

(2018) 03 DEL CK 0125
In the Delhi High Court
Case No : CRL.M.C. 3232 Of 2008

Brijesh Dubey

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 16-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 452, 506, 34
Criminal Procedure Code — Section 200

Citation : (2018) 03 DEL CK 0125

Hon'ble Judges : SANEEV SACHDEVA

Bench : Single Bench

Advocate : Mr. Arvind Dua, Mr. Akshai Malik, Mr. Deepak Gandhi, Mr. Dhruv Gandhi, Mr. Arhum Sayeed

Final Decision : Allowed

Judgement

Crl.M.A.4362/2017 (for recalling the order dated 31.10.2008)

1.This is an application on behalf of the respondent No.2 seeking recall of order dated 31.10.2008, passed by this Court, whereby the FIR

No.238/2002 under Sections 452/506/34 IPC, Police Station Paschim Vihar has been quashed based on a compromise.

2.The subject FIR was registered on a complaint by the respondent No.2 on 31.05.2002. During the pendency of the trial, the parties had approached

the Trial Court for referring the matter to the Lok Adalat on the premise that there was a possibility of a settlement.

3.Pending the proceedings before the Lok Adalat, parties entered into a settlement and a document was executed by the petitioner on 21.04.2007,

wherein, it is written that in the year 2002, there was a fight between the petitioner and the respondent No.2 with regard to some issue. It is also

recorded in the said note by the petitioner that now he has no dispute with the respondent No.2. He has further confirmed that after the said date he will not fight with the respondent No.2 and that he treats the respondent No.2 as his elder brother.

4.It is the case of the applicant/respondent No.2 that since the petitioner had executed the said writing, the respondent No.2 consented to the quashing of the FIR, which was registered on his complaint. The applicant/respondent No.2 contends that when the settlement took place between the parties and the applicant appeared before this court in this petition, he was not informed or made aware that there was a complaint case filed by the petitioner under section Cr P C, which were pending.

5.It is contended that the petitioner had filed a complaint against the respondent No.2 under Section 200 of the Criminal Procedure Code on 26.07.2005 alleging an assault by the respondent No.2 and two of his employees. It is contended that till the time of the settlement or passing of the order quashing of the subject FIR, the respondent No.2 was not aware of the pendency of the said complaint. It is contended that the respondent No.2 had settled with the petitioner on the understanding that all disputes between the parties would be amicably resolved and they were not be relegated to further litigation in Court.

6.Learned counsel for the applicant/respondent No.2 contends that it is only after the subject FIR was quashed that the respondent No.2 was summoned in the complaint case filed by the petitioner.

7.It is submitted that the petitioner has played a fraud not only on the respondent No.2 but also on the Court thereby giving an impression that all disputes between the parties are being settled. Whereas, the petitioner clandestinely continued to prosecute his complaint against respondent No.2 and misled him into agreeing to quashing of the subject FIR.

8.Learned counsel for respondent No.2 further submits that since the petitioner could not prove the allegations in his complaint, the subject complaint has been dismissed by order dated 15.11.2017.

9.Learned counsel for the respondent No.2, in these circumstances, submits that respondent No.2, on account of concealment and misrepresentation, was misled into settling with the petitioner and consenting to the quashing of the subject FIR. It is prayed that the order be recalled and the subject

FIR be revived and the respondent No.2 be permitted to prosecute the same in accordance with law.

10.Learned counsel for the petitioner disputes the contentions of the respondent No.2 and submits that settlement was only with regard to the subject

FIR and there was no settlement between the petitioner and the respondent No.2 with regard to other disputes. Learned counsel for the petitioner

submits that the Settlement Letter dated 21.04.2007 was executed by the petitioner at the demand, insistence and request of the respondent No.2 and

he had only settled the disputes qua the subject FIR and had not settled the disputes qua the complaint filed by him. It is further contended that the

applicant/respondent No.2 approached the petitioner and requested him to enter into the said compromise to save his own skin from being implicated in

future by the Court for lodging a false complaint against the petitioner as there was all likelihood of the present petitioner of being acquitted of the said

offence.

11.Learned counsel for the petitioner submits that the petitioner has already filed an appeal, impugning an order dated 15.11.2017, dismissing his

complaint and the appeal is pending.

