b) of the Code and

straightway issue the process. This he may do irrespective of the view expressed by the police in their report. The police report has no binding effect on the Magistrate, as it is within the judicial discretion of the Magistrate to decide the issue of process even where the police has filed the closure report or the Magistrate may proceed to examine the complainant and the witnesses to be adduced by him after taking cognizance of the offence in terms of Section 202 of the Cr.P.C. and thereafter, may issue the process or proceed u/s 204 of the Code of Criminal Procedure.

17. It is also a settled law that in case where the Magistrate proceeds to take cognizance of the offence despite filing of the closure report u/s 173(1) of the Code, then it is incumbent upon the Magistrate to consider such a report and give brief reasons reflecting his disagreement with the closure report in forming an opinion to take cognizance of the offence regardless of the closure report. However, no such reasons would be necessary where after the investigation, the police report also concludes commission of a cognizable offence on the part of the accused. This legal position stands crystallized in a catena of judgments of the Hon"ble Supreme Court of India.

18. In [Abhinandan Jha and Others Vs. Dinesh Mishra](#), the Hon"ble Apex Court in the following paragraphs while explaining the procedure which a Magistrate is expected to follow held as under:-

13. We are referring to these observations for the purpose of emphasizing that the scheme of Chapter XIV, clearly shows that the formation of an opinion as to whether or not there is a case to place the accused on trial, has been left to the officer incharge of a police station. Bearing in mind these principles referred to above, we have to consider the question that arises for consideration, in this case. The High Courts which have held that the Magistrate has no jurisdiction to call upon the police to file a charge-sheet, under such circumstances, have rested their decision on two principles viz., (a) that there is no express provision in the Code empowering a Magistrate to pass such an order; and (b) such a power, in view of the scheme of Chapter XIV, cannot be inferred-vide [\(Chigurupati\) Venkata Subba Rao and Another Vs. Naraharisetty Anjanayulu](#), Abdul Rahim v. Abdul Muktaadin AIR 1953 Ass 112; [Amar Premanand Vs. The State](#), ; the majority view in [A.K. Roy Vs. State of West Bengal](#), ; and [State of Gujarat Vs. Shah Lakhamshi Umarshi and Another](#), . On the other hand, the High Courts which have recognised such a power, rest their decision again on two grounds viz., (a) when a report is submitted by the police, after investigation, the Magistrate has to deal with it judicially, which will mean that when the report is not accepted, the Magistrate can give suitable directions to the police; and (b) the Magistrate is given supervision over the conduct of investigation by the police, and therefore, such a power can be recognised in the Magistrate-vide [State and Others Vs. Murlidhar Govardhan and Others](#), ; and Ram Nandan v. State.: AIR1966Pat438

14. Though it may be that a report submitted by the police may have to be dealt with, judicially, by a Magistrate, and although the Magistrate may have certain supervisory

powers, nevertheless, we are not inclined to agree with the further view that from these considerations alone it can be said that when the police submit a report that no case has been made out for sending up an accused for trial it is open to the Magistrate to direct the police to file a charge-sheet. But, we may make it clear, that this is not to say that the Magistrate is absolutely powerless, because, as will be indicated later, it is open to him to take cognizance of an offence and proceed, according to law. We do not also find any such power, under s. 173(3), as is sought to be inferred, in some of the decisions cited above. As we have indicated broadly the approach made by the various High Courts in coming to different conclusions, we do not think it necessary to refer to those decisions in detail.

15. It will be seen that the Code, as such, does not use the expression "charge-sheet" or "final report". But it is understood, in the Police Manual containing Rules and Regulations, that a report by Police, filed under s. 170 of the Code, is referred to as a "charge-sheet". But in respect of the reports sent under s. 169, i.e., when there is no sufficient evidence to justify the forwarding of the accused to a Magistrate, it is termed variously in different States, as either "referred charge", "final report", or "Summary".

