

// 1 //

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

ORDER

IN

S.B. Cr. Misc. Petition No.2170/2013
(With Stay Appl. No.1923/2013)

1. Mrs. Reema Chaturvedi w/o Mr. Amit Chaturvedi, R/o House No.574, Vidyut Nagar A, Ajmer Road, Jaipur, now at present : C/o Shri Devendra Nath Chaturvedi, Daulat Ram Ka Hata, Railway Road, Kasganj, District Etah (UP) - 207123

2. Mr. Amit Chaturvedi S/o late Shri B.N. Chaturvedi, R/o House No.574, Vidyut Nagar A, Ajmer Road, Jaipur, now at present : C/o Shri Devendra Nath Chaturvedi, Daulat Ram Ka Hata, Railway Road, Kasganj, District Etah (UP) - 207123

3. Mr. Asit Chaturvedi S/o Shri Devendra Nath Chaturvedi, R/o House No.574, Vidyut Nagar A, Ajmer Road, Jaipur, now at present: C/o Shri Devendra Nath Chaturvedi, Daulat Ram Ka Hata, Railway Road, Kasganj, District Etah (UP) - 207123

...Petitioners

Versus

1. State of Rajasthan through Public Prosecutor

...Respondent

2. Narendra Kataria Son of Shri Ram Lal Kataria, R/o House No.45A, Anandpuri, M.D. Road, Jaipur

...complainant-respondent

Date of Order ::: 09.09.2016

Present

Hon'ble Mr. Justice Mohammad Rafiq

Mr. H.K. Chaturvedi with
Mr. Ajay Sharma, counsel for petitioners
Mr. Sudesh Saini, Public Prosecutor, for the respondent
State

Mr. Siddhant Jain, counsel for complainant-respondent

####

By the Court:-

This criminal miscellaneous petition under Section 482 Cr.P.C. has been filed by accused-petitioners for quashment of F.I.R. No.140/10 registered at Police Station Moti Dungri, Jaipur City, Jaipur for offence under Sections 420, 406, 120-B IPC, and Challan No.20100259 submitted on 25.012.2011 before the court of Additional Chief Judicial Magistrate-VI, Jaipur City, and all other proceedings

// 2 //

emanating from aforesaid challan, and further to quash and set aside the arrest warrants and proceedings under Section 82/83 of the Code of Criminal Procedure dated 22.12.2012 of the said court.

The accused-petitioners and complainant-respondent have jointly filed an application bearing inward no.14771 dated 08.09.2016 supported by their respective affidavits, stating that the parties have arrived at a compromise and accused-petitioners have paid entire settlement amount of Rs.15,00,000/- vide demand draft No.408352 dated 06.09.2016 drawn on Canara Bank, Kasganj, payable at Jaipur in favour of complainant Narendra Kumar Kataria, towards full and final settlement against all the claims of the complainant-respondent and now the complainant-respondent will not raise any claim of any nature in future against the accused-petitioners. It is further stated that all claims of both the parties have been fully adjusted and settled full and finally, and that any claim or prosecution of either party against each other shall be deemed as null and void for future. It is also stated that both the parties have confirmed that all their disputes have been settled amicably. They have no further claims against each other of any kind either civil or criminal nature and will not make any further claim against each other in future in any nature with regard to their disputes of any nature or kind of past, present and future. In the application, it is further stated that complainant-respondent does not want to continue with his case in F.I.R. No.140/2010, Police Station Moti Dungri, Jaipur City, any more, which was due to some misunderstanding and he has consented for quashing of entire proceedings emanating from and including F.I.R. No.140/2010, Police Station Moti Dungri, Jaipur City, as the matter stands fully settled among all the parties and pendency of criminal proceedings will be of no use. The accused-petitioners have also agreed to withdraw all their cases

filed against the complainant-respondent Shri Narendra Kataria and his family pending in the court of Additional District Judge No.4, Jaipur City and in the court of Additional Chief Metropolitan Magistrate No.6, Jaipur Metropolitan, Jaipur, and both the parties have also withdrawn their all allegations against each other.

Learned counsel for accused-petitioners has cited judgment of the Supreme Court in **Gian Singh vs. State of Punjab - (2012) 10 SCC 303**, and argued that the proceedings in the present case be quashed.

Learned Public Prosecutor opposed the petition.

The Supreme Court in **Gian Singh**, supra, observed that quashing of complaint or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. The two powers are distinct and different although ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences

arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and, the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R., if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

The Supreme Court in **B.S. Joshi and Others Vs. State of Haryana and Another - (2003) 4 SCC 675**, considered the ambit of the inherent powers of the High Courts under Section 482 of the Code of Criminal Procedure read with Articles 226 and 227 of the Constitution of India to quash criminal proceedings and held that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Cr.P.C. and Section 320 of the IPC does not limit or affect the powers of the High Court under section 482 of the Cr.P.C.