12.Learned counsel for the respondent No.2 submits that they have not received any notice of the appeal.

13.During arguments, learned counsel for the petitioner now submits that, in fact, the petitioner was also scared and petitioner executed the writing

dated 21.04.2007 at the specific request/insistence of the applicant/respondent No.2 as the petitioner was afraid that the petitioner would be trapped

and lodged in false cases as had been done in the past and would be further forced to work for his unlawful smuggling activities.

14.Despite learned counsel for the petitioner being repeatedly asked as to whether there is anything on record to show that the applicant/respondent

No. 2 was aware of the pendency of the complaint between the period of the filing of the complaint, i.e. 26.07.2005 and passing of the order dated

31.10.2008, learned counsel for the petitioner took over 35 minutes to make submissions and referred to everything except to answering the said

question. Learned Counsel for the petitioner has not been able to point out to anything on the record to show that the applicant/respondent No. 2 was

aware of pendency of the complaint at the time when he appeared before this

Court and agreed to quashing of the subject FIR.

15.It is not in dispute that the petitioner executed the document dated 21.04.2007. The explanation being given by the petitioner to the said document is

that the respondent No.2, who was the complainant in the subject FIR, was afraid that if the FIR was taken to its logical conclusion, the petitioner

would be exonerated and the respondent No.2 would be prosecuted and the further contention that the petitioner also wanted to save himself as there

is a likelihood of the petitioner being trapped in false cases and there was an ulterior motive of the respondent to coerce and influence the petitioner to

work for the respondent No.2 in smuggling and unlawful business activities.

16.Nothing has been brought on record to show that the petitioner has been falsely implicated in any other FIR or proceedings at the behest of the

respondent No.2. The argument of the learned counsel for the petitioner that the respondent No.2, who is the complainant in the subject FIR, to save

himself, had entered into the compromise, does not seem to reason at all. It does not appear to be logical that the respondent, who is the complainant in

the FIR where criminal prosecution of the petitioner is pending, would ask the petitioner to give a letter, which is stated to be an apology letter as he

was afraid of being prosecuted in future. If such a situation was there then an apology letter would have been written by the respondent No.2

apologising to the petitioner for implicating him in a false complaint.

17.For the purpose of completeness, we may also refer to writing of 21.04.2007, which reads as under.

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18.Perusal of the writing executed by the petitioner on 21.04.2007 shows that the petitioner has agreed that, as on the said date, the petitioner has no

surviving dispute with the respondent No.2 and henceforth he shall not fight with him. It is further recorded that the petitioner gives respect to

respondent No.2 as his elder brother. Nowhere in the said writing is it stated that

the said settlement is restricted only to the subject FIR and no other disputes on the contrary it confirms that all disputes have been resolved.

19. Even in the order dated 31.10.2008, this Court has noticed that the parties have compromised their disputes and the FIR had been quashed in the interest of the parties and keeping peace and harmony between them and to avoid further such incidents inter se the parties.

20. The Petitioner has reneged on his own writing dated 21.04.2007 consequent to which the subject FIR was consented to be quashed by Respondent

No. 2. Since the petitioner himself has breached the said understanding, in my view, the entire compromise between the petitioner and the respondent

No.2 is vitiated.

21. It is a settled proposition of law that the fraud vitiates everything. The petitioner did not inform respondent No.2 or this Court about the pendency of

the complaint filed by the petitioner against the respondent No.2 and the intention of the petitioner to continue to prosecute the same even after the

subject FIR is quashed based on the settlement. Even today, the petitioner was asked as to whether he wishes to put a quietus to the entire disputes, to

which the answer was in the negative, which indicates that the petitioner is willing to prosecute his complaint filed against the respondent No.2. It

would be a very unfair and an inequitable to permit one of the parties to continue prosecution based on a settlement and to force the other party to be

bound by the settlement and withdraw his complaint.

22. In view of the above, the application is allowed. The order dated 31.10.2008, quashing the subject FIR, is recalled. The subject FIR is restored to

the file of the Trial Court. The Trial Court shall proceed with the trial in accordance with law.

23. List before the Trial Court for appropriate orders and issuance of consequential directions on 06.04.2018.

24. Order dasti under the signatures of the Court Master.