

(2012) 12 DEL CK 0186

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 1734 of 2012

VXL Realtors Pvt. Ltd. and Another

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 320, 482
Penal Code, 1860 (IPC) — Section 420, 468, 471

Citation : (2013) 1 JCC 181

Hon'ble Judges : Pratibha Rani, J

Bench : Single Bench

Advocate : Ramesh Gupta, in structed by Mr. Madhav Khurana, for the Appellant; Rajesh Mahajan, ASC for State/R-1, Mr. J.M. Kalia and Ms. Bhawna Garg, Advocates for R-2/complainant, for the Respondent

Judgement

Pratibha Rani, J.

Crl. M.A. No. 19774/2012 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P. (Crl.) No. 1734/2012 & Crl. M.A. No. 19775/2012

1. The present writ petition has been filed by the petitioners under Article 226 of Constitution of India, read with Section 482 of the Code of

Criminal Procedure seeking quashing of FIR No. 286/2011, under Sections 420 /468 /471 IPC, PS Saket, Delhi and other proceedings arising

therefrom. Briefly stating, the facts of the present case are that on 30.04.2009, the petitioner No. 1 availed a loan of Rs. 4,75,00,000/- from

respondent No. 2 against property i.e. VXL Millennium Mall (Cosmic Business

School), Sector-6, Vasundhara, Ghaziabad vide loan agreement.

Thereafter on 07.02.2011, Mr. H.S. Duggal, who had given a personal guarantee at the time of grant of loan by respondent No. 2, filed a suit

bearing Civil Suit No. 300/2011 for Declaration and Injunction before the High Court alleging therein that the signatures on various documents

submitted at the time of loan particularly on the personal guarantee, were not his and were forged one. On 28.02.2011, the said civil suit was

withdrawn by Mr. H.S. Duggal

2. Thereafter on 10.00.2011 respondent No. 2 filed a complaint against the petitioner No. 1 and other officers of the company with Saket police

station. When no action was taken on the said complaint, respondent No. 2 filed a complaint case alongwith an application u/s 156(3) CrPC

before the Court in which the learned MM directed the police to register the FIR. Consequently FIR No. 286/2011 u/s 420 /468 /471 IPC was

registered at PS Saket.

3. On 27.09.2012 Mr. H.S. Duggal filed another suit i.e. CS (OS) No. 2427/2011 before this Court against respondent No. 2.

4. During the pendency of above litigations, the parties arrived at an amicable settlement on 16.07.2012 which was reduced into writing vide

Memorandum of Understanding, copy of which is annexed with petition as Annexure-P3.

5. It has been stated that both the parties have arrived at an amicable settlement in terms of MOU, copy of which is placed on record as

Annexure-P3, out of their own sweet will, without any pressure and force from any corner and complainant/respondent No. 2 does not wish to

pursue the complaint against the petitioners any further and wants that the said FIR and all proceedings emanating therefrom may be quashed.

6. Offences punishable under Sections 468 /471 IPC are non-compoundable offences. In the latest decision in the case of Gian Singh Vs. State of

Punjab and Another, , the three Judges Bench of the Supreme Court dealing with the issue of quashing of FIR has observed as under:

57. The position that emerges from the above discussion can be summarised thus; the power of the High Court in quashing a criminal proceeding

or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the

offences u/s 320 of the Code. 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 or quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly 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.

6A. Learned counsel for the petitioners submits that the matter in dispute has been amicably settled and no purpose would be served in

prosecuting the petitioners, therefore, the FIR may be quashed.

7. Learned counsel for the respondent No. 2/complainant submits that the complainant is not interested in prosecuting the petitioners and the FIR

in question and all proceedings emanating therefrom may be quashed.

7A. On behalf of the State learned APP submits that currently the trend emerging is to initiate criminal proceedings to pressurize the other party to

make the payment/settle the dispute in order to avoid arrest and prosecution. Thus, the complainant party is able to get the recovery effected

without filing any civil suit or paying any court fee and in fact execution takes place on a non-existent decree so some cost must be imposed on the

parties for wasting the precious time of the Court and using the State machinery virtually as a recovery agency.

8. On behalf of the complainant and petitioners, it is submitted that they are ready to contribute the amount, considered reasonable by the Court,

for the purpose of charity and benefit of that strata of society needing such help.

9. In view of the aforesaid amicable settlement arrived at between the parties. I am of the considered view that no useful purpose would be served

by continuing the criminal proceedings against the petitioners, which will only be an exercise in futile and wastage of precious time of the Court.

10. Accordingly, the petition is allowed and HR No. 286/2011, under Sections 420/468/471 IPC, PS Saket, Delhi and all the proceedings arising

therefrom are hereby quashed.

11. It is directed that a cost of Rs. 1 Lac by the petitioners and a cost of Rs. 50,000/- by the respondent no. 2/complainant be deposited with the

Army Central Welfare Fund"" at Director, Accounts Section. Room No. 281B, Ceremonial and Welfare Directorate, Adjutant General's Branch

South Block, Integrated HQ of MOD (Army), New Delhi, within two weeks from today and proof thereof shall be placed on record.

12. A copy of this order be sent to the Director Account Section, Room No. 281B, Ceremonial and Welfare Directorate, Adjutant General's

Branch South Block, Integrated HQ of MOD (Army), New Delhi for information. Order dasti.