Indisputably, in the present case the accused-petitioners and complainant-respondent have amicably settled their disputes and arrived at compromise and filed the application to this effect supported by their respective affidavits and agreed to end the criminal proceedings in the case. Thus, there is no purpose to continue the criminal proceedings between the parties.

In view of the law so succinctly laid down by the Supreme Court in the cases referred to above, and the fact that the parties have entered into compromise and filed a joint application before this court, there is no justification for allowing the proceedings in criminal case to continue.

In the result, this petition is allowed. The F.I.R.

// 5 //

No.140/10 registered at Police Station Moti Dungri, Jaipur City, Jaipur, for offence under Sections 420, 406, 120-B IPC, and Challan No.20100259 submitted on 25.012.2011 before the court of Additional Chief Judicial Magistrate-VI, Jaipur City, and all other proceedings emanating from aforesaid challan, and also the proceedings under Section 82/83 of the Code of Criminal Procedure dated 22.12.2012 pending in the said court are quashed and set-aside. The standing warrant so issued by the court below stands cancelled.

This also disposes of stay application.

(Mohammad Rafiq) J.

//Jaiman//82



सत्यमेव जयते

of the writ petitioner was that the matter stood covered by the judgment of Hon'ble Punjab and Haryana High Court, which had been upheld by the Hon'ble Apex Court in the case of National Insurance Company Ltd. & another Vs. Kirpal Singh. We further notice paragraph nos. 4 and 5 of the said judgment, which reads as under:

“4. Mr. I.P. Kohli, learned counsel for the Insurance Company fairly submits that the present matter is squarely covered by the decision of Hon'ble Apex Court (referred above) and the petitioner is also entitled for pensionary benefits, as claimed by him in the present writ petition.

5. In view thereof, in case, the petitioner makes a representation before the Officer in-charge, the same shall be decided, as expeditiously as possible, by passing speaking order, particularly in view of the decision of Hon'ble Apex Court (referred above), within a period of four weeks from the date of production of a certified copy of this order.”

It is pursuant to the same that the impugned order was passed.

3. In the impugned order, the appellant has referred to Clause 5 of the 2004 Scheme, besides para 6 (1) (c) and paragraph nos. 38 and 39 of the judgment rendered by the Hon'ble Apex Court in the case of Manojbhai N. Shah & Ors. Vs Union of India & Ors. (Annexure 2) and held as follows:-

“It is seen that you had opted for voluntary retirement under the Special Scheme and as per the judgment in the case of Manojbhai N. Shah vs. Union of India, your falls into the class of employees who have retired under the Special Scheme as held by the Hon'ble Supreme Court of India in the case of Manojbhai N. Shah & Ors. Vs. Union of India & others as quoted above in this order.

It is noted that you are claiming that his case is covered by the case of National Insurance Company Ltd. vs. Kirpal Singh. We have considered the contention and find that the case of National

Insurance Co. Ltd. & Anr. Vs. Kirpal Singh (being relied upon by you) has been specifically cited in the judgment dated January 7, 2015 passed by the Hon'ble Supreme court of India in Manojbhai N. Shah & Ors. Vs. Union of India & Ors. Accordingly, the Hon'ble Supreme Court of India has while noting the cited judgment has held that the employees who retire under the Special Scheme are a distinct class. The judgment dated January 7, 2015 of Manojbhai N. Shah being a later judgment and having specifically cited the judgment being relied upon by you is the binding judgment.

The Hon'ble Supreme Court in the case of Manojbhai N. Shah has held that employees who retired under Special Scheme form a separate and distinct class of employees who retire under the General Scheme and are not similarly situated. The Hon'ble Supreme Court has also noted that a large ex-gratia amount was already paid to these specially situated employees in addition to retrial dues.

It is, therefore, considered that your case falls under the ratio of the judgment of the Hon'ble Supreme Court in the case of Manojbhai N. Shah vs. Union of India and is accordingly in a class of employees distinct than that of employees retiring under the General Scheme. As per the Special Scheme, you were paid the Ex-gratia amount over and above all his retrial dues. You are, accordingly, not entitled to any further payment such as pensionary benefit as prayed for in your subject representation and it is decided accordingly.

Therefore, in deference to the order of the Hon'ble High Court dated 23.08.2016 as well as by duly examining the facts and circumstances of the case, the undersigned is of the considered view that you are neither entitled for the pensionary benefits nor any notional benefit of 5 years' service as stipulated in para 30(1) and para 30(5) of the General Insurance (Employees) Pension Scheme, 1995 as you had exited under Special VRS Scheme 2004 and not under the General Insurance (Employees) Pension Scheme, 1995.

Hence, your representation is not tenable on merits and in accordance with the law, and the same is disposed of accordingly.”

