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

+ **CRL.M.C. 2272/2022**

M/S THE GALAXIES PRODUCTIONS & ORS. Petitioners

Through: Mr Kamal Ahuja, Ms Priamvada
Suroha and Ms Lakshita Arora,
Advocates.

P-1 & 2 (Through VC)

P-3 in person

versus

THE STATE OF NCT OF DELHI & ANR. Respondents

Through: Ms Richa Dhawan, APP for the State
SI Manoj Kumar, PS EOW, Mandir
Marg

Mr Pramod Kumar Dubey, Sr.
Advocate with Mr Sandeep Kapur,
Ms Apoorva Pandey, Mr G.G
Kashyap, Mr Saurav Mishra, Mr Rose
Verma and Mr Karan Seth, Advocates
for R-2

CORAM:

HON'BLE MS. JUSTICE POONAM A. BAMBA

ORDER

17.08.2022

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1.0 This is a petition under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of FIR No. 09/2022, PS- EOW, under Sections 420,468,471, 120B IPC registered on the directions of Ld. ACMM, Patiala House Courts vide Order dated 18.12.2021 in an application under Section 156(3) Cr.P.C moved by Respondent No. 2, Morchana oriental ltd.

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2.0 It is submitted that the petitioner no. 1 is the sole proprietorship concern of the petitioner no. 2/accused.

2.1 It is further submitted that due to number of issues between the parties, number of criminal cases came to be filed by both the parties against each other in different courts/forums. During the pendency of these cases, the parties have mutually settled all their disputes out of their free will and have agreed voluntarily to withdraw all the cases i.e. civil/criminal/complaints/FIR(s) and/or issue affidavits/statements for all litigations pending before different courts/forums/authorities, filed against each other and shall not agitate the same cause of action before the competent courts. In this respect, the petitioners and the respondent no. 2 have entered into a Memorandum of Understanding dated 07.04.2022.

2.2 Petition also mentions that the respondent no. 2 is left with no grievance against the petitioners and has agreed not to pursue the FIR in question and all the proceedings emanating therefrom. In view of the settlement, the respondent 2 has no objection to quashing of the FIR.

2.3 It is further submitted that the respondent no. 2 has given his no objection by way of an affidavit which has been annexed with this petition as **Annexure P3**.

3.0 Learned counsel for the petitioner further submits that no purpose would be served in keeping the FIR pending and rather, quashing of the

same would further the ends of justice.

4.0 Learned Prosecutor opposes this petition submitting that there are serious allegations of forgery and using of such forged documents against the petitioners.

4.1 Status report dated 26.05.2022 filed on behalf of the State mentions that the petitioner no. 1/M/s The Galaxies Production and Ors. approached Mr Kapil Gupta, the then CEO of the complainant company/respondent no. 2 i.e. Morchana Oriental Ltd. and induced him by stating that they would assist them in ascertaining feasibility of establishing Flight Simulation Project in Delhi/NCR. Accordingly, a 'Letter of Intent' was executed between both the companies. Complainant/respondent no. 2 gave a loan of Rs. 1.65 Cr. to the petitioners/accused company which was promised to be repaid within three months. A Loan Agreement dated 26.06.2018 was executed between the companies.

4.2 Status report further mentions that on 29.08.2018, the petitioner/accused persons again took a loan of Rs. 50 lakhs from the respondent no. 2 company. On 31.01.2019, a Memorandum of Understanding (MOU) (Consultancy and advisory services Agreement) was executed between the respondent no. 2/complainant company 'M/s Morchana Oriental Ltd.' and 'TAV Aeronautics Consultancy Pvt. Ltd.', which was also headed by the accused/petitioner no. 2 Ms. Anjali Mathur.

4.3 Status report also mentions that on 25.09.2019, Mr Kapil Gupta, the then CEO of the complainant company attempted to enter into an MOU; and as per settlement, a security cheque of Rs. 2.2 crore was given by the complainant to the petitioner/accused entity/persons. Petitioner/accused persons did not fulfil the terms and conditions of the MOU, as a result of which, the same was rendered null and void.

