THE HIGH COURT OF MADHYA PRADESH
M.CrC. No.15521/2019
Manoj Kumar Goyal Vs. State of M.P. and others

Gwalior, Dated :09/07/2019

Shri Jitendra Sharma, Counsel for the Petitioner.

Shri Purshottam Rai, Counsel for the Respondent/State.

None for the respondent no.2, though served.

This petition under Section 482 of Cr.P.C. has been filed for quashment of F.I.R. in Crime No.158/2016 registered by Police Station Ganj Basoda City, Distt. Vidisha for offence under Sections 406, 420 and 409/34 of I.P.C., seeking the following relief :

> *It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to allow this petition and quash the FIR Crime no. 158/2016 registered by the Police Station, Ganj-Basoda City, District : Vidisha alongwith all consequential criminal proceedings pending against the petitioner in the concerned court, in the interest of justice.*

2. This is the third round of petition under Section 482 Cr.P.C., which has been filed by the Petitioner for quashment of the F.I.R.

3. Initially, the petitioner had filed a petition under Section 482 of Cr.P.C. which was registered as M.Cr.C. No.11136/2017. The Said petition was dismissed by a Division Bench of this Court by order dated 5-2-2018 which reads as under :

> "Shri N.P. Dwivedi, learned Senior counsel with Shri S.K. Tiwari, counsel for the petitioner.
>
> Shri R.K. Awasthi, learned Public Prosecutor for respondent No.1/State.

Shri Rajiv Sharma, learned counsel for respondent No.2.

Inherent powers of this Court u/S 482 Cr.P.C. are invoked to assail the prosecution initiated against the petitioner vide F.I.R. dated 18.02.2016 bearing Crime No.158/2016 alleging offences punishable u/S 406, 420/34 I.P.C. and subsequently added section 409 I.P.C.

Learned counsel for the petitioner submitted that the impugned F.I.R. was lodged against three co-accused namely Manohar Lal Parik, Chiranji Lal Parik and Devendra Garg and the petitioner was neither named in the said F.I.R. nor any allegation was made therein against him. It is submitted that during the course of investigation statement of one of the co-accused Manohar Lal Parik u/S 27 of Evidence Act was recorded wherein it was inter alia alleged that the godown of the petitioner had been used for storing the stock of gram alleged to be the subject matter of the offence in question. It is thus submitted that there is no evidence available against the petitioner.

Learned counsel for the State and the victim contend that investigation against the said three co-accused after being concluded led to filing of charge-sheets, whereas, further investigation u/S 173(8) of Cr.P.C. is kept pending against the petitioner.

This Court is of the considered view that possibility of further incriminating evidence against the petitioner coming to light cannot be ruled out due to inconclusive investigation.

Accordingly, this Court declines interference.

At this stage learned counsel for the petitioner contends that the petitioner is a reputed Citizen and his arrest may entail adverse consequence to his reputation.

Once this Court finds the challenge to the F.I.R. as premature it would be inappriate to make any comment about the apprehension urged by petitioner's counsel.

Consequently, this petition u/S 482 Cr.P.C. stands dismissed."

4. Thereafter, the petitioner again filed another petition under Section 482 of Cr.P.C. for quashment of the F.I.R. which was registered as M.Cr.C. No.35886 of 2018. The said petition was dismissed by order dated 19-11-2018 which reads as under :

> Shri Jitendra Kumar Sharma, counsel for the applicant.
>
> Shri Vivek Jain, Public Prosecutor for the respondent No.1/ State.
>
> This petition under Section 482 of CrPC has been filed for quashing the FIR in Crime No.158/2016 registered at Police Station Ganj Basoda, District Vidisha for offence under Sections 406, 420, 409, 34 of IPC.
>
> Before considering the submissions made by the counsel for the petitioner, it would be appropriate to mention that initially the petitioner had filed a similar petition, which was registered as MCRC No.11136/2017 and the said petition was dismissed by the Division Bench of this Court by order dated 05/02/2018, with the following observations:-
>
> > "Learned counsel for the State and the victim contend that investigation against the said three co-accused after being concluded led to filing of charge-sheets, whereas, further investigation u/S 173(8) of Cr.P.C. is kept pending against the petitioner.
> >
> > This Court is of the considered view that possibility of further incriminating evidence against the petitioner coming to light cannot be ruled out due to inconclusive investigation.
> >
> > Accordingly, this Court declines interference.
> >
> > At this stage learned counsel for the petitioner contends that the petitioner is a

reputed Citizen and his arrest may entail adverse consequence to his reputation.

