

Anil Thappar and Others Vs State

Court: DELHI HIGH COURT

Date of Decision: Feb. 19, 2016

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 320, Section 482

Penal Code, 1860 (IPC) - Section 120B, Section 120-B, Section 206, Section 406, Section 420

Hon'ble Judges: P.S. Teji, J.

Bench: Single Bench

Advocate: Bansuri Swaraj and Annirudh Sharma, Advocates, for the Appellant; Vinod Diwakar, APP and Afsar Raza, Insp., for the Respondent

Final Decision: Disposed off

Judgement

P.S. Teji, J.

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioners, namely, Sh. Anil Thappar, Sh. Ashok

Thappar, Sh. Shyam Sunder Thappar and M/s. Thappar Oils & Fats Ltd. for quashing of FIR No. 349/2000 dated 22.05.2000, under Sections

406/420/206/120-B IPC registered at Police Station Connaught Place on the basis of the compromise arrived at between the petitioners and Sh.

K.K. Sinha, Sr. Manager, B.O. ARM Branch on behalf of the respondent no. 2, namely, Punjab National Bank, Assets Recovery Management

Branch, Atma Ram House, Tolstoy Marg, New Delhi.

2. Learned Additional Public Prosecutor for respondent-State submitted that the Mr. Vimal Kumar Jain, present in the Court has been identified to

be the Chief Manager, PNB, Rajendra Place, ARMB Branch, New Delhi in the FIR in question by his counsel.

3. The factual matrix of the present case is that the FIR in question was lodged on the allegation that Anil Thapar, Ashok Thapar and Shyam

Thapar being the directors of M/s. Thapar Oils and Fats Ltd. approached the complainant Bank-respondent no. 2 for financial assistance. The

respondent no. 2 sanctioned them various facilities totaling to Rs. 360 lacs. During routine inspection, the respondent no. 2 discovered that the

above mentioned persons have conspired with each other and have fraudulently removed, concealed etc. stocks, finished/semi-finished goods with

the respondent no. 2 and thereby they have prevented the said properties from being taken in execution of the decree or order which they knew is

likely to be passed by the Court of law if a civil suit were to be filed against them by respondent no. 2.

Thereafter, the FIR in question was lodged and the charge sheet was filed by the IO. Thereafter, the matter got compromised between the parties.

4. Mr. Vimal Kumar Jain, the Chief Manager of the respondent No. 2 present in the Court, submitted that the dispute between the parties has

been amicably resolved. The terms of the compromise are as per the order/statement of the parties recorded before the Debts Recovery Tribunal-

II, Delhi on 15.10.2010 in IA No. 880/10. It has been stated that during the pendency of the OA No. 445/2000 there has been a compromise

between the complainant-bank and the petitioners and it has been settled that the complainant-bank is ready to accept a sum of Rs. 32 lacs in full

and final settlement towards the total dues as claimed in the said OA, if and only if the said sum of Rs. 32 lacs is paid by the petitioners within a

period on one year from 03.03.2010. Out of the said amount the petitioners have deposited a sum of Rs. 2 lacs with the complainant-bank as

upfront money at the time of submitting their compromise proposal. The balance amount of Rs. 30 lacs shall be paid to the complainant-bank in the

manner as enunciated in the said order. The petitioners agreed that they have no claim left outstanding against the complainant-bank and that they

withdraw their counter claim filed by them against the complainant- bank. Mr. Vimal Kumar Jain, the Chief Manager of the respondent No. 2

affirmed the contents of the aforesaid settlement. All the disputes and differences have been resolved through mutual consent. Now no dispute with

petitioner survives and so, the proceedings arising out of the FIR in question be brought to an end. Statement of the Sh. Vimal Kumar Jain has

been recorded in this regard in which stated that the respondent no. 2 has entered into a compromise with the petitioners and has settled all the

disputes with the petitioners. He further stated that respondent no. 2 has no objection if the FIR in question is quashed.

5. In *Gian Singh v. State of Punjab*, (2012) 10 SCC 303 Apex Court has recognized the need of amicable resolution of disputes in cases like the

instant one, by observing as under:-

61. 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

proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the

victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the

above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.

6. The aforesaid dictum stands reiterated by the Apex Court in a recent judgment in Narinder Singh v. State of Punjab , (2014) 6 SCC 466. The

relevant observations of the Apex Court in Narinder Singh (Supra) are as under:-

29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving

adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement

and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences

under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings

even in those cases which are not compoundable, where the 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.

7. The inherent powers of the High Court ought to be exercised to prevent the abuse of process of law and to secure the ends of justice. The

respondent no. 2 agreed to the quashing of the FIR in question. As the matter has been settled and compromised amicably, so, there would be an

extraordinary delay in the process of law if the legal proceedings between the parties are carried on. So, this Court is of the considered opinion

that this is a fit case to invoke the jurisdiction under Section 482 Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice.

8. The incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with the situation in the absence of express provision of law to

secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process of law

is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of

the legal process in the delivery of justice. Whereas, the inherent power is not to be exercised to circumvent the express provisions of law.

9. It is settled law that the inherent power of the High Court under Section 482 Cr.P.C. should be used sparingly. The Hon"ble Apex Court in the

case of State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors. and in the case of Inder Singh Goswami v. State of Uttaranchal []

has observed that powers under Section 482 Cr.P.C. must be exercised sparingly, carefully and with great caution. Only when the Court comes to

the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court

would quash the proceedings.

10. It is a well settled law that where the High Court is convinced that the offences are entirely personal in nature and therefore do not affect public

peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure

ends of justice, it should not hesitate to quash them. In such cases, pursuing prosecution would be waste of time and energy. Non-compoundable

offences are basically an obstruction in entering into compromise. In certain cases, the main offence is compoundable but the connected offences

are not. In the case of B.S. Joshi and others v. State of Haryana and another , 2003 (4) SCC 675 the Hon"ble Apex Court observed that even

though the provisions of Section 320 Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers

under Section 482 Cr.P.C. The Hon"ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes

necessary, section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon"ble Apex Court justified the

exercise of powers under Section 482 Cr.P.C. to quash the proceedings to secure the ends of justice in view of the special facts and

circumstances of the case, even where the offences were non- compoundable.

In the light of the aforesaid, this Court is of the view that notwithstanding the fact that the offences under Sections 206/120B IPC are non-

compoundable offences, there should be no impediment in quashing the FIR under these sections, if the Court is otherwise satisfied that the facts

and circumstances of the case so warrant.

11. In the facts and circumstances of this case and in view of statement made by the respondent No. 2, the FIR in question warrants to be put to

an end and proceedings emanating thereupon need to be quashed.

12. Accordingly, this petition is allowed and FIR No. 349/2000 dated 22.05.2000, under Sections 406/420/206/120-B IPC registered at Police

Station Connaught Place and the proceedings emanating therefrom are quashed against the petitioners.

13. This petition is accordingly disposed of.