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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17.05.2024

\+ **W.P.(CRL) 969/2024**

SHAN MIYAN CHAUDHARY AND ORS

..... Petitioners

Through: Ms.Chitra Goswami, Adv.

versus

STATE(NCT OF DELHI) & ANR.

..... Respondents

Through: Mr.Sanjay Lao, SC (Crl.) with Mr.Priyam Agarwal, Mr.Shivesh Kaushik and Mr.Abhinayar Kr. Arya, Advs. with Insp. Rakesh Kumar and SI Rajveer
Mr.Krishan Kumar, Mr.Shivam Bedi and Ms.Gargi Singh, Advs. for R-2

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for quashing of FIR No.0411/2022 dated 18.06.2022 registered at Police Station: Neb Sarai, Delhi for offence under Sections 420/467/468/47l/120B of the Indian Penal Code, 1860 (in short, 'IPC'), along with all other

proceedings arising therefrom, on the basis of the settlement agreement dated 05.03.2024 between petitioners and respondent no.2.

Brief Facts:

2. The above FIR has been registered based on the complaint of the respondent no.2 stating that he is a businessman by profession and has been running a firm under the name and style of 'R.K. Khanna & Co.' at Chandni Chowk, Delhi, and is engaged in the business of ading of clothes. The petitioners in connivance and in collusion with each other impersonated themselves as agents/employees of Life Insurance Corporation (in short, 'LIC') and other private financers who facilitate and provide loans from LIC and other private financial institutions. The respondent no.2 was known to one Mr. Jatin, who was earlier also instrumental in providing and facilitating a loan facility to the respondent no.2. He introduced the respondent no.2 to the petitioner no.1 by representing that the petitioner no.1 facilitates processing of loan facility from the LIC. Thereafter, the petitioner no.1 offered to arrange for a loan of Rs. 2 Crores from the LIC for the respondent no.2 in the month of August, 2019. As the respondent no.2 was in need of finance to expand his business activities, he fell for the trap of the petitioners.

3. The petitioner no.1 got certain documents signed from the respondent no.2 representing them to be required in relation to the loan from the LIC. He also obtained personal documents from the respondent no. 2, including the Income Tax Returns, etc..

4. He then introduced the petitioner no.2 to the respondent no.2 as

an official valuer appointed by the LIC to ascertain the financial status of the respondent no.2. They later informed the respondent no.2 that a loan has been sanctioned by the LIC in favour of respondent no.2 and showed him a mail dated 29.08.2019 which was addressed to the respondent no.2 stating that the loan amount of Rs.2 Crores has been sanctioned by the LIC in the name of the respondent no.2. The petitioners, thereafter, took an amount of Rs.2,10,000/- from the respondent no.2 in cash on different dates commencing from 29.07.2019, claiming that the said amount was towards logging, processing charges, surveyor fees, etc., for facilitating the loan.

5. Thereafter, they introduced the petitioner no.3 to the respondent no.2 as the Credit Manager of the LIC to confirm the sanction of the loan amount in favour of the respondent no.2.

6. When in spite of repeated follow-ups by the respondent no.2, the loan amount was not disbursed, as represented and promised by the petitioners, the respondent no.2 requested for the refund of the amount of Rs.2,10,000/- taken from him by the petitioners. The petitioner no.1 issued a cheque for the return of the said amount, however, the said cheque was dishonoured on presentation.

7. He then informed the respondent no.2 that he has spoken with one private financer who is providing loan facilities to the individuals @ 8% p.a. and he would get respondent no.2 the loan.

8. The petitioner no.1 then introduced the respondent no.2 to the petitioner no.4 as the Manager in a private financial institution, namely, Bajaj Finance, and assured him that he would get him a loan of Rs.2.5 Crores. The respondent no.2 again fell for this trap and

signed certain documents at the instance of the petitioners, and also gave an amount of around Rs.12 Lacs to the petitioners towards filing charges, processing fee, stamp paper, and EMI from 24.04.2020 till 01.05.2020. This amount was again paid in cash by the respondent no.2 to petitioners.

9. Again, in spite of repeated follow-ups, the loan was not disbursed to the respondent no.2.

10. The petitioners again came up with a fabricated story that the financial institution, that was supposed to disburse the said loan, has changed its policies for grant of loan only in favour of the borrowers who would mortgage their immovable property equivalent to the amount of loan.

11. There are further allegations made in the FIR on the same lines and eventually the respondent no.2 states that he had been cheated of more than Rs.51 Lacs by the petitioners in the entire process.

Present petition:

12. As noted hereinabove, the present petition has been filed on the basis of the settlement dated 05.03.2024 arrived at between the petitioners and the respondent no.2 before the Delhi High Court Mediation and Conciliation Centre, where they were referred pursuant to their request during the course of hearing on the applications filed by the petitioner no. 1 and 2 herein for seeking anticipatory bail, being Bail Appln. 2978/2023 and 3503/2023, respectively. In terms of the settlement, the petitioners undertook to pay a sum of Rs.51,60,000/- to the respondent no.2.