Once this Court finds the challenge to the F.I.R. as premature it would be inappropriate to make any comment about the apprehension urged by petitioner's counsel.

Consequently, this petition u/S 482 Cr.P.C. stands dismissed."

It is submitted by the counsel for the petitioner that thereafter, the matter has been amicably resolved between the parties and the FIR may be quashed.

During the arguments, it has been fairly conceded by the counsel for the applicant that the police has not filed the charge sheet so far. Thus, in the light of the order dated 05/02/2018 passed by the Division Bench of this Court, possibility of further incriminating evidence/material cannot be ruled out. The petitioner has not filed this petition under Section 482 of CrPC for quashment of proceedings on the basis of compromise although the photo copies of the affidavit have been placed on record.

Accordingly, this Court is of the considered opinion that in the light of the order dated 05/02/2018 passed by the Division Bench of this Court in MCRC No.11136/2017, this petition is premature. Even otherwise, this petition has not been filed for quashment of FIR on the basis of compromise.

Accordingly, this petition fails and is hereby dismissed."

5. In the present petition also, once again the petitioner has not prayed for quashment of F.I.R. on the ground of compromise, but has pleaded that since, a compromise has been arrived at between the petitioner and the victims, therefore, now there is no possibility of any evidence coming out and the criminal proceedings in such a case

would be a futile exercise. Para 5 of the application and Ground B reads as under :

> *.....However, the petitioner is filing an application of compromise between the parties under Section 320 of Cr.P.C., hence, there is no possibility of any evidence coming out and the criminal proceedings in such a case would be a futile exercise and merely abuse process of law.....*

Ground B reads as under :

> *B) That, all the dispute between the petitioner, complainant and other affected traders have been amicably settled by the parties and a compromise has been entered between the parties and an application under Section 320(2) Cr.P.C. is also being filed alongwith this petition, now complainant or any trader has no grievance against the petitioner. Since the offence punishable under Section 406, 420/34 IPC are compoundable under Section 320(2) Cr.P.C. with the permission of this Hon'ble Court and the offence of Section 409 of IPC is not at all made out and the nature of the offence is relates to commercial transaction, the FIR Annexure P/1 and its consequential criminal proceedings deserves to be quashed in the interest of justice.*

6. I.A. No.320/19 has been filed under Section 320 of Cr.P.C. for quashment of proceedings on the ground of compromise.

7. This Court by order dated 15-4-2019 had issued notices to the respondent no.2 and although he is served and represented by his Counsel, but none appears for complainant/respondent no.2.

8. It is not out of place to mention here that the police has already filed the charge sheet against some of the accused persons and it was

not made clear that whether the charge sheet has been filed against the petitioner, by showing him as absconding or the investigation has been kept pending against him under Section 173(8) of Cr.P.C., therefore, on 25-6-2019, this Court had passed the following order :

> *"Counsel for the applicant prays for and is granted a week's time to make the statement that whether the investigation has been kept pending against him under Section 173(8) of Cr.P.C. or charge sheet has been filed by showing the applicant as absconded?"*

9. Thereafter, on 2-7-2019, the Counsel for the petitioner informed this Court, that the police has kept the investigation pending against the petitioner on the ground that he could not be arrested and seizure could not be made. Therefore, the Counsel for the petitioner was directed to address this Court on the question that whether the non-cooperation by the accused during investigation would have any bearing on this case or not , therefore, following order was passed :

> "In compliance of order dated 25-6-2019, it is submitted by Counsel for the applicant that the Investigating Agency, after concluding the investigation, has filed the charge-sheet against some of the accused persons, but has kept the investigation pending against the applicant on the ground that he could not be arrested and seizure could not be effected. Therefore, at this stage, it cannot be said that the charge-sheet was filed by showing the applicant as absconding. The statement is taken on record.
>
> Due to paucity of time, the matter could

not be heard on merits. Accordingly, the matter is adjourned.

