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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: March 15, 2019
Decided on: April 22, 2019

\+ CRL.M.C. 5765/2018

SH. YASHPAL CHAUDHRANI & ORS. ..... Petitioners

Through: Mr. Gurmit Singh Hans & Ms. Aarti Machanda, Advs.

versus

STATE (GOVT. OF NCT DELHI) & ANR. ..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for the State with SI Alok Bajpai, Spl. Cell/SR.

Mr. Dayan Krishnan, Sr. Adv. with Mr. Harsh Sinha, Adv. for R-2.

Mr. J.P. Sengh, Sr. Adv. with Ms. Veena Ralli, Adv. / Organising Secretary, Delhi High Court Mediation and Conciliation Centre.

\+ CRL.M.C. 5768/2018

AKHIL ARORA & ORS. ..... Petitioners

Through: Mr. Gurmit Singh Hans & Ms. Aarti Machanda, Advs.

versus

STATE & ANR. ..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for the State with SI Alok Bajpai, Spl. Cell/SR.

Mr. Dayan Krishnan, Sr. Adv. with Mr. Harsh Sinha, Adv. for R-2.

\+ CRL.M.C. 5785/2018

RAJIV ARORA & ORS ..... Petitioners

Through: Mr. Gurmit Singh Hans & Ms. Aarti Machanda, Advs.

versus

STATE (GOVT. OF NCT DELHI) & ANR. ..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for the State with SI Alok Bajpai, Spl. Cell/SR.

Mr. Dayan Krishnan, Sr. Adv. with Mr. Harsh Sinha, Adv. for R-2.

\+ CRL.M.C. 5805/2018

MANISH JAIN & ORS. ..... Petitioners

Through: Mr. Gurmit Singh Hans & Ms. Aarti Machanda, Advs.

versus

STATE (GOVT. OF NCT DELHI) & ANR. ..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for the State with SI Alok Bajpai, Spl. Cell/SR.

Mr. Dayan Krishnan, Sr. Adv. with Mr. Harsh Sinha, Adv. for R-2.

\+ CRL.M.C. 5995/2018

ASHWANI KUMAR & ANR ..... Petitioners

Through: Mr. Yudhvir Singh Chauhan, Adv.

versus

THE STATE OF NCT OF DELHI & ORS ..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for the State with SI Shalendra Singh & SI Ishwar Singh, PS Amar Colony.

Mr. J.P. Sengh, Sr. Adv. with Ms. Veena Ralli, Adv. / Organising Secretary, Delhi High Court Mediation and Conciliation Centre.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

J U D G E M E N T

1. In the context of these petitions invoking the inherent power of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC), and similarly placed other petitions which are routinely presented, to seek quashing of criminal proceedings on account of "*settlement*" of the dispute with the party perceived to be the victim, questions have arisen as to whether the process of mediation, particularly one under the aegis of the court, should be permitted or

encouraged to be availed of for bringing about such settlement as may possibly not be taken by the court to be a just or sufficient reason for such intervention, this having regard to the nature of the crime involved. In the course of the scrutiny, some concerns as to the manner in which cases involving grave and serious crimes have been dealt with by the criminal courts have also come up for consideration and directions.

BACKGROUND FACTS

The case of rape and sexual assaults

2. On 15.11.2018, a petition under Section 482 Cr. PC had come up for consideration before this court, it being Crl. MC 5731/2018 titled *Manmeetsingh and Ors vs. State (NCT of Delhi) and Anr.*, wherein prayer was made for quashing of the proceedings arising out of first information report (FIR) no.88/2017 of police station Hauz Khas involving offences punishable under Sections 376 / 377 / 354 / 506 / 509 / 323 / 341/ 34 Indian Penal Code, 1860 (IPC), reliance being placed on a settlement agreement dated 13.09.2018 entered upon by the parties to the said case at Delhi High Court Mediation and Conciliation Centre. As per the said settlement agreement, the parties therein were locked in four cases, the other matters relating to matrimonial dispute, one being a State case involving offence punishable under Section 498-A IPC. But, it was conceded that the allegations of sexual assault, unnatural offence and rape in the case (the quashing of which was being sought) were directed against persons other than the husband. The State had objected to the prayer

placing reliance on ruling of a bench of three Hon'ble Judges of Supreme Court in *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Kurmur & Ors. Vs. State of Gujarat and Anr., (2017) 9 SC 641*. The petitioners chose to withdraw the said petition, in due deference to the said precedent.

Four cases of credit card frauds

3. The first captioned matter relates to FIR no.47/2003 of police station Special Cell (SB) of Delhi Police, the settlement dated 03.07.2018 on the basis of which the prayer for quashing was made, also covering three other criminal cases they having arisen out of FIR nos.45/2003, 53/2003 and 54/2003, all of the same police station. The next three captioned petitions i.e. Crl. MC Nos.5768/2018, 5785/2018 and 5805/2018 pertain to the said three other connected FIRs.

4. It may be mentioned here that all the aforesaid four cases involve four common petitioners, they being Charanjit Singh Chadha @ Shampy, Dinesh Gupta, Rajiv Arora and Yogesh Mahajan. The case relating to FIR no.47/2003 (Crl. MC 5765/2018) involves one Yashpal Chaudhrani as additional accused (first petitioner). The FIR no.53/2003 (Crl. MC 5768/2018) involves one Akhil Arora as additional accused (first petitioner). The case relating to FIR no.45/2003 (Crl. MC 5785/2018) involves four additional accused (petitioners) viz. Adil Khan, Suhail Khan, Imran Khan @ Mehmood Khan and Aman Nayyar. The last case relating to FIR no.54/2003

(Crl. MC 5805/2018) involves one additional accused (first petitioner) Manish Jain.

5. It appears that each of the said cases (FIRs) had been registered on the complaints of Mr. Anuj Bhatia, Assistant Manager – Risk Control of HDFC Bank, a representative of HDFC Bank Ltd. ("the bank") which is the second respondent common to all the four matters, its another representative, Mr. Amit Sahni, Assistant Vice President, being a signatory to the settlement agreement.

6. The copy of the report (charge-sheet) under Section 173 Cr. PC filed on 25.10.2004 by the police in FIR no.45/2003 shows that the complaint had been lodged by the representative of the bank on 05.06.2003 about a large number of instances having come forth in which domestic as well as international credit cards had been counterfeited, by skimming technique which involves copying of electronic data from genuine cards at the time of their use in the normal course, stolen data having been written on blank plastic cards. He informed the police that the bank had been investigating such frauds and with the help of a secret source had come across material showing involvement of certain named persons (petitioners) in such activity. The bank had specific information that some members of the gang would be coming to S.N. Market on 05.06.2003 to use such forged cards on the swipe machines of the merchants.

7. It is the case of the prosecution that the police had arranged a trap and, at the instance of an informer, petitioners Dinesh Gupta, Rajiv Arora and Adil Khan were intercepted. Their interrogation and

searches statedly led to recovery of a large number of credit cards suspected to be counterfeit, the later investigation confirming the same to be forged credit cards prepared with stolen data. The further probe led to certain other recoveries including a large number of blank plastic cards, one assembled CPU make Hitech, a computer system and a laptop with certain peripherals which had been used for preparing the counterfeit credit cards. The interrogation statedly brought out the role of other accused persons (co-petitioners) this, in turn, leading to certain other recoveries including certain computers, laptop, one folder containing CDs, digital diary, etc.

8. The fake credit cards which had been seized were found to be belonging to foreign nationals. The charge-sheet presented in the case sought prosecution of the petitioners (of Crl. MC 5785/2018) for offences under Sections 420, 468, 471, 474, 379, 409 and 120-B IPC.

9. The copy of charge-sheet dated 18.12.2003 submitted on 22.12.2003, upon conclusion of investigation into FIR no.47/2003, reveals that it was based on complaint dated 08.07.2003 of the representative of the bank. This complaint was dealt with as one in continuation of FIR no.45/2003. The first informant was focussing here on the role of petitioner Yash Chaudhrani, proprietor of M/s. *Kurta Ghar*, a trading firm having business from Shop no.6287, Kohlapur Road, Kamla Nagar, Delhi. The said trader had entered into a merchant-establishment agreement with the bank, the necessary equipment (EDC Machine) having been provided so that he could accept the payments against credit cards of specified nature (Master

Card and Visa). Reference was made to certain recoveries (plastic cards and floppies) that had been effected from petitioners (Yogesh Mahajan, Dinesh Gupta and Rajiv Arora) during investigation of FIR no.45/2003. The investigation revealed some of the said plastic cards containing the stolen data of different persons had been used at M/s. *Kurta Ghar*. The data of the affected credit cards was found in the computer of petitioner Charanjit Singh Chadha @ Shampy, it statedly having been procured from foreign country and stored in electronic data reader which had been shared with the co-accused for preparing the counterfeit credit cards. The use of the said forged credit cards from the establishment of M/s. *Kurta Ghar* was assessed to have caused wrongful loss to the tune of Rs.7 Lakh approximately. The charge-sheet sought prosecution of the petitioners (of Crl. MC 5765/2018) for offences under Sections 409, 420, 120-B, 34 IPC.