4.4 It further mentions that as per the complainant, later on, the complainant came to know that an ‘Addendum to the Loan agreement dated 26.06.2018’ and one ‘Letter Agreement dated 31.01.2019’ between the complainant company/M/s Morchana Oriental Ltd./respondent no. 2 and the accused company/M/s The Galaxies Production Ltd./the petitioner herein were false and fabricated, which were purportedly signed by Mr Kapil Gupta, the then CEO of the complainant company. On the said complaint, the present FIR was registered in compliance of the order of Ld. ACMM, Patiala House Court, New Delhi passed in the complainant’s application u/s 156 Cr.P.C.

4.5 Learned Prosecutor submits that quashing of FIR in such cases should not be allowed and placed reliance upon the judgment of ‘*Parbatbhai Aahir @ Parbatbhai vs. The State of Gujarat*’, CrI. Appeal 1723/2017 and ‘*Missu Naseem and Anr. Vs. The state of Andra Pradesh & Ors.*’, CrI. Appeal No. 160/2022.

5.0 In rebuttal, learned counsel for the petitioners submits that the

aforesaid judgments do not apply in the present case, facts in those cases being very different. Learned counsel further submits that in *Parbatbhai's case (Supra)*, the appellants had criminal antecedents and were absconding; warrants against them had already been issued. And in *Missu Naseem's case (supra)*, the offence was committed against the Government department. Whereas, in the instant case, as already submitted, the disputes between the parties are of civil nature, arising out of commercial transactions. Learned counsel for the petitioner submits that this court has wide powers under Section 482 Cr.P.C to quash the FIR in cases like the present one and places reliance upon the judgment of Hon'ble Supreme Court in "*Gian Singh vs State of Punjab & Ors. (2012) 10 SCC 303*" and "*Narinder Singh & Ors. vs State of Punjab & Ors. (2014) 6 SCC 466*".

6.0 I have duly considered the submissions made by both the sides.

7.0 The settlement between the parties has been arrived at on 07.04.2022 vide "Agreement" dated 07.04.2022, which has been filed as Annexure P-2 along with this petition.

7.1 It is submitted by learned counsel for the petitioners and not disputed by learned counsel for the respondent no. 2 that due to various issues and disputes between the parties, various complaints/cases/FIR had been filed by both companies against each other, which are detailed in their settlement titled as "AGREEMENT" dated 07.04.2022. It is also submitted that pursuant to the registration of the FIR in question, the petitioner herein approached the respondent no. 2 company for resolving the disputes

between the parties. The aforesaid settlement was arrived at to resolve and settle all the issues that have arisen between the Parties to this Agreement, once and for all in a binding and legal manner. Vide the aforesaid settlement, they have voluntarily agreed to withdraw all such complaint/cases filed by them against each other. It is submitted that the Agreement has been duly signed by the Authorized Representative of the respondent no. 2 namely Shri Omesh Kumar Saraf.

7.2 Certified true copy of the Resolution passed by the Board of Directors of the respondent no. 2/Morchana Oriental Limited (formerly Intellipro Aviatech Limited) at its meeting held on 21.01.2020 has been placed on record along with this petition wherein Shri U.C Jain and Shri N. K Agarwalla, Directors of the company and Shri Umesh Kumar Saraf have been appointed as Authorized Representative of the respondent no. 2 company.

7.3 My attention is also drawn to the affidavit of Shri Umesh Kumar Saraf, Authorized Representative of the complainant company/respondent no. 2 which has been filed as Annexure P-3, to the effect that disputes with the petitioners/accused persons in FIR no. 09/2022 have been voluntarily settled with his own free will and without any force, pressure coercion or undue influence from any side; and that the respondent no. 2 does not wish to pursue the matter against them; and that he has no objection to quashing of aforesaid FIR against the petitioners.

7.4 Mr Umesh Kumar Saraf, Authorized Representative of the complainant company/respondent no. 2 who was present had confirmed signing of the aforesaid affidavit and that the respondent no. 2 has no objection to quashing of FIR.

7.5 Learned counsel for both the sides submit that all the complaints/cases/applications filed by them against each other have already been withdrawn/brought to end except for the present FIR.

8.0 Learned Prosecutor has objected to the quashing of FIR. Suffice it to state that the power conferred on this court under Section 482 Cr.P.C is of a wide amplitude. No doubt, that the same has to be exercised with care and circumspection.