List this case in the **next week** for arguments on merits as well as for arguments on non co-operation by the applicant in the investigation."

10. Today, when Shri Jitendra Sharma, was asked to first argue on the issue of non-cooperation by the petitioner and its consequences, and whether the petitioner had ever applied for bail or not, then it was submitted by Shri Sharma, that earlier petition was dismissed because the petitioner had not filed the application under Section 320(2) of Cr.P.C. on behalf of all the victims along with their affidavits and now, this Court has once again raised the question of non-cooperation of the petitioner, therefore, this Court may decide the application, on its own, by going through the grounds raised in the application as well as the photocopies of affidavits of all the victims, which have been filed as Annexure P/4 alongwith this application.

11. Per contra, it is submitted by the Counsel for the State that in a case of cheating, each and every act of cheating would constitute a separate offence, therefore, the petitioner should have impleaded all the victims as respondents. It is further submitted that since the petitioner has not impleaded all the victims, therefore, the application is not maintainable. It is further submitted that for consideration of

application under Section 482 of Cr.P.C., the stage of investigation or trial is crucial, therefore, because of non-cooperation by the petitioner in the investigation, the application is liable to be dismissed.

12. Considered the submissions made by the Counsel for the State as well as the grounds raised in the application andthe documents filed along with the application.

13. Since, the Counsel for the petitioner has decided not to assist the Court, therefore, this Court was left with no other option, but to direct the Reader of the Court, to find out that whether the petitioner had filed any other case before this Court or not? Accordingly, the following information could be collected :

13.1. The petitioner, initially filed a petition under Section 482 of Cr.P.C. for quashment of the F.I.R., which was registered as M.Cr.C. No.11136/2017 which was dismissed by a Division Bench of this Court on 5-2-2018.

13.2 Thereafter, the petitioner filed an application under Section 438 of Cr.P.C. for grant of anticipatory bail, which was registered as M.Cr.C. No.14485 of 2018 and the same was allowed by this Court by order dated 4-5-2018 with a condition to deposit Rs.75,00,000/- and was directed to appear before the investigating officer on 4-6-2018. The condition of deposit of

Rs.75,00,000/- was imposed because the petitioner had taken a specific stand, that the co-accused persons have been granted bail on the condition of deposit of Rs.1 Crore Fifty Lakh. The order passed in M.Cr.C. No.14485 of 2018 reads as under :

Shri Sanjay Gupta, Counsel for the applicant.
Shri Prakhar Dhengula, Public Prosecutor for the respondent/State.
Case diary is available.
This is first application under Section 438 of CrPC for grant of anticipatory bail.
The applicant apprehends his arrest in Crime No.158/2016 registered by Police Station Basoda, District Vidisha for offence punishable under Sections 406, 420, 409/34 of IPC.
It is submitted by the counsel for the applicant that a FIR was lodged by the complainant against Manohar Lal Parikh, Chiraunji Lal Parikh and Devendra Garg on the allegation that the complainant had sold gram to Priya Traders and Ashutosh Enterprises. Even after receipt of the said gram, the amount of rupees four crore has not been paid by the accused persons. It is further submitted that during the pendency of the investigation, accused Chiraunji Lal Parikh and Manohar Parikh were arrested and they were granted bail by a co-ordinate Bench of this Court by order dated 1/2/2017 passed in MCRC No. 12810/2016 on the condition of making payment of Rupees One Crore Fifty Lakhs within two months to the traders. Since, the amount could not be paid within a period of two months, therefore, MCRC No. 357/2017 was filed seeking extension of time and a Division Bench of this Court by order dated 17/4/2018 has found that the co-acused Manohar Parikh and Chiraunji Lal Parikh have deposited the amount of rupees One Crore and Fifty lakhs, therefore, the period of two months has been High Court of Madhya Pradesh extended till the actual amount has been paid. It is submitted that so far as the applicant is concerned, he himself is the sufferer of the misdeeds of Manohar Parikh and he has also lodged the FIR against Manohar Parikh. It is further submitted that the applicant undertakes to abide by any condition which may be imposed by this Court.
Per contra, it is submitted by the counsel for the State that the