4. The learned Single Judge allowed the writ petition taking the view that the matter is covered in favour of the writ petitioner by virtue of the judgment in the case of **National Insurance Company Limited and another Vs. Kirpal Singh** reported in **(2014) 5 Supreme Court Cases 189** and after setting aside the impugned order directed the respondents to release the pension within a period of ten weeks with interest of 10 per cent per annum.

5. We heard Mr. P.C. Maulekhi, learned counsel for the appellant and Mr. H.K. Chaturvedi, learned counsel for the respondent/writ petitioner.

6. Learned counsel for the appellant would submit that the case is covered by the judgement of the Hon'ble Apex Court in the case of Manojbhai N. Shah (supra). He would further submit that as far as the judgment in Kirpal Singh's case (supra) is concerned, the provisions of the 1995 Scheme and of the 2004 Scheme were not considered by the Hon'ble Apex Court. In particular, he referred to paragraph nos. 8 and 9 of the 2004 Scheme. He also referred to paragraph 2 (s) of the 1995 Scheme which defines qualifying service, which reads as follows:

“2(s) “qualifying service” means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under this scheme.”

7. Learned counsel for the appellant further drew our attention to paragraph no. 30 of 1995 Scheme, which reads as follows:-

“30. Pension on voluntary retirement

(1) At any time after an employee has completed twenty years of qualifying service, he may, by giving

notice of not less than ninety days, in writing to the appointing authority, retire from service:

Provided that this sub-paragraph shall not apply to an employee who is on deputation unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-paragraph shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

(2) The notice of voluntary retirement given under sub-paragraph (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) (a) An employee referred to in sub-paragraph (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than ninety days giving reasons therefor;

(b) On receipt of request under clause (a), the appointing authority may, subject to the provisions of sub-paragraph (2), consider such request for the curtailment of the period of notice of ninety days on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of ninety days on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of ninety days.

(4) An employee who has elected to retire under this paragraph and has given necessary notice to that effect to the appointing authority shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) The qualifying service of an employee retiring voluntarily under this paragraph shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty three years and it does not take him beyond the date of retirement.

(6) The pension of an employee retiring under this paragraph shall be based on the average emoluments as defined under clause (d) of paragraph 2 of this scheme and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension; Explanation- For the purpose of this paragraph, the appointing authority shall be the appointing authority specified in Appendix-I to this scheme.”

8. Learned counsel for the appellant also drew our attention to paragraph 6 (1) (c) of the 2004 Scheme and would contend that it refers to the words “if eligible”. He also referred to paragraph nos. 8 and 9 of the 2004 scheme. He would submit that the judgment of Hon’ble Apex Court was, therefore, rendered without considering the provisions as aforesaid. He would also submit that the writ petitioner had applied for Voluntarily Retirement under the 2004 Scheme and received the entire payments and he cannot, therefore, file the writ petition, as being done. Learned counsel for the appellant contended that the judgment of the Hon’ble Apex Court also may not bind the appellant, as the appellant was not a party before the Hon’ble Apex Court.

9. Per contra, Mr. H.K. Chaturvedi, learned counsel for the writ petitioner would point out that immediately after the voluntary retirement of the petitioner, he had been addressing the Company to release the pension, but he was being told from time to time that the matter is subjudice, pending before other Courts. He would further

point out that he has approached the Court in the earlier round of litigation, which we have already noted in the form of the earlier judgment of the learned Single Judge. It is pointed out that the stand of the appellant was that the matter is squarely covered by the decision in Kirpal Singh's case (supra) and the writ petition was disposed of directing the representation of the writ petitioner to be considered in the light of the said judgment. Having not raised the question relating to delay in approaching the Court, it may not lie in the mouth of the appellant to contend that the petition should be dismissed on the said ground. He would submit that the appellant was wrong in relying on the decision of Manojbhai N. Shah's case (supra), which is not applicable, as it related to a case where consequent upon the revision of the salary in the year 2005, but with retrospective effect from 2002, the question posed was whether the employee who had taken voluntary retirement under the 2004 Scheme would be entitled to enhanced pension. That is not the issue involved in this case. He would also point out that the Hon'ble Apex Court in Manojbhai N. Shah's case (supra) has not disagreed with the dicta in Kirpal Singh's case (supra) and on the other hand, approved of the position obtaining in law on the basis of Kirpal Singh's case (supra). Learned counsel for the writ petitioner would point out that actually the appellant-Company was also a party in Kirpal Singh's case (supra). He would submit that the writ petitioner has been knocking at the doors of the appellant right from the beginning and he was being told that matter is pending and on the basis of the pendency of the matter, though others are getting the pension, he is not getting the benefit, which otherwise he is entitled to. He would point out that these are judgments of other High

Court after the judgment of the Hon'ble Apex Court wherein the appellant has been mulcted with the liability to pay pension.