13. This petition was first listed before this Court on 22.03.2024, when the learned counsel for the petitioners handed over two Demand Drafts totalling to Rs.9.50 Lacs to the respondent no.2 as a full and final settlement of the claim amount. While the respondent no.2 expressed his no objection on the FIR No.0411/2022 being quashed, the same was opposed by the learned Additional Standing Counsel (Crl.) appearing for the respondent no.1, contending that during the course of the investigation, it has been found that similar *modus operandi* has been adopted by the petitioners not only to defraud the respondent no.2 but also others and two FIRs in this regard had also been registered against the petitioners in Ghaziabad, Uttar Pradesh. He submits that on investigation, it was also found that the petitioners forged a letterhead of the LIC in order to gain the confidence of the complainant/respondent no.2.

14. On the request of the learned counsel for the petitioners, the petition was, thereafter, adjourned for the petitioners to make further submissions.

Submissions by the learned counsel for the petitioners:

15. The learned counsel for the petitioners has placed reliance on the judgment of the Supreme Court in ***Nikhil Merchant v. Central Bureau of Investigation & Anr.***, (2008) 9 SCC 677, and judgments of this Court in ***Himanshu Dawar v. State & Anr.***, 2014 SCC OnLine Del 7585, and ***Punish Jindal v. State & Ors.***, 2008 SCC OnLine Del 453 to buttress her submission that once the respondent no.2 has expressed his no objection to the quashing of the FIR, no useful

purpose would be served in continuing with the same. She submits that where the civil dispute is settled, the continuation of the FIR should not be allowed and it should be quashed.

Submissions by the learned Additional Standing Counsel (Crl.):

16. The learned Additional Standing Counsel (Crl.) opposed the petition by submitting that, in the present case, the petitioners are allegedly guilty of impersonating as LIC officer for cheating the respondent no.2. He submits that this is an offence against the society and the State, and merely because the respondent no.2 has settled the dispute by receiving his amount back, the FIR cannot be quashed. He submits that, in the present case, the allegations and *prima facie* investigation lead to a case under Section 467 of the IPC being made out against the petitioners, that would be punishable with imprisonment which can be up to life imprisonment. He further submits that, therefore, in the present case, the FIR cannot be quashed merely on the basis of the settlement.

Analysis and Findings:

17. I have considered the submissions made by the learned counsels for the parties.

18. Though it cannot be disputed that the petitioners have settled their disputes with respondent no.2, however, the question still remains as to whether this Court should exercise its power under Section 482 of the Cr.P.C. to quash the FIR merely on the basis of the settlement arrived at between the parties through the Mediation Centre

attached to this Court.

19. It is pertinent to mention that the petition has not been filed to quash a private complaint case but an FIR which has been lodged against the petitioners. As stated by the learned Additional Standing Counsel, *prima facie* material has been found against the petitioners to pursue the FIR further, including of them having forged the letter-head of LIC to gain the confidence of the respondent no. 2. The petitioners are also accused in two other FIRs where they are alleged to have followed the same *modus operendi*.

20. In ***Narinder Singh & Ors. v. State of Punjab & Anr.***, (2014) 6 SCC 466, the Supreme Court, while considering the issue as to whether the FIR can be quashed on the basis of a settlement, has laid down the following parameters which are to be applied:

> *"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:*
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> "*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.

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/delicate 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."*

21. It is important to note that the Supreme Court in ***State of Maharashtra v. Vikram Anantrai Doshi & Ors.***, (2014) 15 SCC 29 has ruled that in a case where a wrong or crime has been committed against the society and its interests at large, the Court cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or allow the accused persons to invoke the jurisdiction under Article 226 of the Constitution of India or under Section 482 of the Cr.P.C. and quash the proceeding. It was held as under:

> *"26. We are in respectful agreement with the aforesaid view. Be it stated, that availing of money from a nationalised bank in the manner, as alleged by the investigating agency, vividly exposits fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the charge-sheet cannot be put in the compartment of an individual or personal*

wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kinds of benefits it cannot be regarded as a case having overwhelmingly and predominatingly civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skilfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no dues certificate" and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kinds of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The Court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge that comes to his aid

> *and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinise the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order [Vikram Anantrai Doshi v. State of Maharashtra, Criminal Application No. 2239 of 2009, order dated 22-4-2010 (Bom)] of the High Court is wholly indefensible."*

22. Applying the above standard and principles to the facts of the present case, in my view, the petitioners have not been able to make out a case for quashing of the FIR merely on the basis of the settlement. The charges alleged against the petitioners are rather grave and not confined only to the respondent no.2. The act of the petitioners affect not only the respondent no. 2, but also the society as a whole and the State, as the petitioners are alleged to have impersonated as officers of the LIC and fabricated its letter-head. It also needs to be investigated if such *modus operendi* has been adopted by the petitioners to defraud others.

23. Accordingly, I find no merit in the present petition. The same is dismissed.

24. Needless to say, any observation made in this Order shall not be

considered as an expression or opinion on the merits of the case or the investigation.

NAVIN CHAWLA, J

MAY 17, 2024/ns/***VS***

Click here to check corrigendum, if any