applicant is the partner of Manohar Parikh and it is incorrect to say that the applicant did not get any benefit out of the misdeeds of Manohar Parikh. Manohar Parikh and Chiraunji lal Parikh have been granted bail on depositing an amount of Rupees One Crore and Fifty Lakhs and still 50 % of the amount is outstanding. It is further submitted that although in the FIR, it is nowhere mentioned that the applicant had also persuaded the complainant to supply the gram, but since the applicant is the partner of Chiraunji Lal Parikh, therefore, he is also the beneficiary of the misdeeds of Chiraunji Lal Parikh.

Considering the submissions made by the counsel for the parties as well as the fact that the co-accused persons have been granted bail on depositing 50% of the amount, therefore, the applicant is granted bail on a condition that in case if he deposits an amount of Rs.75,00,000/- (Seventy Five Lakhs) before the trial Court and appears before the Investigating Officer (Arresting Authority) on or before **4.6.2018**, he shall be released on bail on his furnishing a personal bond in the sum of **Rs. 2,00,000/- (Rs. Two Lacs Only)** with two local sureties in the like amount to the satisfaction of the Arresting Officer (Investigating Officer).

The applicant shall make himself available for interrogation by the Investigating Officer as and when required. He shall further abide by the other conditions enumerated in sub-Section (2) of Section 438 of Cr.P.C.

It is made clear that in case if the applicant fails to appear before the Investigating Officer (Arresting Authority) on or before 04.06.2018, then this order in respect of the applicant shall lose its effect and the Investigating Officer shall be at liberty to take him in custody.

Certified copy as per rules."

13.3. The petitioner filed another application under Section 482 of Cr.P.C. for modification of order dated 4-5-2018 which was registered as M.Cr.C. No. 19090 of 2018. It was prayed by the petitioner that the condition of deposit of Rs. 75,00,000 may be deleted, but thereafter made a statement that he is ready to deposit the amount within 15 days. Therefore, the

application was also allowed and the time to deposit the amount and to appear before the Investigating officer was extended and he was directed to appear by 9th of June 2018. The interest of petitioner was also protected by observing that in case, the petitioner is acquitted then he shall be entitled for refund of money with interest @ 4%. The order dated 18-5-2018 reads as under :

"Shri Sanjay Gupta, counsel for the applicant.
Shri BPS Chauhan, Public Prosecutor for the respondent/ State.
Shri Rajiv Sharma, counsel for the complainant.
This application under Section 482 of CrPC has been filed for modification of the order dated 04/05/2018 passed in MCRC 14485/2018 and it is prayed that the condition of "if he deposits an amount of Rs.75 lacs before the trial Court" may be deleted. However, during the course of argument, it is submitted by the counsel for the applicant that the applicant could not arrange the huge amount of Rs.75 lacs and he will not be in a position to deposit the amount of Rs.75 lacs and, therefore, if the period for deposit of amount of Rs.75 lacs is extended by 15 days, then the applicant would comply the order dated 04/05/2018.
The prayer made by the counsel for the applicant is not opposed by the State Counsel as well as the counsel for the complainant.
Accordingly, it is directed that in case if the applicant appears before the Investigating Officer by **9th June, 2018** and deposits the amount of Rs.75 lacs before the trial Court, then he shall be released on bail on his furnishing a personal bond in the sum of Rs.2,00,000/- (Rupees two lacs) with two local sureties in the like amount to the satisfaction of the Arresting Officer (Investigating Officer). The remaining conditions imposed in the order dated 04/05/2018 passed in MCRC No.14485/2018 shall remain the same.
Needless to emphasize that if the complainant files an application for withdrawal of the amount, then the trial Court

