

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 24th September, 2021

SINGLE BENCH: THE HON'BLE ACTING CHIEF JUSTICE MRS. JUSTICE MEENAKSHI MADAN RAI

Crl. M.C. No.04 of 2021

Petitioners : T. Nagendra Rao and Others

versus

Respondent : State of Sikkim

Petition under Section 482 of the
Code of Criminal Procedure, 1973

Appearance

Mr. Rajshekhar Rao, Senior Advocate with Mr. Anandh Venkataramani and Mr. Rahul Rathi, Advocates for Petitioners No.1 and 2.

Mr. Aayush Agarwala, Advocate for Petitioner No.3.

Ms. Yeshi Wangmo Rinchhen, Additional Public Prosecutor for the State Respondent.

O R D E R

Meenakshi Madan Rai, ACJ.

1. The Petitioners have filed the present Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") seeking quashing of FIR bearing No.0007, dated 13.04.2021, lodged at the Police Station-CID, East Sikkim and all proceedings arising therefrom, including Notice under Section 160 Cr.P.C. bearing No.453/POL/CID/2021, dated 23.04.2021, issued to the Petitioner No.1. The present Petition is filed through Petitioner No.2 on behalf of herself and as the Power of Attorney Holder for the Petitioner No.1. The Petitioner No.3 Company is represented by one Balakrishnan Jaikumar (Authorized Representative and Managing Director of Petitioner No.3 Company).

2.(i) Learned Senior Counsel for the Petitioners No.1 and 2 submitted that the FIR, dated 13.04.2021, was registered pursuant to a written Complaint filed by one Joseph Lourduraj (Director of Petitioner No.3 Company) before the State-Respondent through the Investigating Officer, Police Station CB-CID, Police Headquarters, East Sikkim. The facts which led to the lodging of the FIR are that, M/s Shiga Energy Pvt. Ltd. was awarded the Contract to construct a Hydro Power Project at Tashiding, West Sikkim by the State of Sikkim on a Build-Own-Operate-Transfer (BOOT) basis. As per the Contract with the State, the Company was to provide a portion of the electricity generated free of cost to the State and at the end of the term (thirty five years), the Project would be transferred free of cost to the State of Sikkim, which was not liable to pay any monies to the Company in relation to the said Project. M/s Shiga Energy Pvt. Ltd. entered into a Contract with the Petitioner No.3 Company on 28.03.2011 and on 13.06.2011, the Petitioner No.3 Company decided to sub-contract the works under the Main Contract to Nirman Vridhi Constructions Pvt. Ltd. (NVCPL) vide Sub-Contract Agreements. The Project was completed in November, 2017. NVCPL and its 100% subsidiary, Indian Ocean Energy Pvt. Ltd. (IOEPL) which is registered in Singapore, also made investments into a related Company of the Petitioner No.3. Investment and Share Subscription Agreements were executed in 2014 and 2015 between and amongst the Petitioner No.3 Company, NVCPL and IOEPL, which led to the latter two entities invoking Arbitration before the Singapore International Arbitration Centre. The Award, dated 24.05.2019, was accordingly passed and by way of this Award, the Petitioner No.3 Company/Balakrishnan

Jaikumar were jointly and severally liable to pay certain sums to NVCPL and IOEPL.

(ii) That, the Petitioner No.3 Company/Balakrishnan Jaikumar filed an Appeal against this Award before the High Court of Singapore which was dismissed on 13.03.2020. Further, Appeal was filed before the Court of Appeals, Singapore which is currently pending. On 27.01.2021, NVCPL and IOEPL preferred a Petition before the Hon'ble High Court of Delhi under Chapter I of Part II of the Arbitration and Conciliation Act, 1996 (for short, the "Arbitration Act") read with Order XXI and Section 151 of the Code of Civil Procedure, 1908 (for short, the "CPC"), for the enforcement and execution of the Final Foreign Award. Petitioner No.3 Company/Balakrishnan Jaikumar filed their Objections under Section 48 of the Arbitration Act. On 12.04.2021, the Petitioner No.3 Company, through its Director Joseph Lourduraj, filed a Criminal Complaint against the Petitioners No.1 and 2, who were Directors of M/s Shiga Energy Pvt. Ltd., leading to the registration of the FIR *supra*. The concerned Police authorities consequently issued the Notice under Section 160 Cr.P.C., dated 23.04.2021, to the Petitioner No.1. Meanwhile, the Hon'ble High Court of Delhi, vide Order, dated 27.05.2021, in the Enforcement Proceedings, directed the matter to be listed before the Delhi High Court Mediation and Conciliation Centre. During the course of Mediation, all parties involved, agreed to resolve their disputes, both present and past, by way of a composite settlement pursuant to which, a Settlement Agreement, dated 05.07.2021, was executed by and between the Petitioner No.3 Company, Balakrishnan Jaikumar, NVCPL, IOEPL, M/s Shiga Energy Pvt. Ltd. and the Petitioners No.1

and 2. The parties also undertook to take appropriate steps to seek quashing of the FIR including swearing an Affidavit in support of the quashing of the FIR. The Affidavit of the authorized personnel of the Petitioner No.3 Company stated that all disputes had been conclusively settled by way of the Settlement Agreement, dated 05.07.2021. The Hon'ble High Court of Delhi, vide its Order, dated 22.07.2021, took the Settlement Agreement, dated 05.07.2021, on record and finding it to be valid and lawful, decreed the Enforcement Proceedings in terms of the said Settlement Agreement. That, the matter having been amicably settled between the parties, the instant Petition has been filed.