10. The charge-sheet dated 10.12.2003 submitted on 22.12.2003, upon conclusion of investigation into FIR no.53/2003, also reveals that it had also been registered on the complaint dated 08.07.2003 of the representative of the bank. It concerns similar misuse of EDC machine installed by the bank in the premises of a trader M/s. Akshan Telecom, a proprietary concern of the petitioner Akhil Arora, in Ghaffar Market, Karol Bagh, New Delhi, forged credit cards recovered from petitioners Dinesh Gupta, Rajiv Arora and Yogesh Mahajan (arrested during investigation of previous two cases) having been deployed, they having been prepared with the help of stolen / skimmed data of various genuine card holders, information in which

regard was also found contained in the computer of petitioner Charanjit Singh Chadha @ Shampy who had procured it from foreign lands. The loss caused on account of misuse through the establishment of Akhil Arora was assessed to be in the sum of Rs.7 Lakh approximately. The police sought prosecution of petitioners (of Crl. MC 5768/2018) for offences under Sections 420, 120-B, 34 IPC.

11. The FIR no.54/2003 was also registered on 08.07.2003 on complaint of the same representative of the bank. The charge-sheet in this case was submitted on 22.12.2003. It concerns similar misuse of EDC machine installed by HDFC bank at the premises of M/s. Manish Steel Centre, Kamla Nagar, New Delhi, the petitioner Manish Jain being the son of its proprietor. As in the previous two cases, certain fabricated credit cards recovered from petitioners Dinesh Gupta, Rajiv Arora and Yogesh Mahajan have been found to have been used through this establishment causing approximate loss of Rs.7 Lakh, there being evidence confirming involvement of co-petitioner Charanjit Singh Chadha @ Shampy who had arranged the stolen data of genuine customers. The police through the above mentioned charge-sheet sought prosecution of the petitioners (of Crl. MC 5805/2018) for offences under Sections 409, 420, 120-B, 34 IPC.

12. It is clear that the source of data which was stolen and found in possession of the accused has not been traced. *Prima facie*, these acts were committed in wake of deep-rooted criminal conspiracy. The proceedings in the cases reveal some of the accused are absconding.

13. The first four petitions seek the proceedings in the criminal cases referred to above to be quashed on the ground that the bank through its representative has amicably settled the dispute through mediation.

The case of obscene calls and IT Offences

14. The last captioned matter (Crl. MC 5995/2018) pertains to FIR no.454/2013 of police station Amar Colony, the investigation into which has resulted in charge-sheet dated 19.06.2016 being presented seeking trial of the petitioners of the said case for offences under Sections 66-A and 67 of Information Technology Act, 2000, the second respondent being the first informant (complainant). As per the allegations in the FIR, the complainant had been receiving certain obscene / vulgar calls on his mobile phone respecting which he had lodged a complaint on 23.11.2012 (vide DD no.37B) with police station Amar Colony and another complaint on 17.12.2012 made to Cyber Crime Cell. It was revealed that someone had made a fake ID on social media (Orkut) in the name of the third respondent (sister of the complainant), her mobile phone number having been mentioned therein. It was reported that several callers had started making improper contact at the landline phone number of the complainant in his office using vulgar language which resulted in a number of lady workers leaving the job, he being constrained to shift to a new office and obtaining a new telephone number.

15. The complainant suspected the involvement of second petitioner in these acts. Though the Cyber Crime Cell was able to

delete the fake IDs, new ID was found to have been generated, the inquiries into its origin revealing the involvement of the first petitioner.

16. The investigation has statedly brought out, *inter alia*, that a number of fake e-mail IDs have also been created, amongst others, by the two petitioners, they being in use of a number of internet protocol addresses. Evidence showing complicity of the two petitioners (of Crl. MC 5995/2018) in offences under Sections 66-A and 67 of the Information Technology Act, 2000 is stated to have been gathered, the charge-sheet accordingly seeking their prosecution, the role of certain others also having come up but they being untraceable.

17. The counsel on both sides confirmed at the hearing that the question of charge has not been considered in this case till date. The petitioners seek an end to criminal case on basis of settlement through mediation.

REFERENCES TO MEDIATION: SETTLEMENTS

18. The four criminal cases relating to FIR nos.45/2003, 47/2003, 53/2003 and 54/2003 of police station Special Cell were referred to Delhi Mediation Centre of New Delhi Courts Complex at Patiala House by the Chief Metropolitan Magistrate before whom they have been pending. The settlement agreement dated 03.07.2018, common to all the said four cases, signed by Mr. Amit Sahni, Assistant Vice-President and attorney for HDFC Bank Ltd. (the complainant), the

accused persons and their respective counsel, to the extent relevant, reads thus :-

> "*On the complaint of HDFC Bank alleging misuse of credit cards by resort to cloning and drawl of some amounts at points of purchase, the above cases were registered by Special Cell, Delhi Police. During investigation the different roles of inter-alia the accused persons came to the fore. The matter is more than 15 years old. Keeping in view the quantum of finances involved and the time the trial is likely to take, the parties conferred with each other and got the matter referred for mediation.*
>
> *Sh. Amit Sahni has been duly authorized by the complainant bank inter-alia for taking a decision and executing agreement / compromise with the opposite side by virtue of Power of Attorney dated 18.03.2016 executed in his favour. A copy of the same is annexed herewith.*
>
> *Pursuant to negotiations, the complainant and all the accused persons with their respective counsels have been able to resolve / settle their disputes on the following terms and conditions :-*
>
> *1. That all the respondents / accused persons have undertaken to collectively pay a total sum of Rs.12,00,000/- (Rupees Twelve Lakh only) to the complainant HDFC Bank Ltd. in full and final settlement of their money and issues involved in these cases.*
>
> *2. That the respondents / accused persons have actually delivered the following demand-drafts, favouring the complainant to Sh. Sahni, Assistant Vice President and Attorney of the complainant bank :-*
>
> *(details of eleven instruments of total value of Rs.11,77,000/- set out in table omitted).*

> *3. That a sum of Rs.23,000/- (Rupees Twenty Three Thousand only) has been collectively paid by the all the accused persons to Sh. Sahni in cash for now which they will invariably substitute with pay-order / demand draft before the Ld. Concerned court on the next date.*
>
> *4. That on receipt of the entire settlement amount on realization of the bank instruments afore-detailed delivered by the respondents today, the complainant / HDFC Bank Ltd. and of course its officers do not want to further proceed with the cases on their merits against the respondents / accused persons.*
>
> *5. That in the eventuality of the respondents / accused persons approaching the Hon'ble High Court for quashing the cases against them, the complainant / HDFC Bank Ltd. and its officers shall co-operate by swearing affidavits, appearing in the court and making statements."*
>
> (emphasis supplied)

19. The judicial officer who is Mediation In-charge of the aforesaid Mediation Centre has made an endorsement on the said settlement agreement to the following effect :

> "*The above terms of settlement have been arrived at, verified and signed by the parties voluntarily after examining all probabilities.*
>
> *Let the parties appear in Ld. Concerned court on date fixed i.e. 16.07.2018 for conformation and settlement...."*

20. As noted earlier, the prayer for quashing (in Crl. MC 5731/2018 of Manmeet Singh and Ors.), withdrawn on 15.11.2018 was based on

settlement agreement dated 13.09.2018, brokered by Delhi High Court Mediation and Conciliation Centre. In last captioned petition (Crl.MC 5995/2018) also the parties were referred to Delhi High Court Mediation and Conciliation Centre by the Metropolitan Magistrate, by proceedings recorded on 17.11.2018, on request to that effect being made by the parties, this having resulted in the settlement agreement executed on 19.11.2018.

21. Noticeably, this is not the first attempt to seek the said criminal action to be brought to an end. The petitioners had approached this court by Crl. MC 4428/2018 seeking the FIR of fifth petition to be quashed on the ground the parties were "*likely to arrive at a settlement*". The petition was withdrawn and dismissed accordingly on 28.11.2016. Another petition – Crl. MC 1144/2017 – was presented in April 2017 on the ground that the parties had "*settled the matter*". The petition was dismissed by a learned single judge of this court, by order dated 24.04.2017, the relevant part thereof reading thus:

> *1. "Learned APP for the State submits that though the settlement has been arrived at between the parties, however the allegations in the complaint were that the petitioners posted a picture of the respondent No.3 on the ORKUT alongwith the phone calls resulting in respondent no.3 receiving obnoxious calls. Petitioners were the students of respondent No.3 who was the teacher.*
>
> *2. Considering the nature of allegations and evidence collected during the course of trial, even though the parties have settled the matter, this Court is not*

inclined to quash the above-noted FIR and the proceedings pursuant thereto.

3. The petition is dismissed."

22. The petitioners (in Crl. MC 5995/2018) challenged the said order before the Supreme Court by Special Leave to Appeal (Crl.) Nos.5009/2017 but the said petition was dismissed by order dated 24.07.2017.