10. We have already noticed that in earlier round, when the writ petition was filed by the very same petitioner seeking benefit of pension, the stand of the appellant-Company, as revealed by the submission of the learned counsel appearing on behalf of the appellant was that the case is covered by the judgment in Kirpal Singh's case (supra). The representation was directed to be disposed of particularly, in view of the decision of the Hon'ble Apex Court within a period of four weeks. At that stage, we notice that there was no contention taken regarding the period, within which the writ petition which was filed or rather the question of laches. Therefore, at this stage, in the second round, we would think that in the facts of this case which involves the question relating to pension, it may not be appropriate to allow the appellant to raise the plea of the period of time, within which the writ petition has been filed.

11. Coming to the merits of the case, we are in agreement with the learned Single Judge that the issue at hand is squarely covered by the judgment of the Hon'ble Apex Court in Kirpal Singh's case (supra). The precise issue which was raised in Kirpal Singh's case (supra) related to the entitlement to the pension for those who have taken voluntarily retirement under the 2004 Scheme. The question raised in Kirpal Singh's case (supra) also was whether a party who did not have 20 years of qualifying service within the meaning of the General Insurance (Employees) Pension Scheme, 1995 (paragraph 30 thereof)

would still be entitled to get the benefit of pension under the Special Voluntary Retirement Scheme, 2004, if he had 10 years qualifying service. This question was answered by the Hon'ble Apex Court by looking into paragraph no.14 of the 1995 Scheme which in fact reads as follows:-

“14. Qualifying Service – Subject to the other condition contained in this scheme, an employee who has rendered a minimum ten years of service in the Corporation or a Company, on the date of retirement shall qualify for pension.”

12. Besides this, the Court also referred to the definition of the retirement in paragraph 2 (t) of the 1995 Scheme. The Hon'ble Apex Court proceeded to hold as follows:-

“11. The SVRS of 2004 does not obviously rest the claim for payment of pension on any one of the above two provisions. That is because what is claimed by the employees-respondents before us is not superannuation pension nor is it pension on voluntary retirement within the meaning of para 30 (supra). As a matter of fact, para 6 (1)(c) of the SVRS of 2004 specifically provides that the notional benefit of additional five years to be added to the service of the retiring employee as stipulated in para 30 of the pension scheme shall not be admissible for purposes of determining the quantum of pension and commutation of pension. It follows that the SVRS of 2004 did not for the purposes of grant of pension adopt the scheme underlying para 30 of the Pension Scheme 1995. Such being the case, the question is whether the provisions of para 6 of the SVRS of 2004 read with para 14 of the Pension Scheme 1995 which stipulates only ten years qualifying service for an employee who retires from service to entitle him to claim pension would entitle those retiring pursuant to the SVRS of 2004 also to claim pension. Our answer is in the affirmative. If paras 29 and 30 do not govern the entitlement for those seeking the benefit of SVRS of 2004, the only other provision which can possibly be invoked for such pension is para 14 (supra) that prescribes a qualifying service of ten years only as a condition of eligibility. The only impediment in adopting that interpretation lies in the use of the word ‘retirement’ in Para 14 of the Pension Scheme 1995. A restricted meaning to that expression may mean that

Para 14 provides only for retirements in terms of Para (2)(t) (i) to (iii) which includes voluntary retirement in accordance with the provisions contained in Para 30 of the Pension Scheme. There is, however, no reason why the expression 'retirement' should receive such a restricted meaning especially when the context in which that expression is being examined by us would justify a more liberal interpretation; not only because the provision for payment of pension is a beneficial provision which ought to be interpreted more liberally to favour grant rather than refusal of the benefit but also because the Voluntary Retirement Scheme itself was intended to reduce surplus manpower by encouraging, if not alluring employees to opt for retirement by offering them benefits like ex-gratia payment and pension not otherwise admissible to the employees in the ordinary course. We are, therefore, inclined to hold that the expression "Retirement" appearing in Para 14 of the Pension scheme 1995 should not only apply to cases which fall under Para 30 of the said scheme but also to a case falling under a Special Voluntary Retirement Scheme of 2004. So interpreted, those opting for voluntary retirement under the said SVRS of 2004 would also qualify for payment of pension as they had put in the qualifying service of ten years stipulated under Para 14 of the Pension Scheme 1995."

13. Thereafter the Court proceeded to take the view that though the word 'retirement' has been defined by using the "means" mechanism, having regard to the fact that what was involved is the right to pension, the Court took the view that the term 'retirement' must in the context of the two schemes, and the admissibility of pension to those retiring under the 2004 Scheme, include retirement not only under para 30 of the Pension Scheme 1995 but also those retiring under the Special Scheme of 2004. Having regard to the decision of the Hon'ble Apex Court, we would think that the petitioner, who admittedly had more than 10 years (16 years and eight months) of service would certainly be entitled to pension having regard to the

judgment of the Hon'ble Apex Court in Kirpal Singh's case (supra).