8.1 In *Narinder Singh's case (supra)* relied upon by the petitioners, the Apex Court observed as under:

"31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the

criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for ***quashing the criminal proceedings*** is filed, the guiding factor in such cases ***would be to secure:***

(i) ***ends of justice, or***

(ii) ***to prevent abuse of the process of any court.***

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) ***Such a power is not to be exercised in those prosecutions which involve 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. Similarly, for the offences alleged to have been committed under special statute 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.

(IV) On the other hand, ***those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed*** when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to

him by not quashing the criminal cases.

(VI)

(VII) *While deciding whether to exercise its power under Section 482 of the Code or not, **timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation.** It is because of the reason that at this stage the investigation is still on **and even the charge-sheet has not been filed.** Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete.....”*

8.2 In the light of the principles as laid down by Hon’ble Apex Court, this court is competent to exercise its power under Section 482 Cr.P.C in criminal cases arising out of commercial transactions; and if such exercise would further the ends of justice considering other facts and circumstances.

9.0 Now reverting to the instant case. As noted above, the parties in the present case were engaged in business dealings with each other and number of disputes between petitioners and the respondent no. 2 companies arose; and the respondent no. 2 filed approximately seven complaints/cases/applications against the petitioner no. 1 company. All such

complaints/cases/applications are stated to have been brought to an end pursuant to the present settlement. The present FIR came to be registered at the instance of the respondent no. 2, alleging fabrication of certain documents by the petitioners in the business transactions. Respondent no. 2 has subsequently resolved all disputes and differences vide the aforesaid settlement. It may also be mentioned that soon after the registration of FIR, the petitioners have arrived at a settlement with the respondent no. 2 company.

10.0 In view of these facts and circumstances and considering that the settlement between the parties has brought an end to various complaints/cases filed by the petitioner and the respondent no. 2 company against each other, I am of the considered opinion that quashing of the present FIR would only further the ends of justice by bringing an end to all the disputes/litigation between the petitioners and the respondent no. 2 company.

11.0 As far as the judgments relied upon by the learned Prosecutor are concerned, the same are not of much assistance to the State. In Parbatbhai's case (supra) FIR was lodged by the complainant when he realised that the power of attorney in the name of his siblings had been forged. Furthermore, the complainant was threatened to forcibly transfer the land in question in the name of the appellants based on the said forged power of attorney. The appellant had raised an argument that the matter has been amicably settled between the parties. In that backdrop, the Apex Court declined to quash FIR registered under Sections 384/467/468/471/120B and 506(2), IPC observing that:

“It was in this view of the matter that the High Court observed that in

*a case involving extortion, forgery and conspiracy where all the appellants were acting as a team, it was not in the interest of society to quash the FIR on the ground that a settlement had been arrived at with the complainant. We agree with the view of the High Court. The present case, as the allegations in the FIR would demonstrate, is not merely one involving a private dispute over a land transaction between two contesting parties. **The case involves allegations of extortion, forgery and fabrication of documents, utilization of fabricated documents to effectuate transfers of title before the registering authorities and the deprivation of the complainant of his interest in land on the basis of a fabricated power of attorney.** If the allegations in the FIR are construed as they stand, it is evident that they implicate serious offences having a bearing on a vital societal interest in securing the probity of titles to or interest in land. Such offences cannot be construed to be merely private or civil disputes but implicate the societal interest in prosecuting serious crime.*

11.1 In *Missu Nassem (supra)* case the accused had submitted fake and fabricated house tax book and tax receipts to the Urban Land Ceiling Department to grab valuable Government land on which, an FIR/Crime No. 128/2011 came to be registered. Considering the same, the Hon'ble Supreme Court had set aside the order of High Court allowing quashing of FIR. Whereas facts in the instant case as detailed above, are very different.

12.0 In view of the above, the present petition is allowed.

13.0 Thus, FIR No. 09/2022, PS- EOW, under Sections 420,468,471, 120B IPC vide Order dated 18.12.2021 passed by Learned ACMM and all consequential proceedings arising therefrom, are hereby quashed.

14.0 All pending applications, if any, are closed.

POONAM A. BAMBA, J

AUGUST 17, 2022/g.joshi

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Click here to check corrigendum, if any
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