23. Yet, another request was made to the Metropolitan Magistrate for reference to mediation which was granted by order dated 17.11.2018, it culminating in a readily brokered settlement agreement of 19.11.2018 before Delhi High Court Mediation and Conciliation Centre.

24. The settlement agreement dated 19.11.2018, signed by both parties, their counsel and the mediator, to the extent relevant, reads thus :-

"1. <u>Disputes and differences arose between the parties</u> and on the complaint of the first party an FIR No.454/13 PS Amar Colony, under Sections 66A/67/67A under Information Technology Act read with Section 34 IPC as registered against the second party and thereafter the charge sheet was filed before Ms. Ankita Lal Ld. Metropolitan Magistrate-08, SE, Saket Courts, New Delhi by the police against the second party, which was registered as Cr. Cases 256/2/201696219/2016.

xxx

5. The parties hereto confirm and declare that they have voluntarily and of their own free will arrived at

the said Settlement Agreement in the presence of the Mediator.

6. The following settlement has been arrived at between the parties hereto :

a. It is agreed between the parties that they will try to end the litigation pending between them and accordingly, the second party agreed to give a sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the first party as compensation towards the satisfaction of their all claims, disputes, differences and grievances and the same is acceptable to the first party.

b. The second party shall file the petition before the Hon'ble High Court of Delhi for quashing of FIR no.454/13 P.S. Amar Colony, under Sections 66A/67/67A under Information Technology Act read with Section 34 IPC and all proceedings arising thereto within a month from the date of signing of the present settlement agreement. Both parties shall request the Hon'ble Court to quash the above noted FIR as the offences otherwise are not compoundable. The first party shall fully cooperate with the Second Party for quashing of the said FIR and shall appear before the Hon'ble Court for recording of statement and give their no objection / affidavit required for the quashing of the FIR.

c. That the first party has already received a sum of Rs.80,000/- (Rupees Eighty Thousand only) from the second party and the second party undertakes to pay the balance amount of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand only) to the first party at the time of quashing of the above said FIR.

> *d. The parties agree that they will not indulge in any litigation in future against each other and it has been assured by them to each other that they will not give any cause of complaint to each other.*
>
> *xxx"*
>
> (emphasis supplied)

THE CONCERNS

25. On 16.11.2018, the first captioned petition was filed. The background facts of this matter, the contentions of the parties and the issues which arose therefrom were noted at length in the proceedings recorded which, to the extent relevant, read thus :-

> *"8. The present petition invoking inherent power and jurisdiction of this court under Section 482 Cr.P.C. has been submitted seeking quashing of the proceedings arising out of FIR No.47/2003 primarily on the submissions that the parties, i.e., the accused persons (the petitioners), on one hand, and HDFC bank Limited (second respondent), on the other, have resolved to amicably settle the matter in terms of the settlement agreement recorded on 03.07.2018 at Mediation Centre, Patiala House Courts, New Delhi. A copy of the settlement agreement dated 03.07.2018, running into four leaves, counter-signed by the judicial officer deputed as the Mediation In-charge, Patiala House Courts, New Delhi has been submitted. The said document would reveal that the four aforementioned criminal cases were the subject matter of the "negotiations" (as is the expression used in the document) and, in terms of the resolution, the accused persons in the aforementioned four cases have "undertaken to collectively pay" to the complainant Bank a total sum of Rs.12 lacs "in full and final settlement of their money and issues involved...".*

9. The respondent State through Additional Public Prosecutor has strongly objected to the prayer in the petition referring to the decision of the three Hon'ble Judges of the Supreme Court reported as "Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another, (2017) 9 SCC 641". He submitted that the investigation has brought out a deep-rooted criminal conspiracy wherein certain credit cards were cloned, stolen data having been used with design to commit such frauds, a large number of public persons having also been thereby adversely affected, the case also involving the element of criminal breach of trust by the bank and its employees.

10. As was pointed out by the learned Additional Public Prosecutor for the State in the course of hearing, only yesterday, i.e., 15.11.2018 another petition, also invoking power and jurisdiction of this court under Section 482 Cr.P.C.had come up, it being Crl.M.C.5731/2018, titled Manmeet Singh & Ors. Vs. State (NCT of Delhi) & Anr., wherein prayer was made for quashing of the proceedings arising out of FIR No.88/2017 of Police Station Hauz Khas involving offences punishable under Sections 376/377/354/506/509/323/341/34 IPC, reliance being placed on a settlement agreement dated 13.09.2018 entered upon by the parties to the said case at Delhi High Court Mediation & Conciliation Centre. It must be added here that as per the settlement agreement dated 13.09.2018 involved in the said other case the parties therein were locked in three other matters, the said other matters relating to matrimonial dispute, one being a State case involving offence punishable under section 498-A IPC. But, it was conceded that the allegations of sexual assault, unnatural offence and rape were directed against persons other than the husband.

11. Though the attention of the counsel in the abovesaid other case having been drawn to the ruling of the Supreme Court in "Parbatbhai Aahir (supra), on instructions, he chose to withdraw the said petition which was dismissed

accordingly by order passed yesterday, the issue persists, particularly against the backdrop of the petition at hand, as to whether it is advisable for those concerned with legal process to take or permit recourse to mediation, in the teeth of law, as settled by the Supreme Court which would inhibit the inherent power under Section 482 Cr.P.C. to be availed to quash such criminal proceedings in serious or heinous crimes including those reflecting "mental depravity", as indeed, economic offenses involving "financial well-being of the State" or financial or banking institutions, affecting the public at large by "financial or economic fraud(s)".

12. In the given facts and circumstances, it is questionable as to whether in cases of this nature, this court should be called upon to exercise inherent power under Section 482 Cr.P.C. and, if the answer to this were to be in the negative, it is also questionable as to whether such cases should at all be referred by the criminal courts to the process of mediation and, even further, as to whether the court annexed mediation centers should be entertaining matters of above nature for such "negotiations", particularly when the process of mediation is supervised, or overseen, by judicial officers or persons trained in law.

13. HDFC Bank Limited is in the service of public at large and also deals with public money. It requires inquiry as to the justifications with which it would agree to participate in such process of negotiated settlement in cases involving serious criminal breach of trust and cheating. ..."

14. The State shall file a status report in respect of four aforementioned FIRs, also explaining the reasons why the case(s) are still at the initial stage of the judicial process, even fifteen years after the charge-sheet having been submitted.

15. The Chief Metropolitan Magistrate, New Delhi is directed to send a report as to what have been the reasons for delay in the progress of the cases after filing of the

charge sheet in December, 2003. He shall depute the court clerk who is custodian of the case files to remain present with trial court records for perusal on next date.

16. Copies of this order shall also be sent to the Mediation In-charge, New Delhi at Patiala House Courts and the Organizing Secretary, Delhi High Court Mediation & Conciliation Centre for their comments, if any, in the matter.

xxx"

(emphasis supplied)

THE PROTRACTED CRIMINAL PROCESS

26. The trial court records in all the four cases of credit card frauds mentioned above have been called for and perused. They reveal a very disturbing trend. The charge-sheets in the latter three FIRs, submitted on 22.12.2003, followed by the charge-sheet in the first case submitted on 25.10.2004, remained without any effective proceedings being recorded, even charges not having been considered or framed for almost a decade and a half, the proceedings recorded on numerous dates reflecting difficulty in procuring the presence of the accused persons, or their counsel, for assistance in consideration of charge. There has been gross wastage of the judicial time and energy in irrelevant or inconsequential matters, the presiding officer(s) being more pre-occupied with administrative responsibilities than judicial duties, there being no effective control, the directions for the case to be taken up on several dates for charge to be considered more in the nature of lip service than out of sincerity of purpose. The petitioners seem to have used all possible methods to delay meaningful progress

in any of these prosecutions including by absenting at will, every time the duress process issued being cancelled, almost for the asking, there being no accountability on the part of anyone including the prosecutor in charge.

27. A whole lot of confusion seems to be prevailing. This can be illustrated by the fact that in the case relating to FIR no.45/2003, some of the order-sheets prior to 12.01.2018 indicate the case was still at the stage of consideration of charge. Yet, on 12.01.2018 reference is made to the summons sent to the first informant (Anuj Bhatia) having returned unserved, the case being adjourned to 09.02.2018 "*for exploring chances of settlement, if any*" or failing that effort "*for PE*". While adjournments continued to be granted for exploring the possibility of settlement, the case continued to be listed at the stage of prosecution evidence, it eventually culminating in the proceedings for consideration of the settlement that had been reached on 03.07.2018.