14. We are not impressed by the attempts made by learned counsel for the appellant to contend that the provisions of scheme were not appreciated by the Hon'ble Apex Court and, therefore, the judgment of the Hon'ble Apex Court would not bind this Court. It is settled law that the binding nature of the judgment of the Hon'ble Apex Court which is law under Article 141 of the Constitution of India cannot depend upon whether the arguments which the appellant seeks to raise were raised before or considered by the Hon'ble Apex Court. The Courts are forbidden to embark upon the inquiry as to whether if a particular argument was addressed before the Hon'ble Apex Court, the decision of the Hon'ble Apex Court would be different and the law would be laid down differently. It may be true that Clause 6 (1) (c), which deals with the entitlement to pension for a person who has taken voluntarily retirement under the 2004 Scheme is not as such automatic, but the words "if eligible" are used. There is also, no doubt, reference to the 1995 Pension Scheme in this regard, but as far as 1995 Pension Scheme is concerned, it has been considered by the Hon'ble Apex Court in paragraph 11, which we have extracted and it apparently has clearly taken the view that paragraph 30 of the 1995 Scheme was not adopted when the 2004 Scheme was implemented.

15. Therefore, in such circumstances, in view of the law laid down by the Hon'ble Apex Court in Kirpal Singh's case (supra), which was the decision, which was applicable to the facts of this case, the appellant was not justified in

placing reliance on the subsequent decision of the Hon'ble Apex Court in Manojbhai N. Shah's case (supra) which, in fact, has no bearing at all to the question, which is raised in the writ petition.

16. In the light of the above discussion we see no reason to interfere with the judgment of the learned Single Judge. Accordingly, the Appeal will stand dismissed. No order as to costs.

(Alok Singh, J.)

(K.M. Joseph, C.J.)

31.07.2017

Ravi

Court No. - 44

Case :- APPLICATION U/S 482 No. - 31833 of 2018

Applicant :- S.C.L. Infratech Ltd. And 4 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Anuj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. H.K. Chaturvedi, Advocate, assisted by Mr. Anuj Kumar Singh, learned counsel for the applicants and the learned A.G.A. for the State.

This application under Section 482 Cr.P.C. has been filed challenging the summoning order dated 27.2.2018, passed by the Judicial Magistrate, Additional Court No.1, Gautam Budh Nagar in Complaint Case No. 2260 of 2017 (Bhilangana Hydro Power Limited Others Vs. S.C.L. Infratech Limited and Others), under sections 138 N.I. Act as well as the entire proceedings of above mentioned complaint case.

Learned counsel for the applicants submits that disputed cheque was given by the applicant to the complainant opposite party No.2 as security. He, next invited the attention of the Court to the award dated 12.6.2018, passed by the arbitrator, wherein paragraph 407, the arbitrator has clearly held that the cheques mentioned in paragraph 399 of the award have been issued by way of security. The arbitrator has recorded a further finding that the said cheques were undated which is admitted to the parties. Consequently, no interest is payable on the amounts payable under the disputed cheques mentioned in paragraph 399 of the award. The arbitrator in paragraph 410 of the award has consequently issued a direction that the cheques mentioned in paragraph 399 valued at Rs. 6.25 crores be returned to the opposite party, who filed counter claim i.e. the present applicants.

On the aforesaid factual premise, it is urged that the present criminal proceedings initiated by the complainant opposite party No.2, in respect of the disputed cheques, are wholly illegal and amount to an abuse of the process of the Court. As such, the same are liable to be quashed by this Court.

Learned counsel for the applicants has filed supplementary affidavit today in Court, which is taken on record. In the said supplementary affidavit, it has been specifically averred that that the award dated 12.6.2018 given by the arbitrator has not

been challenged before any other Court till date.

Having heard the learned counsel for the applicants and the learned A.G.A. for the State as well as upon perusal of the facts and circumstances of the case as brought on record, matter requires consideration.

Notice on behalf of opposite party No.1 has been accepted by learned A.G.A.

Issue notice to opposite party no. 2.

All the respondents may file their respective counter affidavits on or before the date fixed in the notice.

List on the date fixed in the notice.

Until further orders of court, further proceedings of above mentioned complaint case, shall remain stayed.

Order Date :- 13.9.2018

Arshad

Court No. - 44

Case :- APPLICATION U/S 482 No. - 31841 of 2018

Applicant :- S.C.L. Infratech Ltd. And 4 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Anuj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. H.K. Chaturvedi, Advocate, assisted by Mr. Anuj Kumar Singh, learned counsel for the applicants and the learned A.G.A. for the State.