shall obtain the adequate surety from the complainant as well as an undertaking from the complainant that in case if the applicant is acquitted, the complainant shall immediately refund the amount along with interest @ 4% per month.
This order shall be treated as part of the order dated 04/05/2018 passed in MCRC No.14485/2018.
This application is accordingly disposed of.
CC as per rules."

13.4. Thereafter the petitioner filed another petition under Section 482 of Cr.P.C. for quashment of F.I.R. which was registered as M.Cr.C. No. 35886 of 2018 and the order dated 19-11-2018 has already been reproduced in the earlier part of the order.

13.5. Thereafter, the present application has been filed for quashment of the F.I.R. on the ground of compromise.

14. The petitioner has merely disclosed the details of those applications which he had filed under Section 482 of Cr.P.C. It is important to mention here that in the present petition, the petitioner has not disclosed the fact that he had ever filed any application for anticipatory bail, and he was granted anticipatory bail on the condition of deposit of Rs. 75,00,000/-. It has also been suppressed by the petitioner that whether he has furnished the anticipatory bail after depositing the amount of Rs. 75,00,000 or not? Since, the petitioner is not inclined to make any statement with regard to the above mentioned circumstances, therefore, this Court is left with no

other option, but to draw an adverse inference against the petitioner to the effect, that he has not furnished the anticipatory bail after complying with the directions. Therefore, the effect of all the above mentioned circumstances are that not only, the petitioner has suppressed the fact of grant of anticipatory bail but has also suppressed the fact that he has not complied with the conditions on which anticipatory bail was granted. In spite of the anticipatory bail, the petitioner has not appeared before the investigating officer and has not co-operated in the investigation. The effect of such non-disclosure shall be considered at the later stage.

15. The following questions arise for determination :

15.1 In a case of cheating, whether each and every act of cheating would amount to separate offence warranting registration of separate F.I.R, or whether the Police by filing a consolidated charge-sheet can make the other victims as a witnesses, and if every act of cheating is a separate offence, then whether more than 3 offences committed in a calendar year can be tried together or not?

15.2 Whether the application for quashment of proceedings can be entertained, when the police has filed the charge sheet against co-accused persons, but kept the investigation pending against the petitioner, on the ground that he is yet to be

arrested and seizures are yet to be made?

15.3 What is the effect of non furnishing of the bail after complying with the conditions imposed by the Court, while granting anticipatory bail.

Whether each and every act of cheating constitutes a separate offence or a consolidated F.I.R. can be filed by showing one victim as complainant and other victims as witnesses?

16. The 3 Judges Bench of Supreme Court in the case of **Narinderjit Singh Sahni Vs. Union of India** reported in **(2002) 2 SCC 210** has held as under :

> **60.** As regards the issue of a single offence, we are afraid that the fact situation of the matters under consideration would not permit to lend any credence to such a submission. Each individual deposit agreement shall have to be treated as a separate and individual transaction brought about by the allurement of the financial companies, since the parties are different, the amount of deposit is different as also the period for which the deposit was effected. It has all the characteristics of independent transactions and we do not see any compelling reason to hold it otherwise. The plea as raised also cannot have our concurrence.

17. Another 3 Judges Bench of Supreme Court in the case of **State of Punjab Vs. Rajesh Syal** reported in **(2002) 8 SCC 158** has held as under :

> **6.** On a query being raised by this Court, the

learned counsel for the respondent sought to rely on Sections 218 and 220 CrPC in an effort to justify his plea for the consolidation of the cases. Mr Bali submitted that because of the proviso to Section 218, even where there are distinct offences being tried the Magistrate can direct that the same be tried together. In our opinion, proviso to Section 218 would apply only in such a case where the distinct offences for which the accused is charged are being tried before the same Magistrate. In the instant case, offences were being tried before different Magistrates and proviso to Section 218 cannot give any single Magistrate the power to order transfer of cases to him from different Magistrates or courts. Even Section 220 does not help the respondent as that applies where any one series of acts are so connected together as to form the same transaction and where more than one offence is committed, there can be a joint trial.