28. Mercifully, in the case arising out of FIR no.47/2018, question of charge was decided upon by order dated 08.07.2015, it having been conceded by the accused persons in that case that charge was made out for putting them on trial for offences under Section 120-B IPC, Section 420 read with Section 120-B IPC and, in the alternative, under Section 409 read with Section 120-B IPC. Similar proceedings were recorded on 08.07.2015 in the cases relating to FIR no.53/2003 and also FIR no.54/2003. In the latter case, however, formal charge could not be framed since one accused was absent. Subsequently, duress process had to be issued to secure the presence of the absentee. Later

proceedings show that the trial court forgot that the charge had already been conceded to be made out. The case was again taken to arguments on the question of charge as indeed for exploring chances for settlement. The confusion noticed in the context of FIR no.45/2003 also prevailed in this case as the case was taken to the stage of prosecution evidence, by order dated 12.01.2018, though formal charge had not been framed, the settlement agreement dated 03.07.2018 having eventually derailed the process.

RESPONSES

29. The Chief Metropolitan Magistrate who presides over the court which is in *seisin* of the four criminal cases that are subject matter of the first four petitions has explained his position, based on proceedings in criminal case arising out of FIR No.47/03, by report dated 10.12.2018 thus :

> *"... the reasons for long pendency of the case after the filing of charge-sheet are various. First of all, the file was transferred from one court to another on number of occasions. The case was transferred from the court of Ld. CMM, Delhi to the court of Ld. ACMM, Delhi on 21.03.2006. On 01.06.2009, matter was transferred from the court of Ld. ACMM, North Delhi to Ld. CMM, Delhi which was received on 06.07.09. On 12.08.13, the matter was transferred from the court of Ld. CMM, Delhi to the court of Ld. CMM, New Delhi.*
>
> *Further, the case remained pending due to the absence of the one or the other accused on different dates. Accused Aadil was absent on 12.02.05, Accused CHARANJIT Chadha was absent on 12.12.05 and NBWs were issued against him which were got cancelled on 20.03.06. On 29.05.05, accused Yogesh*

Mahajan was absent and NBWs were issued against him. Accused Yogesh Mahajan was in JC in some other case and production warrants were issued on 31.08.06 but on NDOH he was not produced from the court and thereafter, production warrants were issued on 07.11.06 but on NDOH accused Yogesh Mahajan appeared and NBWs were got cancelled before the 29.01.07 but on NDOH i.e. 29.01.07, accused Rajiv Arora was absent and NBWs were issued against him which were cancelled 05.02.07. On 13.05.14, all accused persons were absent and BWs were issued against him.

Moreover, the IO did not file the report from GEQD and on 10.02.09, he stated that he would not be filing any such report. This fact also led to the delay in the matter.

Another reason for the matter having remained pending is that the Ld. Predecessors who presided over the court were busy in Administrative work or were on leave. The Ld. Presiding Officers were remained busy in Administrative work on 09.05.11, 02.09.11, 17.01.12, 25.04.12, 27.07.12, 19.10.12, 26.02.13 and 04.04.13. The Presiding Officers were remained on leave on 21.10.09, 17.02.10, 04.09.10, 18.02.11, 20.11.13 and 25.11.14.

The undersigned has joined this court on 11.09.2017 and after that on 15.11.2017 last opportunity was granted to the prosecution to produce the witnesses and summons were ordered to be issued through DCP as well as IO. However, the witnesses remained unserved and further, there was no report from the GEQD filed by the IO. Under these circumstances, the accused themselves express their desire to settle the matter through mediation. In fact, the mediation talks were going on since 08.08.2014 between the parties.

The heavy pendency of cases which are more than 10 years old has also caused delay in the disposal of

> *maters because as per direction, 10 years old case are to be disposed off on priority basis. The court is having heavy pendency of cases including more than 10 years old cases which are 205 in number and in each case the record is too voluminous. However, undersigned is giving short dates in those matters for expeditious disposal in terms of directions of Hon'ble High Court of Delhi for expeditious disposal of old cases. Initially the total pendency of more than 10 years old cases was 310 out of which 105 old cases have been disposed off till date. Undersigned is also looking after the administrative work and other miscellaneous work. The present case in hand also falls in the category of 10 years old matters …"*
>
> (emphasis supplied)

30. The judicial officer who has been working as In-charge of the Mediation Centre of Patiala House Courts, by his report dated 30.11.2018, has opted to term the settlement of credit card fraud cases as "*imprudence*", which was regrettable.

31. Mr. Amit Sahni, the Assistant Vice President, HDFC Risk Intelligence and Control of HDFC Bank Ltd., having taken instructions from the board of directors of the bank, and having been authorised in that behalf, has submitted his affidavit sworn on 12.03.2019 referring, *inter alia*, to the background facts of the four cases of cheating / fraud and the proceedings recorded in the trial court, particularly those of 12.01.2018 and 09.02.2018 on the file of FIR no.47/2003, whereby presence of the authorised officer of the bank had been insisted upon in the context of request for opportunity made by the defence for exploring chances of settlement. He took

exception to the submission of the State, as recorded in the proceedings of 16.11.2018 regarding there being "*element of criminal breach of trust by the bank and its employees*". He has set out in his affidavit the gist of the resolution dated 07.03.2019 of the board of directors of the bank as under :-

> "*(i). ... acknowledge that the Bank representative participated in the mediation and settlement process because the matter was referred to settlement by the court and mediation was carried out by the judicial officers, due to which there was an oversight by the Bank representative to agree as part of this settlement to give a 'no-objection' for quashing of the criminal proceedings (involving some non-compoundable offences) arising out of the relevant FIRs being 47/2003, 45/2003, 53/2003, 54/2003; and to tender apology for the said oversight.*
>
> *(ii). Take appropriate steps for due revocation of the aforesaid 'no objection' given in the matter(s)....*"
>
> (emphasis supplied)

32. By his affidavit dated 12.03.2019, Mr. Amit Sahni, Assistant Vice President of HDFC Bank, *inter alia*, seeks to revoke the "*no-objection*" given in the cases (for quashing on the basis of settlement), stating that the bank believes and follows the view point that "*the fraudsters should be brought to book and be punished*".

33. The Organizing Secretary of Delhi High Court Mediation and Conciliation Centre, by her comments in writing filed on 11.03.2019, referring to rulings of the Supreme Court in *Gian Singh vs. State of*

Punjab, 2012 (10) SCC 389; K Srinivas Rao vs. D.A. Deepa, 2013(5) SCC 226; Narinder Singh vs. State of Punjab, 2014 (6) SCC 466; Parbhatbhai Aahir Parbatbhai Bhimsinhbhai Kurmur & Ors., 2017 (9) SCC 641 and *State of Madhya Pradesh vs. Laxmi Narayan and Others in Criminal Appeal No.349/2019 (with Criminal Appeal No.350/2019)*, decided on 05.03.2019 and decision of a division bench of this court in *Dayawati vs. Yogesh Kumar Gosain, 2017 (243) DLT 117*, has, *inter alia*, submitted thus :

> "*2.Out of the alternative dispute mechanisms adopted by this country's legal system, the mediation movement as a reliable mechanism has gained both acceptability and popularity. Mediation is an assisted negotiation process aimed at allowing parties to settle their disputes amicably. Mediation enables warring parties to sit across the table and negotiate.*
>
> *3. It is submitted that the process of mediation commences pursuant to the Court order referring the parties for exploring the possibility of settlement through mediation process. Parties are being referred to Delhi High Court Mediation and Conciliation Centre, Samadhan, for resolution of their disputes of all kinds be it Civil or Criminal. The Court references for mediation are made on joint requests or with the consent of the parties. In cases where the settlement is arrived at between the parties, terms of such settlement are finalized and signed by the parties. In criminal matters, if the settlement is reached through mediation, a clause is incorporated by which the parties agree to approach the Hon'ble Court for taking the settlement on record and for quashing the criminal proceedings wherever required. Notwithstanding the fact that in criminal matters parties otherwise agree mutually to settle their dispute and grievances against each other in an amicable manner on the terms and conditions*

mentioned in the settlement reached between the parties, but the matter with regard to quashing of the criminal proceedings entirely remains within the power of the Hon'ble Court under Section 482 of Cr. PC as quashing of such proceedings is always left to the discretion of the Hon'ble court keeping in mind the guidelines enumerated in various judgments of the Apex Court.

4. The High Court, in exercise of such powers may refuse to quash any criminal proceedings which may involve heinous or serious offences or offences of mental depravity, offences under the special statutes and by looking at the antecedents of the accused and scan the entire facts to find out the thrust of the allegations so as to find out as to whether the incorporation of a penal provision of law is there for the sake of it or there is sufficient evidence on record which would lead to framing of charge or conviction.

5. The Hon'ble Supreme Court in various judgments pronounced since 2012 has elaborately discussed and laid down principles / guidelines which may be kept in mind by the High Court while exercising its power under Section 482 Cr. PC by quashing the criminal proceedings in cases involving non compoundable offences where amicably settlement otherwise is reached between the contesting parties ...

6. By laying down and applying the above stated principles and guidelines from time to time, Supreme Court has recognized the permissibility of quashing the criminal prosecutions in non-compoundable cases by High Court in exercise of its inherent jurisdiction under Section 482 of the Cr. PC. The Supreme Court has accepted compromises / settlements in non-compoundable offences upon evaluation of the factors like genuineness, fairness, equity, stage of the criminal proceedings and interests of justice."