This application under Section 482 Cr.P.C. has been filed challenging the summoning order dated 27.2.2018, passed by the Judicial Magistrate, Additional Court No.1, Gautam Budh Nagar in Complaint Case No. 2261 of 2017 (Bhilangana Hydro Power Limited Others Vs. S.C.L. Infratech Limited and Others), under sections 138 N.I. Act as well as the entire proceedings of above mentioned complaint case.

Learned counsel for the applicants submits that disputed cheque was given by the applicant to the complainant opposite party No.2 as security. He, next invited the attention of the Court to the award dated 12.6.2018, passed by the arbitrator, wherein paragraph 407, the arbitrator has clearly held that the cheques mentioned in paragraph 399 of the award have been issued by way of security. The arbitrator has recorded a further finding that the said cheques were undated which is admitted to the parties. Consequently, no interest is payable on the amounts payable under the disputed cheques mentioned in paragraph 399 of the award. The arbitrator in paragraph 410 of the award has consequently issued a direction that the cheques mentioned in paragraph 399 valued at Rs. 6.25 crores be returned to the opposite party, who filed counter claim i.e. the present applicants.

On the aforesaid factual premise, it is urged that the present criminal proceedings initiated by the complainant opposite party No.2, in respect of the disputed cheques, are wholly illegal and amount to an abuse of the process of the Court. As such, the same are liable to be quashed by this Court.

Learned counsel for the applicants has filed supplementary affidavit today in Court, which is taken on record. In the said supplementary affidavit, it has been specifically averred that that the award dated 12.6.2018 given by the arbitrator has not

been challenged before any other Court till date.

Having heard the learned counsel for the applicants and the learned A.G.A. for the State as well as upon perusal of the facts and circumstances of the case as brought on record, matter requires consideration.

Notice on behalf of opposite party No.1 has been accepted by learned A.G.A.

Issue notice to opposite party no. 2.

All the respondents may file their respective counter affidavits on or before the date fixed in the notice.

List on the date fixed in the notice.

Until further orders of court, further proceedings of above mentioned complaint case, shall remain stayed.

Order Date :- 13.9.2018

Arshad

Court No. - 44

Case :- APPLICATION U/S 482 No. - 31864 of 2018

Applicant :- S.C.L. Infratech Ltd. And 4 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Anuj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. H.K. Chaturvedi, Advocate, assisted by Mr. Anuj Kumar Singh, learned counsel for the applicants and the learned A.G.A. for the State.

This application under Section 482 Cr.P.C. has been filed challenging the summoning order dated 27.2.2018, passed by the Judicial Magistrate, Additional Court No.1, Gautam Budh Nagar in Complaint Case No. 2258 of 2017 (Bhilangana Hydro Power Limited Others Vs. S.C.L. Infratech Limited and Others), under sections 138 N.I. Act as well as the entire proceedings of above mentioned complaint case.

Learned counsel for the applicants submits that disputed cheque was given by the applicant to the complainant opposite party No.2 as security. He, next invited the attention of the Court to the award dated 12.6.2018, passed by the arbitrator, wherein paragraph 407, the arbitrator has clearly held that the cheques mentioned in paragraph 399 of the award have been issued by way of security. The arbitrator has recorded a further finding that the said cheques were undated which is admitted to the parties. Consequently, no interest is payable on the amounts payable under the disputed cheques mentioned in paragraph 399 of the award. The arbitrator in paragraph 410 of the award has consequently issued a direction that the cheques mentioned in paragraph 399 valued at Rs. 6.25 crores be returned to the opposite party, who filed counter claim i.e. the present applicants.

On the aforesaid factual premise, it is urged that the present criminal proceedings initiated by the complainant opposite party No.2, in respect of the disputed cheques, are wholly illegal and amount to an abuse of the process of the Court. As such, the same are liable to be quashed by this Court.

Learned counsel for the applicants has filed supplementary affidavit today in Court, which is taken on record. In the said supplementary affidavit, it has been specifically averred that that the award dated 12.6.2018 given by the arbitrator has not

been challenged before any other Court till date.

Having heard the learned counsel for the applicants and the learned A.G.A. for the State as well as upon perusal of the facts and circumstances of the case as brought on record, matter requires consideration.

Notice on behalf of opposite party No.1 has been accepted by learned A.G.A.

Issue notice to opposite party no. 2.

All the respondents may file their respective counter affidavits on or before the date fixed in the notice.

List on the date fixed in the notice.

Until further orders of court, further proceedings of above mentioned complaint case, shall remain stayed.

Order Date :- 13.9.2018

Arshad

Court No. - 53

Case :- CRIMINAL MISC. WRIT PETITION No. - 11080 of 2019

Petitioner :- Kashi Nath Chaturvedi and another

Respondent :- State of U.P. And 3 others

Counsel for Petitioner :- Suresh Chandra Pandey

Counsel for Respondent :- G.A.,Laxmi Narayan Mishra

Hon'ble Pankaj Naqvi,J.

