

DELHI HIGH COURT

Rajinder Kumar Sharma and Another

v

State and Another

HON'BLE JUSTICE S.N. DINGRA

26/02/2007

CASE NO: Cri.M.C. 1216-17 of 2006

LAWYERS: Sanjiv Kumar, Richa Kapoor, Sukriti Bhardwaj

JUDGMENT:

1. By this petition, under Section 482 Code Of Criminal Procedure, 1973 the petitioners have prayed for quashing of FIR 278/98 P.S. Vasant Vihar under Sections 420/468/471 read with Section 34 Indian Penal Code, 1860. It is submitted by the petitioner that the petitioners have compromised the matter with the complainant and paid the amount of Rs.17, 640/- to the complainant/respondent no. 2 thereby making good the loss suffered by her. It is alleged that the petitioner no. 1 and the respondent no. 2 (complainant) are related to each other and with the intervention of relatives/family members, a compromise was arrived at and the complainant had filed an affidavit along with present petition that she had no objection if the FIR was quashed. The trial has been going on for about eight years and the case was still at initial stage.
2. It would be interesting to note the facts of the case before embarking upon the pleas taken by the petitioner for quashing of FIR. The complainant was to receive a cheque of Rs.17, 640/- from her policy No. M-9024066927 under Unit Trust of India and cheque of this amount dated 1.1.1998 was sent by UTI at the address of complainant. This cheque was not received by her and she contacted Unit Trust of India. She was informed by UTI that this cheque had already been encashed. She, thus, sought details and was supplied the details that the cheque was got encashed at Punjab National Bank 'C' Block Vasant Vihar on 31st March, 1998. She thereafter, made a complaint to the police that she had not deposited this cheque in her account and the account at PNB, Vasant Vihar was not hers and somebody had opened a fake account in her name and got her cheque encashed. The person, who got the fake account opened, would have been introduced by another bank account holder and in this forgery and cheating some bank employee might also be involved. Some photograph must have been pasted on the account opening form and the matter should be investigated. The matter was investigated and the petitioners were found to be the persons involved in opening a fake account in the name of complainant by forging her signatures and getting the cheque of the complainant encashed through that fake account. After the investigation, the charge-sheet was filed and case proceeded against the petitioners. This petition has been filed after 9 years of the commission of crime when trial is proceeding.
3. A crime under Indian Penal Code, 1860 or under any other penal law is not a crime against an individual, it is a crime against the society and State and that is the reason that State or any of its agency is the prosecutor in criminal cases. The suppression of crime is the most important function of state. The maintenance of law and

order and compliance of laws by the citizens is the responsibility of the State. Criminal law has been mainly concerned with protection of elementary social interest in the integrity of life, liberty and property. The legislature in its wisdom considered some offence as trivial offence and some offence more serious and of graver nature. Those offences which did not affect the society at large have been made compoundable under Section 320 Code Of Criminal Procedure, 1973. However, all offences under Indian Penal Code, 1860 or under other Acts have not been made compoundable because the legislature considered that some offence cannot be compoundable and the perpetrator of such offence must be punished according to law, so that the criminal tendency is curbed. Recently, the legislature has introduced plea bargaining under law so as to benefit such accused persons who repent upon their criminal act and are prepared to suffer some punishment for the act. The purpose of plea bargaining is also to see that the criminals who admit their guilt and repent upon, a lenient view should be taken while awarding punishment to them. But the legislature has not thought it proper to give right to the individual to compound any offence and every offence in which loss to individual is also involved. When a person goes to the extent of opening fake account, putting fake signatures and getting cheque encashed on the basis of forged signatures, this shows his criminal bent of mind. If he is really repentful, he must undergo some punishment for his crime committed and the sufferance which he made to the society.

4. I consider that the High Court cannot under its inherent powers quash those criminal proceedings where no compounding is provided by the legislature. **The Courts have been allowing quashing of proceedings under Section 498A /406 Indian Penal Code, 1860 because in such cases the FIRs are result of matrimonial discord and more often the effort of the Court is that either the parties should settle for a compromise for living together or they should part their company peacefully, so that, there is peace and amity in the society. In cases resulting from matrimonial discord, the Court is not dealing with criminal but dealing with broken marriages and broken homes where resort is more often made to Sections 498A/406 Indian Penal Code, 1860 to teach lessons to the family of husband or to take revenge.** However, this is not the case in respect of offences of forgery, dacoity, robbery etc. An FIR under Section 468 and 471 cannot be quashed, on the ground that victim is paid back the money. # The persons with criminal bent of mind cannot be let loose on the society, after paying the amount involved in forgery on being caught. The Court by quashing such FIRs shall create clean record of their criminal history and they can even enter into Government or State Service or legislatures and show their skills and hand there. A person who wants to improve, can resort to plea bargaining or can plead guilty and pray the Court for giving benefit of Prohibition of Offenders Act or request the Trial Court to have lenient view in punishment. Quashing of such FIRs is illegal and unjustified. In *Zahira Habibullah Sheikh and Anr. v. State of Gujarat and Ors.* 2006 (3) Scale 104, Supreme Court observed as under:

"This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general."

5. In view of my above discussions, I find no merits in the petition. The petition is hereby dismissed.