(emphasis supplied)

THE LAW

Civil Disputes

34. The process of mediation has evolved over the period as one of the effective tools of alternative dispute resolution (ADR) mechanism. The provision contained in Section 89 of the Code of Civil Procedure, 1908 (CPC), reinserted by Act 46 of 1999 (brought in force with effect from 01.07.2002), gives it statutory recognition, the civil court being obliged to refer the disputants before it to such process if "*there exist elements of a settlement which may be acceptable"* the court required to "*formulate the terms of settlement*" modifying the same, if required, in light of observations of the parties thereto and if such process were to succeed to "*effect a compromise between the parties*" and to "*follow such procedure as may be prescribed*". The general scope of Section 89 CPC and the question as to whether such provision empowers the court to so refer the parties "*without the consent of both parties*" had arisen for consideration by the Supreme Court in decision reported as *Afcons Infrastructure Ltd. Vs. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24*. The court embarked upon a detailed scrutiny of the subject including on the question as to whether reference to ADR process is mandatory and, while answering the said question in the affirmative, carved out exceptions, by specifying the category of cases which would be treated as "*excluded*", they being "*not suitable for ADR process having regard to their nature*", referring in this context (para 27), *inter alia*, to the following :

> "(iv). Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion, etc.
>
> (vi). Cases involving prosecution for criminal offences"

Criminal cases

35. The Code of Criminal Procedure, 1973 (Cr.P.C.) governs the process of investigation, inquiry, or trial pertaining to criminal offences. The Indian Penal Code, 1860 (IPC) is the general law defining various offences prescribing the punishment therefor. The said law (IPC) is supplemented by various other enactments (special statutes) which also define certain other offences prescribing the punishment for each. Generally speaking, the procedural law, as provided by Cr.P.C., governs all such criminal law processes, be it relating to offences under IPC or under special statutes (see Section 4 Cr.P.C.). The special criminal laws, however, at times, make a departure from the general criminal procedure and for such purposes come with necessary provisions indicating the extent to which Cr.P.C. is to be applied with requisite modification.

36. The objective of criminal law is primarily to visit the offender with certain consequences. He may be made to suffer punishment or may be given opportunity to reform by release on probation (or after admonition), or, further to make amends (may be in addition to punishment) by paying compensation to the victim. The law, at the same time, recognizes that it may not be always desirable in every criminal offence to mete out punishment, particularly if the victim

wants to bury the hatchet. It is necessary that peace and tranquillity prevails in the society, and, therefore, if the disputants (here, the offender and the victim) want to move on, forgetting the damage done, depending on the nature and seriousness of the consequences that may flow from the particular offence, the law classifies the crimes into two categories, *viz.*, compoundable or non-compoundable.

37. Section 320 Cr.P.C. provides the procedure which is followed by the criminal court for dealing with the request for compounding of an offence. It specifies the offences which may be compounded and the conditions subject to which such request may be entertained as indeed the person who has the authority to compound the offence with the offender. There are two broad classes of compoundable offences; first, where it is left to the discretion of the parties and, the second, where the compounding is subject to discretion of the court.

38. Aside from offences under general law (IPC), certain special statutes also provide for crimes which may be compounded. For illustration, the offence under Section 138 of the Negotiable Instruments Act, 1881 is compoundable by virtue of Section 147. It is treated as *quasi* civil in nature. In *Kaushalya Devi Masand vs. Roopkishore Khore, 2011 4 SCC 593*, the distinction between traditional criminal offences and the said offence under Section 138 of the Negotiable Instruments Act (generally known as "*cheque bouncing case*") was commented upon thus :-

> "*11. Having considered the submissions made on behalf of the parties, we are of the view that the gravity of a*

complaint under the Negotiable Instruments Act cannot be equated with an offence under the provisions of the Penal Code, 1860 or other criminal offences. An offence under Section 138 of the Negotiable Instruments Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones."

(emphasis supplied)

39. The proviso to Section 19(5) of Legal Services Authority Act makes it clear that a *Lok Adalat* shall have no jurisdiction in respect of any case or matter relating to an offence "*not compoundable under the law*". A practice has grown over the period for cases of such nature, unduly large in number, to be referred to *Lok Adalats* under Section 19 of Legal Services Authority Act, 1987. The settlements brought before the courts of Metropolitan Magistrates, whether through the process of mediation, or before *Lok Adalat*, or otherwise by the parties on their own, have been resulting in prosecution under Section 138 of the Negotiable Instruments Act, 1881 being treated as compounded, the parties thereafter expected to abide by the terms of such settlement.

Inherent Power of High Court (S. 482 Cr.P.C.): Jurisprudence

40. The High Court is at the head of the judicial apparatus in each State with power of control and superintendence over all courts sub-ordinate to it, including criminal courts. Aside from such supervisory role conferred on the High Court, by the Constitution of India, 1950, particularly Articles 226 and 227, the Code of Criminal Procedure, 1973 also acknowledges, by Section 482, its inherent power to secure the ends of justice. This special provision reads thus:-

"482. Saving of inherent powers 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."

41. In cases where criminal court does not have the jurisdiction to entertain a request for compounding of an offence because law does not classify such offence in that category or where there are other reasons why the request for compounding has not been entertained, a practice has grown over the years that the parties approach the High Court invoking the inherent power under Section 482 Cr.P.C. for seeking end to the criminal process (at times even at the stage of investigation or inquiry) on the plea that continuance thereof would be an abuse of the process of law, most of the time on the contention that the parties have amiably resolved to end the dispute. It is in this context that the parties have been taking the matter, with or without the intervention of the court, to ADR mechanisms, particularly the process of mediation, the settlement reached there being then brought before the High Court with the prayer under Section 482 Cr.P.C. for the criminal proceedings to be quashed.

42. In *State of Karnataka Vs. M. Devendrappa, (2002) 3 SCC 89*, a bench of three Hon'ble Judges of the Supreme Court had examined the width and scope of the jurisdiction of the High Court for bringing to an end a criminal action by quashing the case, *inter alia*, under Section 482 Cr.P.C., in light of past precedents and observed that such

jurisdiction emanated from its inherent power to bring about justice, explaining it thus:-

> *"6. ... It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any*

> *proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice…."*
>
> (emphasis supplied)

43. The scope and ambit of the power conferred on the High court by Section 482 Cr. P.C., read with Articles 226 and 227 of the Constitution of India, in the particular context of prayer for quashing criminal proceedings, was examined by the Supreme Court in *B.S. Joshi and Ors. Vs. State of Haryana and Anr., (2003) 4 SCC 675*, against the backdrop of a catena of earlier decisions. It was a criminal case arising out of marital discord. Noting, with reference to the decision in *State of Karnakata Vs. L Muniswamy, (1977) 2 SCC 699*, that in exercise of this "*inherent*" and "*wholesome power*", the touchstone is as to whether "*the ends of justice so require*", it was observed thus :

> *"10.* **...** *that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. ...that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."*
>
> (emphasis supplied)

44. It was further noted :-

> *"What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The answer clearly has to be in the "negative". It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides."*
>
> (emphasis supplied)

45. Holding that "*special features in ...matrimonial matters are evident*" and that it is "*the duty of the court to encourage genuine settlements of matrimonial disputes*", referring to *Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojiroo Angre, (1988) 1 SCC 692*, it was further observed that :

> *"11. ... Where, in the opinion of the court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into*

consideration the special facts of a case, also quash the proceedings."

(emphasis supplied)

46. In *Gian Singh* (supra), while dealing with identical issues, another bench of three Hon'ble Judges of the Supreme Court observed thus :-

> *"55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.*
>
> (emphasis supplied)

47. In *Gian Singh* (supra), the Supreme Court contrasted the request for quashing of criminal proceedings on the basis of settlement with the possibility of compounding of an offence and observed thus :-

> *"57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of*

criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment."

(emphasis supplied)

48. Pertinent to note, in *Gian Singh* (supra), the Supreme Court held as under:-

"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.

(emphasis supplied)

49. The above views in the context of matrimonial disputes resulting in criminal proceedings have been consistently followed over the years, as may be further illustrated by the decision of a bench of three Hon'ble Judges of the Supreme Court in *Jitendra Raghuvanshi and Ors. Vs. Babita Raghuvanshi and Anr., (2013) 4 SCC 58*, the following observations summarising the philosophy succinctly :-

> *"15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.*
>
> *16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends*

of justice require that the proceedings ought to be quashed..."