(iii) It was urged by Learned Senior Counsel for the Petitioners No.1 and 2 that now the disputes and differences between the parties have been set to rest by way of the Settlement Agreement, dated 05.07.2021, and the Petitioners have no grievances against each other and continuing the criminal proceedings would serve no useful purpose.

(iv) That, the Petitioner No.3 Company has, in fact, unequivocally and irrevocably understood, agreed and accepted that all its claims, disputes, differences and disagreements with the NVCPL, IOEPL, M/s Shiga Energy Pvt. Ltd. and the Petitioners No.1 and 2 in respect to the Tashiding Project and the said FIR have been completely resolved and irrevocably withdrawn for all legal intent and purposes. It was also canvassed that the Petitioner No.3 Company does not have any further claims, disputes or differences with the said Petitioners No.1 and 2.

(v) That, further the parties have also filed the instant Petition and Affidavits without any pressure, undue

influence and coercion and have been done so of their volition and they are performing their respective obligations as described in the Settlement Agreement. While placing reliance on the ratio of ***Gian Singh vs. State of Punjab***¹, it was contended that in matters pertaining to commercial affairs and family disputes, the Criminal Cases can be quashed when the parties so agree. Strength was also drawn from the decision in ***State of Madhya Pradesh vs. Laxmi Narayan and Others***² wherein it has been held that offences having the character of civil dispute can be quashed by the High Courts by exercising jurisdiction under Section 482 of the Cr.P.C. regardless of the fact that the offences are Compoundable or Non-Compoundable. That, in the aforesaid facts and circumstances the Court may exercise its jurisdiction under Section 482 of the Cr.P.C. and grant the relief sought by the Petitioner.

3. Learned Counsel Mr. Aayush Agarwala for the Petitioner No.3 admits the submissions put forth by Learned Senior Counsel for the Petitioners No.1 and 2 and concedes that all differences between the parties have been settled as detailed hereinabove. That, they have no pending claims against each other and consequent upon the settlement of all disputes the instant Petition has been preferred.

4. Learned Additional Public Prosecutor submitted that no losses had occurred to the State Exchequer on account of the Tashiding Project or on account of the differences between the parties. That, the differences *per se* were between the Petitioners and the State-Respondent had no objection to the prayer for quashing of the FIR and other consequential reliefs.

¹ (2012) 10 SCC 303

² (2019) 5 SCC 688

5. I have given due consideration to the submissions of the parties and perused all documents on record.

6.(i) The FIR No.0007 (Annexure P3), dated 13.04.2021, was filed before the CID Police Station and registered against the Petitioner No.1 and Others under Sections 420, 409 and 120 B of the IPC. The offence under Section 409 is Non-Compoundable as also the offence under Section 120 B of the IPC.

(ii) In ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai***³, the Hon'ble Supreme Court, while discussing the provisions of Section 482 of the Cr.P.C. held *inter alia* as follows;

"**16.** The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

.....
16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

(iii) In ***State of Madhya Pradesh vs. Laxmi Narayan and Others*** (*supra*) relied on by the Petitioners, the Hon'ble Supreme Court observed *inter alia* that;

"**15.**

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

³ (2017) 9 SCC 641

15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

.....
15.5 While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc.”

(iv) In *Gian Singh vs. state of Punjab (supra)* relied on by the Petitioners, it was held *inter alia* as under;

“**58.** Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.

.....
61. 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 under Section 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominately civil flavour stand on a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

(v) On the anvil of the ratiocinations extracted hereinabove, it is evident that when disputes have a predominantly civil character and arise out of commercial transactions, and where the parties have resolved the disputes amongst themselves, the Courts can exercise its powers under Section 482 of the Cr.P.C. to quash the criminal proceedings in Non-Compoundable offences. It is relevant to notice that the offence did not involve the financial and economic well being of the State of Sikkim. Annexure P4 reveals that the parties were before the Delhi High Court Mediation

and Conciliation Centre and a Settlement Agreement executed between them. Annexure P5 is a Communication addressed by Balakrishnan Jaikumar to the Station House Officer, CID Police Station and the Investigating Officer of the case submitting therein that the Complainant and the Accused in Annexure P3 (FIR) have entered into a Settlement Agreement, dated 05.07.2021, and resolved their disputes in terms thereof and the matter accordingly be closed. Annexure P8 is the Order of the Hon'ble High Court of Delhi, dated 22.07.2021, whereby it is *inter alia* recorded that the Suit is decreed in terms of the Settlement Agreement, dated 05.07.2021, which shall form part of the Decree. The parties as submitted are performing their respective obligations as delineated in the Settlement Agreement.

(vi) In the end result, the parties having settled the disputes amongst themselves and the dispute arising from commercial transactions amongst themselves with no loss to the State Exchequer, I am of the considered opinion that no fruitful result would emerge from continuing the criminal proceedings.

(vii) Accordingly, the FIR bearing No.0007, dated 13.04.2021, lodged at the CID Police Station, East District, Sikkim and all proceedings arising therefrom including Notice under Section 160 Cr.P.C. bearing No.453/POL/CID/2021, dated 23.04.2021, issued to the Petitioner No.1, hereby stand quashed.

7. Crl.M.C. No.04 of 2021 stands disposed of.

(Meenakshi Madan Rai)
Acting Chief Justice
24.09.2021