

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

% **Reserved on : 21.02.2022**
Pronounced on : 12.04.2022

+ **CRL. M.C. 1741/2021**

SUNIL TOMAR

..... Petitioner

Through: Mr. Abhimanue Shrestha, Adv.

Petitioner in person.

versus

THE STATE OF NCT OF DELHI & ANR

..... Respondent

Through: Ms. Rajni Gupta, APP for the State.

R-2 in person.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 482 Cr.P.C. for quashing of FIR No. 549/2016, under Sections 406/420/34 IPC, registered at Police Station Dwarka, South West District, Delhi, and all proceedings emanating therefrom.
2. In brief the facts of the case are that the instant case was registered on the complaint of Sh. Satyender Singh (Respondent No. 2 herein) S/o Sh.

Sukhbir Singh R/o 2B/182, Awas Vikas Colony Baraut, District Baghpat U.P, filed against Sunil Dev, Sunil Tomar (Petitioner herein) and Sunil Sharma. In the said complaint it is alleged that accused No. 2 is an old friend and well aware about financial position of the complainant. In August, 2013 accused No. 2 hatched a criminal conspiracy with accused No. 1 and 3 to cheat the complainant and accused No. 1 showed him a villa bearing No. E 100, Raman Vihar Society which was allotted in name of accused No. 2 for a total consideration of Rs. 2.33 Crores. Out of the said amount, complainant had paid Rs. 1,85,70,000/- (Rs. 1.25 Crores in cash to accused No. 1 and Rs. 64 Lacs to accused No. 2 by cheque). The said amount was misappropriated by accused No.1 and 2 and the deal was also not finalized. Thereafter, the instant FIR No. 549/2016, under Sections 406/420/34 IPC, registered at Police Station Dwarka, South West District, Delhi was lodged.

3. It is submitted by the learned counsel for the petitioner that during the pendency of the trial, the parties have settled the matter amicably in terms of the MOU/Settlement Deed dated 23.07.2021. Copy of the said settlement is placed on record.
4. Ld. counsel for the petitioner submitted that there are no disputes, claims or grievances that now remain pending between the petitioner and the respondent No. 2 and that disputes between the petitioner and the respondent No. 2 are of a private nature, and as they have been amicably settled, the FIR dated 21.10.2016 against the petitioner and all consequential proceedings emanating therefrom be quashed.

5. Counsel for the petitioner and respondent no.2 were present in Court and they have been identified by the IO. I have interacted with the parties and they submitted that they have settled their disputes. Respondent No.2 admits that he has settled the matter amicably with the petitioner. He further submits that the settlement/compromise has taken place voluntarily, without any force, pressure or coercion. Respondent No.2 submitted that nothing remains to be adjudicated further between them and he has no objection if the FIR in question is quashed qua the petitioner.
6. Learned APP for the State submitted that for the non-cooperation of complainant/ respondent No. 2, the instant case has been submitted before concerned Ld. MM as closure and the said closure report is pending consideration. It is further submitted that in view of the settlement, the State has no objection if the FIR in question be quashed qua the petitioner.
7. Hon'ble the Supreme Court in the case of *B.S. Joshi v. State of Haryana* reported as 2003(2) R.C.R. (Criminal) 888 while relying on the judgment titled as *Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. [(1998) 5 SCC 749]*, that this Court with reference to Bhajan Lal' case observed that the guidelines laid therein as to where the court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying rigid formula to be followed by the court. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any

court or otherwise to secure the ends of justice. It is well settled that these powers have no limits. Of course, where there is more power, it becomes necessary of exercise utmost care and caution while invoking such powers

8. In *Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors. [(1998) 1 SCC 692]*, it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.
9. Partial quashing or part quashing of FIR only qua the petitioner/accused with whom the complainant has compromised or settled the matter can be allowed and while quashing, it must be appreciated that the petitioner/accused cannot be allowed to suffer based on a complaint filed by the respondent, when subsequently, all disputes have been settled between the parties. Reliance can be placed on *Poonam Khanna vs. State & Ors in Crl.M.C.No. 3690/2016 Dated 30.01.2018*.
10. In *Lovely Salhotra and Anr. vs. State, NCT of Delhi (2017 SCC Online SC 636)*, in paragraph 4 and 7, it is observed and held as under:

“4. We have taken into account the fact of the matter in question as it appears to us that no cognizable offence is made out against the appellant-herein. The High Court was wrong in holding that the F.I.R. cannot be quashed in part and it ought to have appreciated the fact that the appellants-herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No.2— herein only on the ground that the investigation against co-accused is still pending. It is pertinent to note that the learned Magistrate has opined that no offence is made out against co- accused Nos.2, 3, 4 and 6 prima facie.

7. Accordingly, we set aside the order of the High Court and quash the FIR qua the appellants- herein.”

11. In ***Vijay Kumar Gupta V. State, Government of NCT of Delhi in Crl.M.C. No.2289/2013 Dated 09.03.2017***, in paragraph 7, it is observed and held as under:

“7. Looking into the facts and circumstances of the case and the fact that the petitioners have paid the loan/settlement amount to the Respondent No.2 and nothing remains to be

adjudicated further, to remove the hurdle in the personal life of the present petitioners for leading better and peaceful life and to meet the ends of justice, I deem it appropriate to quash the FIR No.107/2003, under Section 406/420/468/471 Indian Penal Code, 1860,, registered at Police Station – Parliament Street, Delhi qua against the petitioners, namely Vijay Kumar Gupta, Raj Kumar Sharma and Vinod Chaudhary only to the extent of their role in commission of the alleged offence.”

12. Keeping in view the aforesaid judgments and the facts and circumstances of this case, since the matter has been amicably settled between the parties, no useful purpose will be served by keeping the case pending. It will be nothing but abuse of the process of law. Consequentially, this petition is allowed and FIR No. 549/2016, under Sections 406/420/34 IPC, registered at Police Station Dwarka, South West District, Delhi and the proceedings emanating therefrom shall stand quashed qua the petitioner herein.
13. The present petition stands disposed of accordingly.

RAJNISH BHATNAGAR, J

APRIL 12, 2022/AK