7. In the present case, different people have alleged to have been defrauded by the respondent and the Company and therefore each offence is a distinct one and cannot be regarded as constituting a single series of facts/transaction.

18. Recently, the **High Court of Delhi**, in the case of **State Vs. Khimji Bhai Jadeja** by order **dated 8-7-2019** in the case of **Cr. Reference No. 1/2014**, while deciding the criminal reference made by an Additional Sessions Judge under Section 395(2) of Cr.P.C. has held as under :

The questions of law framed by the Ld. ASJ for determination of this Court, read as follows:
—a. Whether in a case of inducement, allurement and cheating of large number of investors/ depositors in pursuance to a criminal conspiracy, each deposit by an investor constitutes a separate and individual transaction or all such transactions

can be amalgamated and clubbed into a single FIR by showing one investor as complainant and others as witnesses?

b. If in case the Hon'ble Court concludes that each deposit has to be treated as separate transaction, then how many such transactions can be amalgamated into one charge- sheet? (Note: - As per the provisions of section 219 Cr.PC. and as observed by the Hon'ble Apex Court in the case of Narinderjit Singh Sahni & Anr. Vs. Union of India &Ors. Only three transactions in a particular year can be clubbed in a single charge-sheet).

c. Whether under the given circumstances the concept of maximum punishment of seven years for a single offence can be pressed into service by the accused by clubbing and amalgamating all the transactions into one FIR with maximum punishment of seven years?

(Note: - If this is done, this would be in violation of concept of Proportionality of Punishment as provided in the Code of Criminal Procedure. In the case of Narinderjit Singh Sahni vs. Union of India &Ors. it has been observed by the Hon'ble Supreme Court that this cannot be done but in case if we go by the ratio laid down by the Delhi High Court in the case of State vs. Ramesh Chand Kapoor this is possible. Hence this aspect requires an authoritative pronouncement by a larger Bench)‖.

The High Court while answering the reference has held as under :

62. Thus, our answer to Question (a) is that in a case of inducement, allurement and cheating of large number of investors/ depositors in pursuance to a criminal conspiracy, each deposit by an investor constitutes a separate and individual transaction. All such transactions

cannot be amalgamated and clubbed into a single FIR by showing one investor as the complainant, and others as witnesses. In respect of each such transaction, it is imperative for the State to register a separate FIR if the complainant discloses commission of a cognizable offence.

* * * *

80. Thus, our answer to question (b) is that in respect of each FIR, a separate final report (and wherever necessary supplementary/ further charge sheet(s)) have to be filed, and there is no question of amalgamation of the final reports that may be filed in respect of different FIRs. The amalgamation, strictly in terms of Section 219 Cr.P.C., would be considered by the Court/ Magistrate at the stage of framing of charge, since Section 219(1) mandates that where the requirements set out in the said Section are met, the accused "may be charged with, and tried at one trial for, any number of them not exceeding three"

81. We may now proceed to answer question (c), which read as follows:

―c. Whether under the given circumstances the concept of maximum punishment of seven years for a single offence can be pressed into service by the accused by clubbing and amalgamating all the transactions into one FIR with maximum punishment of seven years?‖

82. In our view, the aforesaid question does not survive in view of the answer to question (a) and (b). It would be for the Trial Court to consider the sentence to which the convict may be subjected as per law, keeping in view the well settled principles of sentencing. In this regard, we may only refer to Section 31 of the Cr.P.C. which, inter alia, provides that when a person is convicted at one trial of two or more offences,

> the Court, may subject to the provisions of Section 71 IPC, sentence him for such offences to the several punishments prescribed therefor which such Court is competent to inflict. It further provides that such punishments, which consist of imprisonment, would commence one after the expiration of the other, unless the Court directs that such punishments shall run concurrently. The limitation on the quantum of sentence is prescribed by sub Section 2 of Section 31 of the Cr.P.C., but the same would apply in respect of convictions at one trial of two or more offences. However, where the trials are multiple, which result into multiple convictions, the proviso to Section 31(2) would have no application.
>
> 83. Accordingly, the Criminal reference is answered in the above terms.