16. In these two appeals, which are from the State of Bihar, the reports, under s. 169, are referred to as "final report". Now, the question as to what exactly is to be done by a Magistrate, on receiving a report, under s. 173, will have to be considered. That report may be in respect of a case, coming under s. 170. or one coming under s. 169. We have already referred to s. 190, which is the first section in the group of sections headed "Conditions requisite for Initiation of Proceedings." Sub-s. (1), of this section, will cover a report sent, under s. 173. The use of the words "may take cognizance of any offence", in sub-s. (1) of s. 190 in our opinion imports the exercise of a "judicial discretion", and the Magistrate, who receives the report, under s. 173, will have to consider the said report and judicially take a decision, whether or not to take cognizance of the offence. From this it follows that it is not as if that the Magistrate is bound to accept the opinion of the police that there is a case for placing the accused, on trial. It is open to the Magistrate to take the view that the facts disclosed in the report do not make out an offence for taking cognizance or he may take the view that there is no sufficient evidence to justify an accused being put on trial. On either of these grounds, the Magistrate will be perfectly justified in declining to take cognizance of an offence, irrespective of the opinion of the police. On the other hand, if the Magistrate agrees with the report, which is a charge-sheet submitted by the police, no difficulty whatsoever is caused, because he will have full jurisdiction to take cognizance of the offence, under s. 190(1)(b) of the Code. This will be the position, when the report under s. 173, is a charge-sheet.

17. Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under s. 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in question, as a "final report"? Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be

instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under s. 156(3), to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under s. 156(3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence under s. 190(1)(c), notwithstanding the contrary opinion of the police, expressed in the final report.

19. While dealing with somewhat an identical issue, this High Court in the case of [Dr. Narendra Nath Vs. State and Another](#), held in the following paras as under:-

11. As regards the submission about the procedure that the learned MM was expected to follow, the law has been clearly set out by the Supreme Court in the judgments referred to. In Abhinandan Jha the Supreme Court explained what the learned MM is expected to do when a closure report is submitted by the police u/s 173 Cr.P.C. in the following passages:

15. Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, u/s 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in question, as a "final report"? Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not bash.

20. In yet another judgment reported in the case of [Dr. Rajni Paliwala Vs. Dr. D. Mohan and Another](#), in the following paragraphs, this High Court held as under:-

19. A reference was made to the judgment of the three-Judge Bench in [Bhagwant Singh Vs. Commissioner of Police and Another](#), where again the three options open to the court on a receipt of the report u/s 173(2) Cr.P.C. were discussed. Those three options read as under (SCC @ p. 543):

(1) The court may accept the report and drop the proceedings; or

(2) the court may disagree with the report and take cognizance of the offence and issue process if it takes the view that there is sufficient ground for proceeding further; or

(3) the court may direct further investigation to be made by the police.

20. In the instant case, the learned MM was bound in law to apply his mind to report filed by the police, and to opt for any one of the three courses of action available to him in terms of the judgment of the Supreme Court in H.S. Bains and Hemant Dhasmana. However, the learned MM did not do so. He permitted the complainant to withdraw the application u/s 156(3) Cr.P.C. and straightway proceeded to list the case for the complainant's evidence. This course was erroneous. The learned MM was bound to discuss the police report and come to a definite conclusion that it was or was not acceptable and follow the course explained in the above decisions. Can the application u/s 156(3) Cr.P.C. be treated as a complaint?

