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**Court :** Delhi

**Decided On :** Nov-25-2011

**Judge :** M.L. Mehta, J.

**Acts :** [Constitution of India](#) - Articles 226; Indian Penal Code (IPC) - Section 420, 468, 471; [Arbitration and Conciliation Act, 1996](#) - Section 9 ; Code Of Criminal Procedure (CPC) - Section 320, 482,

**Appeal No. :** W. P (Crl.)No.488 of 2009 And Crl. MA 4142 of 2009 (stay) And 18208 of 2009

**Appellant :** R.K. Gupta

**Respondent :** State

**Judgement :**

1. This is a petition under Section 226 of the [Constitution of India](#) for quashing of FIR No.95/2008 under Sections 420/468/471 IPC registered at police station Pahar Ganj, New Delhi.

2. The aforesaid FIR was registered on the complaint of the respondent no.3 Mr. Davinder Paul Singh (Mr. Singh) who was partner of the petitioner in his business run in the name and style of M/s Kwaliti Caterers having its registered office at 1012, Mantola, Pahar Ganj, New Delhi. This firm came into existence in 1998 as a sole proprietary concern of Mr. Hemant Jajoria. The petitioner as well as the

complainant Mr. Singh were inducted as its partners in the year 2001 and this firm comprised of three partners with 1/3rd share each in the firm. Due to some differences, allegedly because of Mr. Singh's having started his business in competition with the business of the firm, the two partners namely the petitioner herein and Mr. Hemant Jajoria intended to dissolve the firm. Sensing this, the respondent Mr. Singh filed a petition under Section 9 of [Arbitration and Conciliation Act, 1996](#) in this Court seeking interim relief that the firm shall not be dissolved. He also made a complaint on 29.11.2007 with the Police (Economic Offence Wing) alleging that the petitioner obtained certain loans from the banks and financial institutions in the name of the firm by forging his signatures. The stand taken by the petitioner in the said complaint made to the EOW was that no signatures of Mr. Singh was ever forged by him and that all the loans as mentioned by Mr. Singh in his complaint were taken by the firm with the knowledge of Mr. Singh. It was also stated that all the loans were utilized by the firm in giving license fee as well as security deposits to IRCTC and further that all those loans were reflected in the income tax returns of the firm. The complaint lodged with EOW was stated to be motivated. In the meanwhile, present FIR was also got registered by Mr. Singh against the petitioner on 26.3.2008 and it is this FIR which is sought to be quashed by the petitioner in the instant petition.

3. Before advertng to the submissions of the petitioner made in this petition for quashing the FIR, it may be noted that in his application under Section 9 of [Arbitration and Conciliation Act, 1996](#) for appointment of an Arbitrator, the Hon'ble Ms. Manju Goel (retired Judge of this Court) was appointed as sole Arbitrator to resolve the disputes. The said application was dismissed by the Arbitrator. In the meanwhile, the third partner Mr. Hemant Jajoria also initiated proceedings for dissolution of the partnership firm by issuing notice to Mr. Singh. Mr. Singh moved an application before the Arbitrator seeking stay of dissolution of the firm. This application was dismissed on 30.5.2008. Against this order, Mr. Singh preferred an appeal which came to be dismissed by this Court on 6.6.2008. In this appeal proceedings, Mr. Singh made a statement that he has settled all his disputes with the petitioner and was willing to retire from the said partnership firm, but the same may not be dissolved. Subsequently vide a joint application dated 10.4.2008 filed by three partners under Order XXXIII Rule 3 CPC before the Arbitrator, they

settled all their disputes. It is noteworthy that one of the conditions of the said application was that FIR No.95 of 2008 registered at Police Station Pahar Ganj at the behest of Mr. Singh shall be quashed and he shall cooperate in getting the same so done. The Arbitrator allowed that application vide her award dated 28.7.2008. The operative part of that order passed by learned Arbitrator reads as under:

"On 10.7.2008, the partners filed a joint application seeking disposal of the arbitration proceedings in terms of the settlement arrived at. The said application is duly supported by affidavits of Mr. Davinder Paul Singh, Mr. Rakesh Kumar Gupta and Mr. Hemant Kumar Jajoria.

The terms of the settlement are fair and reasonable. Hence, the arbitration proceedings are disposed of in terms of the settlement. The said application under Order 23 Rule 3 CPC dated 10th July, 2008 will form part of the award."