(emphasis supplied)

50. The judgment reported as *K. Srinivas Rao* (supra), was also in the context of a criminal case involving offence under Section 498A IPC. The Supreme Court, taking note of mediation (as a method of alternative dispute redressal) having got legal recognition, made observations regarding settlement of matrimonial disputes thus :-

> *39. Quite often, the cause of the misunderstanding in a matrimonial dispute is trivial and can be sorted out. Mediation as a method of alternative dispute resolution has got legal recognition now. We have referred several matrimonial disputes to mediation centres…*
>
> *44. We, therefore, feel that though offence punishable under Section 498-A IPC is not compoundable, in appropriate cases if the parties are willing and if it appears to the criminal court that there exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation. This is, obviously, not to dilute the rigour, efficacy and purport of Section 498-A IPC, but to locate cases where the matrimonial dispute can be nipped in bud in an equitable manner. The Judges, with their expertise, must ensure that this exercise does not lead to the erring spouse using mediation process to get out of clutches of the law. During mediation, the parties can either decide to part company on mutually agreed terms or they may decide to patch up and stay together. In either case for the settlement to come through, the complaint will have to be quashed. In that event, they can approach the High Court and get the complaint quashed. If, however, they choose not to settle, they can proceed with the complaint. In this exercise, there is no loss to anyone. If there is settlement, the parties will be saved from the trials and tribulations of a*

criminal case and that will reduce the burden on the courts which will be in the larger public interest. Obviously, the High Court will quash the complaint only if after considering all circumstances it finds the settlement to be equitable and genuine. Such a course, in our opinion, will be beneficial to those who genuinely want to accord a quietus to their matrimonial disputes.

46. We, therefore, issue directions, which the courts dealing with the matrimonial matters shall follow.

46.2. The criminal courts dealing with the complaint under Section 498-A IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A IPC is not diluted. Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the court concerned to work out the modalities taking into consideration the facts of each case.

46.3. All mediation centres shall set up pre-litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage."

(emphasis supplied)

51. In *Narinder Singh* (supra), the principles which are to guide the High Court *"in giving adequate treatment to the settlement between the parties"* where exercising power under Section 482 Cr.P.C. for quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings were summed up as would be reiterated in later judgment in *Parbatbhai Aahir* (supra).

52. In sharp contrast to above line of cases concerning matrimonial disputes, in *State of Madhya Pradesh vs. Madan Lal, (2015) 7 SCC 681,* against backdrop of charge of rape, following the dispensation in *Gian Singh* (supra) and *Narinder Singh* (supra), the Supreme Court held thus:-

> *"18. ... We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error."*
>
> (emphasis supplied)

53. The judgment in *Parbatbhai Aahir* (supra), was rendered by a bench of three Hon'ble Judges of the Supreme Court. The factual matrix involved grabbing of valuable parcels of land coupled with extortion, forgery and criminal conspiracy. The accused had criminal antecedents including opening of bogus bank accounts. They had

earlier absconded. Taking note of gravity of crimes, the antecedents and past conduct, the High Court had declined to entertain petitions for quashing on settlement. Approving such approach, the broad principles governing the subject were summarized in the following propositions:-

> *"16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.*
>
> *16.2 The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.*
>
> *16.3 In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.*
>
> *16.4 While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.*
>
> *16.5 The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves*

ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6 In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7 As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

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.

(emphasis supplied)

54. The decision of the Supreme Court in *State of Madhya Pradesh vs. Laxmi Narayan & Ors., 2019 SCC OnLine SC 320,* has also been rendered by a bench of three Hon'ble Judges, upon a reference noticing some conflict between the decisions in *Narinder Singh* (supra) and *State of Rajasthan vs. Shambhu Kewat, (2014) 4 SCC 149,* in the particular context of a case involving offences of attempt to commit murder punishable under Section 307 IPC. The Supreme Court while reiterating the principles as culled out above has ruled thus:-

"31....

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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/delicate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) 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 impart 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."

(emphasis supplied)

Circumspection of Inherent Power (S. 482 Cr.P.C.)

55. Though the above-noted authoritative pronouncements of the Supreme Court have consistently laid down the broad principles governing the exercise of power of the High Court under Section 482 of the Cr. PC for bringing an end to the criminal process, for

addressing the concerns noted at the outset and future guidance of trial courts, some of the crucial ones may be flagged as under :-

(i). The inherent jurisdiction vested in the High Court, as recognized and preserved by Section 482 Cr. PC, is primarily to "*prevent abuse of the process of court*" or to "*otherwise secure the ends of justice*".

(ii). The ends of justice are higher than the ends of mere law, the prime principle governing the exercise of inherent power being "*to do real, complete and substantial justice*" for which the court exists.

(iii) It is the duty of the court to give "*adequate treatment to* the *settlement between the parties*" particularly in cases involving compoundable offences, the exercise of inherent power of the High Court under Section 482 Cr.P.C., however, not being inhibited in case of non-compoundable offences though, for the latter category, such power is to be "*exercised sparingly and with caution*".

(iv). If the criminal case has "*overwhelmingly and predominantly civil character*", particularly if it arises out of "*commercial"* (financial, mercantile, partnership or such other) transaction – and this would include the "*cheque bouncing cases*" under Section 138 N.I. Act – or "*matrimonial dispute*" or "*family dispute*", genuine resolution on equitable terms, in entirety, by the parties should result in criminal proceedings being quashed.

(v). Since the institution of marriage has an important role to play in the society, the court is to make every effort to encourage the parties to terminate such discord amicably and if it appears that elements of settlement exist, and the parties are willing, they are to be directed to the process of mediation to explore the possibility of settlement, it being desirable to do so even at the "*pre-litigation stage*".

(vi). While examining the prayer for quashing of a non-compoundable offence, on the basis of settlement of the dispute between the wrongful doer and the victim, the High Court is to bear in mind as to whether the possibility of conviction is "*remote and oblique*" and further, if the continuation of the criminal case would lead to "*oppression and prejudice*" or "*extreme injustice*" for the accused.

(vii). The considerations which would weigh with Court include the antecedents of the accused, possible lack of *bona fides*, his past conduct and that includes the question as to whether he had earlier absconded and as to how he had managed with the complainant to enter into a compromise.

(viii). But, the High Court, when called upon to exercise the power under Section 482 Cr. PC to bring the criminal case to an end on the basis of settlement, must steer clear of intervention in "*heinous*" or "*serious*" offences, including those involving "*mental depravity*", as indeed "*economic offences*" affecting "*the financial and economic well being of the State*", such as murder, attempt to murder, extortion, forgery, rape, dacoity,

financial or economic frauds, cases under Arms Act, etc., the reason being that such offences are "*not private in nature*" but have "*a serious impact upon society*", and continuation of trial thereof is essential due to "*overriding element of public interest*".

(ix). The court, however, is not to go by mere use of label of a serious offence (e.g. offence under Section 307 IPC), it being open to it to examine, by scrutiny of the evidence gathered, to find as to whether there are sufficient grounds to frame charge for such offence and, in this view, it being "*not permissible*" to intervene till the matter has been properly investigated.

56. As noted earlier, in the particular context of matrimonial disputes, the Supreme Court in the case of *K. Srinivas Rao* (supra) has expressly allowed – nay, encouraged – reference of the disputants to the process of mediation for exploring the possibility of settlement so that the criminal action (for offences such as one punishable under Section 498A IPC) may be terminated on an amicable note. Similar approach vis-a-vis the offence under Section 138 of the Negotiable Instruments Act, 1881 (which is *quasi*-civil in nature) has been commended by the division bench of this court in *Dayawati* (supra), it finding "*no bar*" to the ADR tools (including mediation) being utilized for such purposes, though restricting such approach to compoundable offences only.

Reference of criminal case by court to mediation

57. Questions have been coming up before the courts, from time to time, as to the legality of referral of a criminal compoundable case, (such as the one under Section 138 of the Negotiable Instruments Act) to mediation, applicability of the rules of mediation to such process, enforceability of the settlement which is reached through the process of mediation etc. It is against the backdrop of such issues that a reference was made by a Metropolitan Magistrate. The reference was answered by a division bench of this court, by judgment dated 17.10.2017, reported as *Dayawati vs. Yogesh Kumar Gosain, 2017 SCC Online Del 11032* : *(2017) 243 DLT 117 (DB)*, thus:.

> *"58. In para 18 of Afcons, the Supreme Court has given illustrations of certain categories of cases that were normally not considered suitable for alternate dispute resolution processes. Prosecution for criminal offences has been mentioned as not suitable. The judgment also notes that the categorization enumerated is merely illustrative and not inflexible. As the legal validity of mediation in criminal compoundable cases was not specifically in question, there is thus no authoritative judicial pronouncement prohibiting the same.*
>
> *x x x*
>
> *60. Mediation undoubtedly provides an efficient, effective, speedy, convenient and inexpensive process to resolve disputes with dignity, mutuality, respect and civility where parties participate in arriving at a negotiated settlement rather than being confronted with a third party adjudication of their disputes. The very fact that it enables warring parties to sit across the table and negotiate, even if unsuccessful in dispute resolution, undergoing the process creates an atmosphere of harmony and peace in which parties learn to 'agree to disagree'.*

x x x

63. ... Section 320 of the Cr.P.C. enumerates and draws a distinction between offences as compoundable, either between the parties or with the leave of the court. This provision clearly permits and recognizes the settlement of specified criminal offences. Settlement of the issue(s) is inherent in this provision envisaging compounding. The settlement can obviously be only by a voluntary process inter se the parties. To facilitate this process, there can be no possible exclusion of external third party assistance to the parties, say that of neutral mediators or conciliators.