19. Thus, each and every act of cheating is a separate offence in itself, requiring registration of separate F.I.R. In the present case, the police has registered only one consolidated F.I.R. and as per the allegations, several persons to the tune of Rs. 4 Crores were cheated by the accused persons. Thus, under these circumstances, although the police might have registered only one F.I.R., but one victim cannot be treated as a complainant and the remaining victims cannot be treated as witnesses only. In the present case, the petitioner has impleaded the complainant only and has filed his own affidavit and the affidavit of the complainant in support of the application filed under Section 320 of Cr.P.C. Since, each victim is a complainant, therefore, affidavits of each and every victim were necessary in

support of the application, but in view of the photocopies of affidavits (filed as Annexure P/4) of victims, the petitioner can be directed to implead all the victims as respondents. However, the next question would be that whether any direction to file the affidavits of all the victims would serve any purpose or not? This shall be considered in the following paragraphs.

20. Thus, it is held that the police should have registered separate F.I.R.s for every act of cheating and should not have lodged a consolidated F.I.R. However, as the charge sheet has already been filed against the co-accused persons, therefore, this Court, doesnot find it appropriate to issue any direction to the police in this regard.

Non-arrest and non-cooperation of the petitioner in the investigation.

21. Section 320 of Cr.P.C. reads as under :

> **"320. Compounding of offences**.—(1) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:—
>
> * * * *
>
> (2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:—

* * * *

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908), of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under Section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded."

22. It is the case of the petitioner, that the offences under Sections 406, 420 of I.P.C. are compoundable with the permission of Court

and no offence under Section 409 IPC has been made out.

23. The centripetal question is that whether this Court, in exercise of power under Section 482 of Cr.P.C., can exercise the powers of Section 320(2) of Cr.P.C., even when the accused has not surrendered, although the Trial is in progress against co-accused persons?

24. The answer lies in Section 320(2) of Cr.P.C., which says that the offence can be compounded with the permission of the "Court before which any prosecution for such offence is pending". Thus, the Court before which the prosecution is pending is competent to grant permission. In the present case, no prosecution in the form of appeal/revision is pending before this Court. Even no prosecution of the petitioner is pending before the Trial Court, as he has not surrendered and because of that the police has kept the investigation pending under Section 173(8) of Cr.P.C.

25. When the petitioner can always file an application under Section 320(2) of Cr.P.C. before the Trial Court, for compounding of compoundable offences, then this Court should restrain itself from exercising the powers of the Trial Court, because the petitioner is not co-operating in the investigation. This Court while dismissing the first petition filed by the petitioner, which was registered as M.Cr.C. No.11136/2017 had observed that there is a possibility of collection

of further evidence. Thus, this Court in exercise of powers under Section 482 of Cr.P.C. cannot quash the proceedings in the light of the dismissal of M.Cr.C. No. 11136 of 2017.

26. So far as the contention of the Counsel for the petitioner, that he does not want to address the Court on the question of non-cooperation of the petitioner in the investigation is concerned, this Court is of the considered opinion, that the stage of investigation/ trial is one of the important factors for considering the application for quashment of the F.I.R./criminal proceedings on the ground of compromise.

27. The Supreme Court in the Case of **Narinder Singh Vs. State of Punjab** reported in **(2014) 6 SCC 466** has held as under :

> **29.1.** 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.
>
> **29.2.** 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.

29.3. 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.

29.4. 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.

29.5. 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.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether

such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. 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 or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence

> under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.