21. The contention on behalf of the petitioner that once the application u/s 156(3) Cr.P.C. stood withdrawn by the respondent No. 1, no complaint remained before the learned MM does not appear to be the correct position in law. The Full Bench of the Allahabad High Court in Sukhwasi v. State of Uttar Pradesh (supra) referred to the judgment of the Supreme Court in Madhu Bala v. Suresh Kumar (supra), and observed that "this is wrong notion that (when) an application has been moved u/s 156(3) Cr.P.C., the only order (that) can be passed is for registration (of an FIR) in the matter. The Magistrate has got discretion u/s 190 Cr.P.C. to take the cognizance directly or to pass an order that the police to investigate and then take cognizance on the submission of the report u/s 173 Cr.P.C." It was further observed that "it is not possible to hold that where an application is moved before the court only for exercise of power u/s 156(3) Cr.P.C. it will remain an application only and would not be in the nature of a complaint...such an application will not cease to be a complaint nor can the Magistrate refuse to treat it as a complaint even there would be no prayer seeking trial of the known or unknown accused.

22. In the instant case, therefore, the application u/s 156(3) Cr.P.C. could have been treated as a complaint by the learned MM once the learned MM found the police report to be not acceptable for valid reasons. Consequential orders.

21. Applying the aforesaid dicta of law to the facts of the present case, it is quite manifest that the learned ACMM failed to consider the said closure report dated 08.08.2011 filed by the Economic Offences Wing of Delhi Police and has been silent on the closure report but directed the police to investigate the matter and register an FIR against the accused persons. The learned ACMM also failed to properly carry out the directions given by the Superior court i.e. Revisional Court as the order dated 30.11.2010 passed by the Revisional Court gave categorical direction to the Metropolitan Magistrate to pass a speaking order on the application moved by the complainant u/s 156(3) of the Cr.P.C. before proceeding further.

22. As is invincible from the above analysis, in the order dated 30.11.2010, the learned Revisional Court gave a clear reference to the earlier cryptic order passed by the ACMM, which had no whisper about the police report being called for and perused. The said order also deprecates the earlier order passed by the ACMM as the ACMM did not call for the report of the crime branch and nor had he felt the need of considering the same. The

learned Revisional Court also held that the order of the ACMM should have reflected whether or not she felt that prima facie cognizable offence was not made out. The directions of the learned Revisional Court were quite explicit and unambiguous but the learned ACMM failed to carry out the said directions by not referring to the report submitted by the Economic Offences Wing of Delhi Police and nor gave any reasons of his disagreement with the opinion given by the Economic Offences Wing in the said closure report.

23. Having dwelled upon the said facet, without expressing any view on the merits of the case it would be appropriate that the learned Magistrate shall pass a speaking and a well-reasoned order. If the Magistrate finds himself in disagreement with the view taken by the police in the closure report then also his order must reflect a brief reasoning for taking such a distinctive view. As already stated above it is within the judicial discretion of the Magistrate, either to accept the closure report or reject the same as the report of the police has no binding effect on the Magistrate, but the order passed by the Magistrate must show that there is a proper application of judicial mind by the Magistrate.

24. This Court is quite distressed to find out that in the closure report dated 08.08.2011, filed by the police there is no reference to the earlier complaints filed by the complainant nor there is any reference to the earlier closure reports filed by the police. It is equally intriguing to find that even the complainant has not made a categorical reference to the earlier complaints dated 10.10.2005, 13.10.2005, 26.10.2005 filed by him with the police and nor any reference to the view taken by the police on the said complaints. Equally perturbing is the conduct of the petitioner, who despite getting due opportunity before the Revisional Court, yet sought to raise the argument that the petitioner was not heard by the Revisional Court. Any party approaching any Court of law must approach with utmost honesty and disclose correct facts so as to help the Courts in arriving at just and fair decision.

25. In the light of the above discussion, the matter is remanded back to the concerned ACMM, who shall pass a fresh, speaking and reasoned order on the said application moved by the respondent/complainant u/s 156(3) of the Code of Criminal Procedure after taking into consideration the said closure reports. Parties are accordingly directed to appear before learned ACMM on 22.07.2013. It is made clear that nothing said herein above shall tantamount to expression of opinion on the merits of the case. The learned Magistrate will be at liberty to take an independent view in the matter without being influenced by any of the observations made hereinabove. With the above directions, the present petition stands disposed of.