64. Therefore, even though an express statutory provision enabling the criminal court to refer the complainant and accused persons to alternate dispute redressal mechanisms has not been specifically provided by the Legislature, however, the Cr.P.C. does permit and recognize settlement without stipulating or restricting the process by which it may be reached. There is thus no bar to utilizing the alternate dispute mechanisms including arbitration, mediation, conciliation (recognized under Section 89 of CPC) for the purposes of settling disputes which are the subject matter of offences covered under Section 320 of the Cr.P.C."

(emphasis supplied)

58. On the question of process to be followed upon reference of such dispute to mediation, it was held as under :-

"*65. So what is the process to be followed in disputes under criminal law? So far as criminal matters are concerned, Section 477 of the Cr.P.C. enables the High Court to make rules regarding any other matter which is required to be prescribed. The Mediation and Conciliation Rules stand notified by the Delhi High Court in exercise of the rule making power under Part X*

of the Code of Civil Procedure, Section 89(2)(d) of the C.P.C. as well as "all other powers enabling the High Court" in this behalf. The Rules therefore, clearly provide for mediation not only in civil suits, but also to "proceeding pending in the High Court of Delhi or in any court subordinate to the High Court of Delhi". So far as Delhi is concerned, these rules would apply to mediation in a matter referred by the court concerned with a criminal case as well as proceedings under Section 138 of the NI Act."

(emphasis supplied)

OPINION OF COURT

59. In the considered opinion of this court, there is no bar to the disputant parties to be referred by the court to mediation, even in cases involving such non-compoundable offences the action in which context can be lawfully terminated by approaching the High Court under Section 482 Cr. PC, provided the parties are willing and there exists an element of settlement. After all, amicable settlement restores peace and tranquillity not only to the parties but also to the society at large. The concern to be addressed, however, is as to whether the court is to make a reference of a criminal case to the process of mediation merely for the asking or should there be scrutiny before such reference; and further as to whether the mediator is obliged to proceed ahead, hold parleys to negotiate and broker some settlement irrespective of the nature of offences only because there is a reference from the court.

60. Generally speaking, the disputants locked in a *lis* are lay persons who do not understand the technicalities of law and

procedure. They need to be guided on these aspects and it is for this and such other reasons that there is always insistence on availability of legal aid and advice. The counsel assisting the litigants are trained in law and the advice which they render is, thus, expected to be in accord with law.

61. The process of mediation as a potent ADR tool has gained currency, acceptability and credibility in India over the last decade and more possibly because it has been regulated through court-annexed mediation centres, under the close watch, guidance and supervision of the judicial organ; so much so that the process is legitimately expected to adhere to the discipline of the rules framed by the High Court. The Mediation Centres in the district courts are run under the constant gaze of trained and experienced judicial officers of long standing. Another centre has been running, with success stories to its credit, at the High Court, the organisation whereof has been entrusted in the hands of seasoned members of the bar. Trained judicial officers and lawyers with vast experience act as mediators in all these centres. All of them are officers of the court and possess the requisite skills and training not only in the process of mediation but, more importantly, also in law, its ethos and awareness as to how it works or is enforced.

62. Generally speaking, to prosecute or not to prosecute in criminal law is the prerogative of the State (and this normative comes with its own exceptions, which do not need elaboration here). The State is also conferred with the power to "withdraw from prosecution" in terms of Section 321 Cr.P.C. It may also be noted and acknowledged that the

complainant may also withdraw or abandon a criminal case instituted otherwise than on police report (i.e. complaint case) in certain fact-situations. But, for purposes of present discussion, what needs to be underscored is that criminal action, once commenced, would ordinarily conclude with the judgment as to the guilt or otherwise of the person accused (and consequences which follow therefrom) unless a case is made out, within the four corners of law, for such process to be brought to an end midway on account of settlement, either through the route of compounding or by intervention of the High Court under Section 482 Cr.P.C.

63. When parties are being referred by the Court to mediation, against the backdrop of criminal charge, they expect and assume that the Court has examined the matter in proper perspective to satisfy itself that there exist elements of settlement and also, and this is important here, that should they be able to reach a settlement, the Court will have the competence and authority in law to act upon it so as to bring the criminal proceedings to an end. Similarly, when the parties reach the court-annexed mediation centre, having been advised that such institutions could be trusted to take the endeavour forward, because it is controlled by persons trained in law, they are led to believe that the process of mediation entered upon under the guidance of trained lawyers, and judges, would save them from the vagaries of criminal law process (inquiry, investigation or trial), should they be inclined for give-and take and reach a settlement. To put it simply, the

litigants assume the legitimacy of the process and acceptability in law of what such process produces as the "settlement".

64. At the hearing on these matters, the learned senior counsel representing HDFC Bank repeatedly submitted that in all the four cases of credit card frauds, bank's representatives had been *"summoned"* by the Court, not for giving evidence, but to *"ask"* him to join the process of mediation since the accused persons facing the trial were requesting for negotiated settlement and, thus, the bank's representatives proceeded to participate in the mediation, only "because" the matter had been "referred" for such purposes "by the court".

65. The learned senior counsel appearing for Delhi High Court Mediation and Conciliation Centre submitted that when the Court refers a case for mediation, the centre is duty bound to honour and respect such reference and take the parties through the mediation to make sincere efforts to assist them in resolving the dispute amicably. At the same time, he fairly conceded that the mediator cannot be blind to, or oblivious of, the guidelines in law governing the amicable resolution of dispute relating to a crime. He informed that a system has since been put in position in Delhi High Court Mediation and Conciliation Centre for vetting of the settlement agreements in criminal cases before they are formally executed and made over to the court for consideration.

66. The learned counsel on all sides agreed that reference by the court, and initiation of the mediation by the court-annexed mediation

centres, raises hopes in the minds of the parties that they are on a meaningful track. It gives rise to a natural expectation that the resolution adopted by such method would ensure end of the criminal case. In a case involving offences which are not compoundable or ones that the court will be loath to quash (under Section 482 Cr.P.C.), it is unfair and unjust to raise false hopes. The reasons for this include the reality that by "negotiations" (as is the expression generally used in settlement agreements), the equities undergo change, the parties end up sharing information (possibly to their prejudice), make payments or give up certain rights taking new obligations.

67. This Court is of the firm view that before making a reference to mediation in the context of criminal case, the court must consider as to whether a settlement reached by such effort would be acceptable for the criminal process to be brought to an end.

68. The rules of mediation do not limit the process to the case in the context of which the parties have been referred. It is often the scenario that the dispute in which the parties are embroiled goes beyond the contours of the case under reference, its branches having resulted in other litigation. It is but natural that when the parties sit across the table in the hope of bringing peace to themselves by amicable resolution, in the spirit of give and take, they want and expect all cases to come to an end. To put it simply, the parties hope that the mediation will bring an end to the litigation in entirety.

69. The initial reference to the mediation may be in a case where there would be no difficulty in the court accepting the resolution and

acting upon it. To illustrate, reference of a summary suit seeking recovery of money due in commercial transaction on the basis of acknowledgement by a cheque issued (but which was dishonoured upon presentation) would be generally encouraged and once the parties have arrived at a compromise, the court would ordinarily be inclined to decide the case accordingly, provided the terms are lawful and there is free will and volition. The bouncing of the cheque may, however, also have given rise to a prosecution by complaint under Section 138, Negotiable Instruments Act, 1881. It is legitimate expectation of the defendant in the civil suit (who in such scenario would also be an accused in the criminal case) that though the reference to mediation is by the civil court, the criminal case is also concluded by the settlement to which he is agreeable. The mediator, thus, can assist the parties to enter into a settlement which would be acceptable both to the civil court for a compromise decree and to the criminal court for permitting the parties to compound the offence.

70. But, situations may arise where the request for additional settlement to be included in the terms of compromise by mediation relates to a case of heinous offence *e.g.* the offence of rape (punishable under Sections 376 IPC) or an offence of attempt to commit murder (punishable under Section 307 IPC). Assuming there is sufficient evidence available to the criminal court for the person accused to be put on trial, a settlement agreement reached by mediation (intended to govern several cases) cannot possibly lead to quashing of such grave criminal charge for the reason the offence is neither compoundable

under section 320 Cr.P.C. nor quashable under Section 482 Cr.P.C. It is the obligation of the mediator, who is called upon to assist the parties in such a scenario to guide them properly in law and refrain from brokering a compromise that apparently would not be permissible or lawful.

71. To sum up, this Court is of the considered opinion that there has to be circumspection at all stages and:

(i) The court while considering reference of the parties to a criminal case to mediation must before even ascertaining as to whether elements of settlement exist first examine, by preliminary scrutiny, the permissibility in law for the criminal action to be brought to an end either because the offence involved is compoundable or because the High Court would have no inhibition to quash it, bearing in mind the broad principles that govern the exercise of jurisdiction under Section 482 Cr.P.C.

