

CASE NO.:
Appeal (crl.) 451-453 of 2008

PETITIONER:
VIJAY PAL SINGH

RESPONDENT:
YASH PAL AND ANR

DATE OF JUDGMENT: 03/03/2008

BENCH:
S.B. SINHA & V.S. SIRPURKAR

JUDGMENT:
JUDGMENT
O R D E R

CRIMINAL APPEAL NOS. 451-453 OF 2008
[Arising out of SLP(Crl.) Nos.5728-5730/2007]

Leave granted.

The parties during the pendency of the appeal filed before the High Court of Delhi at New Delhi (being Criminal Appeal No. 192/2001), entered into a settlement. Pursuant to and/or in furtherance of the said Settlement the appellant withdrew the said Criminal Appeal No.192/2001 unconditionally and by an order dated 24.4.2003 the same was disposed of in terms of the Memo of Settlement arrived at between the parties.

Our attention has been drawn to the said Memo of Settlement, from a perusal whereof it appears that the first respondent herein had lodged a First Information Report against the appellant, being FIR No. 316/1993 P.S. Samaypur Badli. In respect of the said First Information Report, respondent No.1 made a statement before the High Court that the proceedings would be dropped. However, recourse thereto was not taken by the respondent No.1.

Appellant herein filed an application for enforcement of the terms of the said Memo of Settlement. By an order dated 18.11.2006 the same was dismissed by the High Court stating:

\023This application has been moved for enforcement of memorandum of understanding arrived at between the parties pursuant to which the appellant withdrew Crl. No. 192/2001. It is contended before us that this memorandum of understanding should be enforced by this Court. We find that the memorandum of understanding deals with cases which are not compoundable. This Court cannot, therefore, force party to enter into an agreement which is otherwise prohibited by law. Application dismissed.\024

An application for review of the said order has also been dismissed by another Division Bench of the High Court opining that the Court had no power to review.

Having heard the learned counsel for the parties, we are of the opinion that a Settlement should be given effect to in its entirety or not at all. It may not be given effect to in part. A party to the said Settlement cannot get advantage of a part thereof and refuse to implement that part of the Memo of Settlement in terms whereof he has some role to play.

Learned counsel for the respondents states before us that in view of the fact that in the said criminal proceedings, a charge-sheet has been submitted and an order taking cognizance has been passed, the first respondent being merely an injured witness cannot withdraw the criminal case and/or take any part in getting the First Information Report quashed by the High Court.

Technically, the learned counsel for respondent No.1 is correct. However, the

respondent knew about the legal position when the said Settlement was arrived at. He having entered into the said settlement, in our opinion, cannot be permitted to resile therefrom.

We would assume that the said settlement is illegal being contrary to public policy.

If that be so, the entire settlement, in our opinion, should be set at naught. A party to an illegal settlement, it is well settled, cannot take advantage thereof.

We, therefore, are of the opinion that in exercise of our jurisdiction under Article 142 of the Constitution of India and with a view to do complete justice between the parties, not only the impugned orders dated 18.11.2006, 8.5.2007 but also the Settlement dated 22.4.2003 should be set aside and direct restoration of the criminal Appeal No.192/2001 to its original file. The proceedings pending against both the parties shall stand restored.

The appeals are disposed of accordingly.