4. The matter remained pending thereafter and Mr. Singh did not come forward to get the FIR quashed and having seen his so conduct and behavior, the petitioner approached this Court by way of instant petition seeking quashing of the aforementioned FIR mainly on the basis of compromise as arrived at between the parties before the Arbitrator.

5. The main defence that was sought to be taken by Mr. Singh in opposing this petition was that what was settled by him in the arbitral proceedings was to the extent that was mentioned in the compromise application and that the payment made to him was towards his share in the business, but it could not be said that he compounded the offences committed by the petitioner. He maintained that the petitioner had committed the offences by forging his signatures and that the offences which he committed were not compoundable as per law. This way he seemed to be trying to resile from the compromise that was made before the Arbitrator.

6. In the meantime, Mr. Singh expired and his son Mr. Jasmeet Singh sought to substitute in place of his deceased father.

7. The question for consideration would be as to whether in the given facts and circumstances, the aforesaid FIR could be quashed. Similar question came up for consideration before the Supreme Court in *Manoj Sharma v State and others* [2008 16 SCC 1] wherein the Supreme Court observed that in rare and exceptional cases, departure can be made from the principles laid down in the decisions of the Apex Court. Specifically taking note of the provisions of Section 320 and 482 Cr.PC, it observed thus:

"18. However, it has to be pointed out that Section 320 Cr PC cannot be read in isolation. It has to be read along with the other provisions in the Cr PC. Once such other provision is Section 482 Cr.PC which reads: "Saving of inherent power of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

19. The words "Nothing in this Code" used in Section 482 is a non obstante clause and gives it overriding effect over other provisions in the Cr.PC. The words "or otherwise to secure the ends of justice" in Section 482 implies that to secure the interest of justice sometimes (though only in very rare cases) the High Court can pass an order in violation of a provision in the Cr.P.C.

8. While taking note of the certain decisions of the Apex Court wherein it was held that the power under Section 482 Cr.PC cannot be exercised except to do something which is expressly barred under the Code, it was observed that the judgment of the Supreme Court cannot be read mechanically and like a Euclid's Theorem.

9. Further taking note of its decision in the case of *B.S. Joshi v State of Haryana* [2003 (1) JCC 541] wherein it was held that the High Court had the power and authority to exercise jurisdiction under Section 482 Cr.P.C or under Article 226 of the [Constitution of India](#) to get the compounding done of the offences which are not compounded, it was held as under:

"8. In our view, the High Court's refusal to exercise its jurisdiction under Article 226 of the Constitution for quashing the criminal proceedings cannot be supported. The First Information Report, which had been lodged by the complainant indicates a dispute between the complainant and the accused which is of a private nature. It is no doubt true that the First Information Report was the basis of the investigation by the Police authorities, but the dispute between the parties remained one of a personal nature. Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter. We do not suggest that while exercising its powers under Article 226 of the Constitution the High Court could not have refused to quash the First Information Report, but what we do say is that the matter could have been considered by the High Court with greater pragmatism in the facts of the case. As we have indicated hereinbefore, the exercise of power under Section 482 Cr.P.C. or Article 226 of the Constitution is discretionary to be exercised in the facts of each case".

10. As has been noted above, there was a settlement arrived at between the petitioner and the complainant Mr. Singh before the Tribunal and one of the terms of the settlement was that the complainant will cooperate in getting the aforesaid FIR quashed. This settlement was arrived at after the complainant Mr. Singh had received hefty amount of money from the petitioner herein, despite that petitioner had been denying having forged the signatures of the complainant on the loan documents. During investigation, the police has verified from the auditor that all the loans which were taken by the petitioner were in the name of the firm and were utilized only in the business activities of the firm. Further the questioned signatures of the complainant Mr. Singh appearing on the loan documents have been got examined from FSL and it has been categorically reported by this agency that the signatures appearing thereon were not that of the petitioner. In that view of the matter, there was no evidence of the petitioner having forged the signatures of the complainant Mr. Singh and thus prima facie no case under Sections 468/471 IPC could be seen to be made out. The complainant seems to have tried to wriggle out of the settlement for some ulterior motives. Since the complainant has expired and his son stepped into his shoes, he too has raised all untenable disputes.

11. Having regard to the foregoing facts and circumstances, I am of the view that the continuation of the abovesaid FIR would be nothing but abuse of the process of the Court. The allegations contained in the FIR even be taken at their face value and accepted true, do not constitute the offence as alleged. Resultantly, the petition is allowed and all the consequential proceedings arising therefrom are hereby quashed.

12. The petition stands disposed of.

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