28. Thus, the stage at which the compromise was arrived at between the parties is also very crucial. In the present case, it is an admitted position, that the police after concluding the investigation, has already filed a charge sheet against the co-accused persons. Since, the petitioner could not be arrested therefore, the police kept the investigation pending on the ground that the petitioner could not be arrested and seizure could not made. Further, the petitioner after obtaining the anticipatory order, did not comply the conditions and did not furnish bail and also did not appear before the Investigating officer. Thus, it is clear that the petitioner has adopted a non-cooperative attitude with the police and is hiding all the time.

29. Thus, in the considered opinion of this Court, when an accused is running away from investigating agency, and has also not complied with the conditions of anticipatory bail and has not co-operated in the investigation, inspite of the fact that charge sheet has already been

filed against some of the accused persons, and they are facing trial, this Court is of the considered opinion, that the criminal prosecution can not be quashed on the ground of compromise.

30. In the present case, the allegations in short are that the petitioner along with the co-accused persons has cheated several persons to the tune of Rs. 4 crores. Although the petitioner has claimed himself to be an innocent person, having been implicated falsely, but on deeper scrutiny of the affidavits of the victims, it is clear that they have stated that the petitioner has refunded their money. Since, the contents of all the affidavits of 21 victims are identical, therefore, the averment made in the affidavit of one Smt. Rama Gupta are being reproduced here by way of sample :

> 3. यह कि उक्त मनोजकुमार गोयल द्वारा मुझ शपथकर्ता के फर्म के नुकसान की क्षतिपूर्ति कर दी गई है एवं अब मेरा मनोजकुमार गोयल से कोई लेना देना शेष नही रहा है। हमारे बीच सौहाद्रपूर्ण वातावरण मे राजीनामा हो चुका है। मै उक्त अपराध मे मनोजकुमार गोयल के विरूद्व कोई कार्यवाही नही चाहता हूं।

31. Thus, it is clear that the contention of the petitioner that he has nothing to do with the misdeeds of the co-accused persons is false. Even otherwise he has also not filed any document/bank account statement to show that he has repaid the amount to the victims. Further, the petitioner has suppressed material facts as mentioned above.

32. Further, the petitioner has not filed the affidavits of all the victims in support of this application. The present application is supported by the affidavit of the petitioner and the respondent no.2 only. As already held that each and every act of cheating amounts to separate offence, therefore, it is necessary that the application for compounding the offence should be supported by an affidavit of all the victims. The photocopies of the affidavits filed along with the application cannot be considered as an Affidavit in support of the application.

33. As the case has not been argued by the Counsel for the petitioner, therefore, this Court is restraining itself from considering the allegations against the petitioner in detail, however, in the light of the order passed by the Division Bench of this Court in M.Cr.C. No. 11136/2017, as well as non-compliance of the order of anticipatory bail, it is sufficient to hold that as the petitioner has not co-operated with the investigating officer and has not allowed the investigating agency to collect all the material against the petitioner, therefore, even on the ground of compromise, the F.I.R. No.158/2016 registered by Police Station Vidisha for offence under Section 406,420,409/34 of I.P.C. cannot be quashed. Further, where number of innocent persons have been cheated, then it can be safely said that the offence alleged against the petitioner is not against a single person, but it is

an offence against the Society at large.

34. Resultantly, the application fails and is hereby **Dismissed.**

35. Let a copy of this order be sent to the Director General of Police, State of Madhya Pradesh, Bhopal, for issuing necessary instructions to the investigating officers to follow the law laid down by the Supreme Court in the case of **Narinderjit Singh Sahni (Supra)** and **Rajesh Syal (Supra)** as well as the Judgment passed by the Delhi High Court in the case of **Khimji Bhai Jadeja (Supra).**

36. S.T. No.200239 of 2016 is pending before the Court of 2nd Additional Sessions Judge, Vidisha against other co-accused persons. The office is directed to immediately send a copy of this Court to the Trial Court also for necessary information.

(G.S. Ahluwalia)
Judge

Arun*