Hon'ble Umesh Kumar,J.

Heard Sri Suresh Chandra Pandey, learned counsel for the petitioners and Sri H.K. Chaturvedi, learned counsel for the informant and Sri A.N. Mulla, the learned A.G.A.

This writ petition has been filed by the petitioners to issue a writ, order or direction in the nature of certiorari quashing the impugned F.I.R. dated 23.3.2019 registered as Case Crime No. 0247 of 2019 under sections 406, 420, 120B, 34 I.P.C, P.S. Kotwali District Mathura.

It is submitted by the learned counsel for the petitioners that the petitioner no.1 and the informant are Chartered Accountants, who entered into partnership, disputes arose, which are civil in nature, petitioner No.1 lodged F.I.R. against Respondent no.3 in Case Crime No. 1159 of 2018 under Sections 420, 467, 468, 471, 120-B I.P.C. in which respondent no.3 got interim protection by this Court in Criminal Misc. Writ Petition No.28443 of 2018 on 9.10.2018, the impugned F.I.R. is malafidely motivated, which is liable to be quashed.

Per contra learned A.G.A. and Sri H.K. Chaturvedi opposed the submission on the ground that F.I.R. cannot be quashed as cognizable offences are made out.

After having heard learned counsel for the parties and perusing the impugned F.I.R, we are not inclined to quash the same.

However, considering the peculiar facts and circumstances of the case, we direct that investigation of the aforesaid case shall go on but the petitioners shall not be arrested till the submission of police report under Section 173(2) Cr.P.C, subject to their extending full co-operation during investigation.

With the aforesaid direction, this petition is finally **disposed of.**

Order Date :- 29.4.2019/Ram Murti

Court No. - 36

Case :- CRIMINAL MISC. WRIT PETITION No. - 6675 of 2016

Petitioner :- Sanjay Kumar

Respondent :- State Of U.P. & 2 Others

Counsel for Petitioner :- Laxmi Narayan Mishra

Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha,J.

Hon'ble Mrs. Rekha Dixit,J.

Sri Vijay Prakash Chaturvedi ,Advocate has filed his Vakalatnama on behalf of the respondent No.3 is taken on record.

Heard Sri H.K. Chaturvedi, Advocate, holding brief of Sri Laxmi Narayan Mishra, learned counsel for the petitioner Sri Vijay Prakash Chaturvedi, learned counsel for respondent No.3, learned A.G.A for the State and perused the record.

This writ petition has been filed by the petitioner with the prayer to quash the F. I. R. dated 7.1.2016 which has been registered as Case Crime No.23 of 2016, under Sections 420, 464, 467, 468, 471 and 120-B I.P.C, read with Section 34 I.P.C, Police Station Medical College, District Meerut.

Learned counsel for the parties have jointly stated that the dispute between the petitioner and respondent No.3 has been compromised amicably. Learned counsel for respondent No.3 has admitted the fact of the compromise. So far as the other concerned, the investigation may go on.

Learned AGA states that taking into account the compromise entered into between the parties appropriate order by passed by the Court.

Learned counsel for the applicants in support of his contention has placed reliance on the judgment of Apex Court in the case of **Manoj Sharma Vs. State, (2008)16 SCC1, B.S. Joshi Vs. State of Haryana & others, (2003) 4 SCC 675 and Gian Singh Vs. State of Punjab & another, (2012)10 SCC 303** and has submitted that in view of the compromise, no fruitful purpose would be served if the prosecution is allowed to go on.

In view of the aforesaid, the view taken by the Apex court in the case of **Manoj Sharma (Supra), B.S. Joshi (supra) and Gian Singh versus State Of Punjab (supra)** which has been relied upon by the learned counsel for the petitioner finds force that this court in exercise of its inherent power under section 482 Cr.P.C. can quash the proceeding as the dispute being matrimonial in nature and have been amicably settled between

husband and wife.

Hence, considering the facts and circumstances of the case and nature of offence the proceeding of the aforesaid case is hereby quashed.

The present writ petition stands allowed.

(Mrs. Rekha Dixit,J) (Ramesh Sinha,I)

Order Date :- 28.11.2016

G.S

Court No. - 36

Case :- CRIMINAL MISC. WRIT PETITION No. - 6676 of 2016

Petitioner :- Vishal Pathak

Respondent :- State Of U.P. & 2 Others

Counsel for Petitioner :- Laxmi Narayan Mishra

Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha,J.

Hon'ble Mrs. Rekha Dixit,J.

Sri Vijay Prakash Chaturvedi, Advocate, has filed his Vakalatnama on behalf of the respondent No.3 is taken on record.