(ii) The mediator (before commencing mediation) must undertake a preliminary scrutiny of the facts of the criminal case and satisfy himself as to the possibility of assisting the parties to such a settlement as would be acceptable to the court, bearing in mind the law governing the compounding of the offences or exercise of power of the High Court under Section 482 Cr.P.C. For this, an institutional mechanism has to be created in the mediation centres so that there is consistency and

uniformity in approach. The scrutiny in above nature would also need to be undertaken, as the mediation process continues, should any such criminal case, as mentioned above, be brought on the table by the parties (for being included in the settlement), as takes it beyond the case initially referred.

(iii) The system of vetting, at the conclusion of the mediation process, needs to be institutionalised so that before a settlement *vis-a-vis* a criminal case is formally executed by the parties, satisfaction is reached that the criminal charge involved is one which is either compoundable or one respecting which there would be no inhibition felt by the High court in exercise of its inherent power under Section 482 Cr.P.C., bearing in mind the relevant jurisprudence.

72. It is hoped and expected that the criminal courts, and the mediation centres shall abide by the above guidelines in future. It may be added that the above would equally apply *mutatis mutandis* to the other ADR methods.

DECISION ON THE PETITIONS

73. Having regard to the principles that govern exercise of power under Section 482 Cr.P.C, the settlement agreements reached in the five cases at hand are unacceptable.

74. The four cases of credit card frauds relate to deep-rooted criminal conspiracies leading to serious offences being committed, cheating the public at large and the banking system. In that sense, the offences committed are not private in nature. Instead, they have a serious adverse impact on the financial and economic well being of the State and its banking institutions. Such frauds, if actually committed, tend to erode the confidence of the people at large. Whether the bank likes it or not, the fact remains that data of innocent customers of the bank was stolen, right from under its nose, and cloned credit cards were fabricated and used from the premises of various vendors where the bank had provided EDC machines, the racket running lucratively for some time, these facts adding the element of breach of trust. Assuming the cases are well-founded, credit at the same time will have to be given to the bank that once it became alive to the frauds, it promptly reported the crimes to the police which also seems to have taken immediate action leading to those suspected to be involved being brought to the book.

75. But, the lament is that frauds were committed in 2003 and the cases have not moved to a meaningful stage for over decade and a half. As has been noticed at length, the accused persons have used all tricks in the trade to cause delay and also had the cheek to cite the said very delay to persuade the Chief Metropolitan Magistrate to refer the matters for possible settlement through mediation. The bank's representative also agreed that the fifteen year old vintage of the cases was good justification for the settlement to be accepted. All

concerned including the criminal court making the reference, the complainant bank and the mediator forgot – the public prosecutor possibly apathetic – that the accused persons were attempting to take benefit of their own wrongs. Public money of value much more was stolen than what the bank shockingly was ready to accept to bury the cases. There cannot be a premium on dishonesty. The gravity and seriousness of the offences, the conduct of the accused persons and the impact on society are good reasons to reject the settlement as ill-conceived and unworthy.

76. The fifth case involving pornographic and obscene calls and offences under Information Technology Act similarly is one which falls foul of the guidelines laid down by the Supreme Court consistent *vis-a-vis* the exercise of power under Section 482 Cr.P.C. The Metropolitan Magistrate, making reference to mediation, ignored the fact that this Court in that very case had declined to quash the case, by decision dated 24.04.2017 (Crl.M.C. 1144/2017). Neither the parties nor their counsel shared with the mediator the earlier order (of this Court) rejecting the move. The withholding of such material information from the mediator was dishonest and will have to be condemned in strongest terms. The fact remains that the case involving the element of "mental depravity" cannot be quashed on settlement.

77. Thus, all the five petitions are liable to be dismissed. Ordered accordingly.

DEALING WITH OTHER CONCERNS

78. A criminal court cannot apply the procedure mindlessly. Liberty of an individual is important. But, the accused cannot be permitted to wrest the initiative from out of control of the presiding judge. He cannot hold the criminal law machinery to ransom. If released on bail, it is his obligation to appear and participate on each date of hearing. If he has any valid reason to remain absent, he must seek exemption. The criminal court is not a room with a revolving door where the accused can enter into or exit from at his own whims or fancies. The judge presiding over a criminal trial must keep everyone in discipline, particularly in the matter of appearance in time. If a pattern or tendency of truancy is noticed, necessary consequences must follow.

79. The manner in which the accused persons in the credit card fraud cases have played with the procedure, absenting at will, re-appearing at their convenience, requesting for the duress processes to be cancelled on specious grounds, their requests being granted just for the asking, leaves one with the impression that no one – and that includes the presiding judge and public prosecutor – was interested in taking the cases forward. These cases reflect a most irresponsible way of handling a criminal court bordering on abdication.

80. As has been highlighted earlier, the presiding judge was so confused in dealing with the matters that on some dates he even forgot that charges were to be framed. Witnesses were summoned without pre-requisites being put in place. Even now, there is some confusion

prevailing. Formal charges are yet to be framed in spite of certain orders showing to the contrary.

81. There can be no denial of the ground reality that in the criminal law process of this country, protracted trials have become the rule and expedition is an exception. There seems to be no system, check or discipline, or accountability, on the part of the defence counsel. But, the judge presiding over the criminal trial cannot afford to forfeit the prerogative conferred by law on him. He must always be in full command and control. It is his obligation to take the case forward as expeditiously as possible.

82. This Court has been laying emphasis from time to time on timely conclusion of old cases in a time bound manner. But, treating serious fraud cases as one meant for recovery through the process of mediation is no answer to the challenge of huge pendency of old cases in criminal jurisdiction. The only way forward is a serious and sincere effort on each and every date of hearing to take the matter to the next logical stage under the prescribed criminal procedure. It is in that context that the manner of handling of these cases has come out to be more of a lip service presenting models which cannot be permitted to be followed.

83. As is acknowledged by the Chief Metropolitan Magistrate (in his report), he and his predecessors could not take up these cases on innumerable dates also for the reason of pre-occupation with administrative work. This is not proper. No judge can shun judicial

work during court hours for administrative work. The judicial business remains the priority.

84. The court was informed at the hearing that criminal complaints under Section 138 Negotiable Instruments Act, 1881 have inundated the courts of Metropolitan Magistrates and Civil Judges all over Delhi, particularly at New Delhi sessions division. These cases have rendered civil litigation and serious criminal cases secondary, which is not healthy. The move in 2008 to create special courts at Dwarka Court Complex for such cases filed by financial institutions had proved to be very effective. It had freed the regular magisterial courts from such work so that they could devote more energy on serious offences. It is time the court reconsidered that modal once again by utilizing space now available at Dwarka Court Complex by recent moving of Labour Courts, etc. Shifting of such work from courts of regular magistrates will facilitate progressive movement in regular criminal work and bring timely justice, a goal for achievement of which the court is to always remain committed.

85. The report of the Chief Metropolitan Magistrate also indicates that the said court has a pendency (as on the date of the report) of over two hundred cases which are more than ten years' old. A large number of cases requiring priority with concentration in one court do clog the progress. It does not call for much imagination to understand that delay in conclusion of the trials renders criminal justice ineffective.

86. There is a need for creation of additional criminal courts so that each such court carries only such optimum number of cases as can be expeditiously moved through the procedure to conclusion. But, such endeavour would depend on infrastructural support from other agencies of the State. While the Court on the administrative side is expected to take up this issue with the concerned quarters, there is also an urgent need for equitable distribution of the judicial business, particularly the old matters, so that collective effort can be made to take the chronic ones to logical conclusion within reasonable time.

87. This Court requests Hon'ble the Chief Justice to have the above issues examined on the administrative side for such directions to be issued and such steps to be undertaken as may be deemed proper.

88. There is also a need to issue instructions about the four credit card fraud cases at hand (arising out of FIR nos. 45/2003, 47/2003, 53/2003 and 54/2003) of police station Special Cell. The Chief Metropolitan Magistrate, New Delhi is directed to take up the said matters hereinafter on day-to-day basis till they reach final conclusion. Before proceeding further, the said court will ensure that formal charges, if made out, are framed in each case. No latitude or indulgence will be shown in the matter of non-appearance. The accused persons will be duty bound and obliged to appear and participate without fail on each and every date of hearing with their respective counsel, duly briefed and instructed, on the first call. The Chief Metropolitan Magistrate, will ensure proper discipline and

control in this regard and not grant any adjournment on any frivolous grounds.

89. The Sessions Judge, New Delhi will periodically monitor the progress of the above cases. All endeavour shall be made to ensure that they are decided as expeditiously as possible, preferably within six months of the date of receipt of copy of this order. At the end of the said period of six months, or if the cases are decided earlier, compliance report shall be sent to this court.

90. These petitions are disposed of in above terms.

91. A copy of this judgment shall be circulated for information of all criminal courts of Delhi. The registry shall also send copies to the mediation centres in District Courts of Delhi and to the Delhi High Court Mediation and Conciliation Centre.

R.K.GAUBA, J.

APRIL 22, 2019
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