
(2007) 11 DEL CK 0218

In the Delhi High Court

Case No : Criminal M.C. No's. 4290-91 of 2006

Anil Kumar and Another

APPELLANT

Vs

State of NCT of Delhi and Another

RESPONDENT

Date of Decision : 22-11-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 320, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2007) 11 DEL CK 0218

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Kamlesh Sabharwal, for the Appellant; Sanjay Lao, APP and Jatan Singh, for the Respondent

Final Decision : Allowed

Judgement

P.K. Bhasin, J.—This petition u/s 482 Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") has been filed for quashing of FIR No. 119/2002 for the offences under Sections 420/406 of Indian Penal Code ("I.P.C." in short), registered at Police Station Mukherjee Nagar on 13.03.2002.

2. The relevant facts necessary for the disposal of this petition are that the respondent no. 2, a Company carrying on the business of financing Motor Vehicles, filed a complaint under Sections 200/202 of Cr.P.C. in the Court of Metropolitan Magistrate for the offences under Sections 420/406 of I.P.C. The learned Metropolitan Magistrate in exercise of its powers conferred upon it u/s 156(3) Cr.P.C. vide its order dated 08.03.2002 directed the police to register an FIR and investigate the matter. Pursuant thereto FIR no. 119/2002 was registered by the police but till date no charge sheet appears to have been filed in the Court.

3. It was alleged by the complainant (respondent no. 2 herein) in its complaint that it had entered into a hire purchase agreement while financing one Truck to M/s Shree Sanmati Rice Ltd. Seventeen monthly Installments were fixed between

the parties for the loan amount sanctioned by the complainant company and petitioner no. 2 herein was the guarantor for the re-payment of the loan amount. However the borrower defaulted in paying the monthly Installments and even the financed vehicle was not given back to the complainant. So the complainant lodged a complaint with the police as well as filed a complaint in the Court. It was further alleged in the complaint that the complainant while trying to get the repossession of the financed vehicle came to know that it had been dismantled by the accused and they had sold it off to someone else against the terms of the agreement.

4. The police was still investigating the matter when the parties reached an amicable settlement and the payment due to the respondent no. 2-complainant with respect to the loan transaction was allowed to be made in Installments.

5. After clearing the dues of the complaint-company the petitioners preferred the present petition for quashing of the FIR in view of settlement arrived with the complainant and clearance of the loan amount. The petitioners in support of this petition placed reliance upon one judgment of the Apex Court in B.S. Joshi and Ors. v. State of Haryana 2003 (3) SC 189 , and one judgment of this Court in Gurcharan Singh Vs. State, .

6. Notice of this petition was given to the State as well as respondent no. 2-complainant. On 27.09.2007 Mr. Jatan Singh, advocate, appeared for respondent no. 2 and affirmed that the dispute had been amicably resolved and so the complainant was no more interested in pursuing its complaint based on which the police had registered an FIR and he supported the prayer of the petitioners for quashing of the FIR.

7. Learned APP for the State, however, opposed quashing of the FIR on the ground that offence u/s 406 of I.P.C. is not compoundable u/s 320 Cr.P.C. and so if this offence is permitted to be compounded that would amount to bypassing the provision so f Section 320 Cr.P.C. which should not be done by this Court by exercising the inherent jurisdiction vested in it u/s 482 Cr.P.C.

8. It is now well settled by many judgments of the Hon''ble Supreme Court that FIRs even in respect of those offences which are not compoundable u/s 320 Cr.P.C. can be quashed as also the criminal proceedings emanating there from if it is felt while dealing with a quashing petition u/s 482 Cr.P.C. that it would secure the ends of justice if the FIR and criminal proceedings arising there from are quashed and continuation of the criminal proceedings would amount to abuse of the process of law. The judgment in B.S. Joshi's case (supra), relied upon by the learned Counsel for the petitioners is one of such judgments wherein it has been so held by the Hon''ble Supreme Court. It is significant to note that one of the offences in that case was also u/s 406 I.P.C. but still the criminal proceedings were quashed because of the compromise between the complainant side and the accused persons. In the present case, the FIR against the accused came to be registered primarily because of their failure to repay the loan amount which the

complainant had disbursed for purchase of some vehicle and in respect of which transaction a hire purchase agreement was executed between the complainant Company and the borrower. Since the complainant has received back the loan amount from the accused it would secure the ends of justice if the FIR of the present case is quashed and if the police is permitted to go on with the investigation that would amount to abuse of the process of law. Under almost similar circumstances, a learned Single Judge of this Court has in a recent case decided on 30.11.2006 reported as G. Udayan Dravid and Others Vs. State and Others, had quashed the FIR under Sections 406/420/120B I.P.C. relying upon the settlement arrived at between the complainant bank and the borrower to whom money had been advanced for purchase of some vehicles. It was observed in that judgment that since no public money was involved in the transaction between the parties and the parties had compromised the matter the FIR deserved to be quashed. In an earlier decision also of a Single Judge Bench of this Court reported as 2006 (1) JCC 371 D.C. Singham v. State and Anr. FIR under Sections 420/406 I.P.C. as well as the criminal proceedings emanating there from had been quashed because of the compromise arrived at between the complainant and the accused of that case.

9. In view of the foregoing, I allow this petition and consequently FIR no. 119/2002 under Sections 420/406 I.P.C. registered at Mukherjee Nagar Police Station on 13.03.2002 stands quashed.