Heard Sri H.K. Chaturvedi, Advocate, holding brief of Sri Laxmi Narayan Mishra, learned counsel for the petitioner, Sri Vijay Prakash Chaturvedi, learned counsel for respondent No.3, learned A.G.A for the State and perused the record.

This writ petition has been filed by the petitioner with the prayer to quash the F. I. R. dated 31.12.2015 which has been registered as Case Crime No.754 of 2015, under Sections 420, 464, 467, 468, 471 and 120-B I.P.C read with section Section-34 I.P.C, P.S Medical College, District Meerut.

Learned counsel for the parties have jointly stated that the dispute between the petitioner and respondent No.3 has been compromised amicably. Learned counsel for respondent No.3 has admitted the fact of the compromise. So far as the other concerned, the investigation may go on.

Learned counsel for the applicant in support of his contention has placed reliance on the judgment of Apex Court in the case of **Manoj Sharma Vs. State, (2008)16 SCC1, B.S. Joshi Vs. State of Haryana & others, (2003) 4 SCC 675 and Gian Singh Vs. State of Punjab & another, (2012)10 SCC 303** and has submitted that in view of the compromise, no fruitful purpose would be served if the prosecution is allowed to go on.

In view of the aforesaid, the view taken by the Apex court in the case of **Manoj Sharma (Supra), B.S. Joshi (supra) and Gian Singh versus State Of Punjab (supra)** which has been relied upon by the learned counsel for the petitioner finds force that this court in exercise of its inherent power under section 482 Cr.P.C. can quash the proceeding as the dispute being matrimonial in nature and have been amicably settled between husband and wife.

Hence, considering the facts and circumstances of the case and nature of offence the proceeding of the aforesaid case is hereby

quashed.

The present writ petition stands allowed.

(Mrs. Rekha Dixit,J) (Ramesh Sinha,I)

Order Date :- 28.11.2016

G.S

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 958 of 2014

Arvind Kumar Chaudhary

... Petitioner

Vs

The New India Assurance Company Ltd.
& another

... Respondents

Mr. H.K. Chaturvedi, learned counsel for the petitioner.
Mr. I.P. Kohli, Advocate, for the respondents.

Hon'ble Sudhanshu Dhulia, J. (Oral)

1. The petitioner was the employee of New India Assurance Company Ltd. Present writ petition has been filed by the petitioner seeking a writ or direction in the nature of mandamus commanding the respondents to grant him pensionary benefits under the General Insurance Employees Special Voluntary Retirement Scheme, 2004 (*in short "Scheme of 2004"*).

2. According to the petitioner, since he had opted the Scheme of 2004 within the stipulated period i.e. within sixty days of the issuance of the scheme, therefore, he is liable to get the pensionary benefit. This was denied to the petitioner on the ground that he is actually covered under the 1995 Pension Scheme where the incumbent must have put at least 20 years of mandatory service before he is liable for pensionary benefits.

3. Mr. H.K. Chaturvedi, learned counsel for the petitioner would argue that this matter stands covered by the decision of High Court of Punjab & Haryana in CWP No. 13382 of 2007 (*Kripal Singh Vs National Insurance Company Ltd. & another* decided on 25.01.2008) wherein it has been held that in the absence of any clear stipulation in the Scheme that pension would be payable on completion of 20 years of qualifying service, the same cannot be made applicable in the case of the petitioner. Subsequently, the National Insurance Company Ltd. preferred an appeal against the said judgment

before the Hon'ble Apex Court being Civil Appeal No. 256 of 2014 (National Insurance Company Ltd. & another Vs Kripal Singh), which was dismissed vide judgment and order dated 10.01.2014 and it has been held by the Hon'ble Apex Court that Scheme of 2004 was a special scheme and the employees, who opted such scheme, were exempted under the said Scheme and they are liable to be given pension.

4. Mr. I.P. Kohli, learned counsel for the Insurance Company fairly submits that the present matter is squarely covered by the decision of Hon'ble Apex Court (referred above) and the petitioner is also entitled for pensionary benefits, as claimed by him in the present writ petition.

5. In view thereof, in case, the petitioner makes a representation before the Officer in-charge, the same shall be decided, as expeditiously as possible, by passing speaking order, particularly in view of the decision of Hon'ble Apex Court (referred above), within a period of four weeks from the date of production of a certified copy of this order.

6. With the aforesaid direction, the writ petition stands disposed.

(Sudhanshu Dhulia, J.)

23.08.2016

Aswal

Writ Petition No.340 of 2017(S/S)

Arvind Kumar Chaudhary

.....Petitioner

Versus

The New India Assurance Company Ltd. & others

.....Respondents

Mr. H.K. Chaturvedi, Advocate with Mr. Aditya Sah, Advocate for the petitioner.
Mr. V.K. Kohli, Senior Advocate assisted by Mr. I.P. Kohli, Advocate for the respondents.

Hon'ble Rajiv Sharma , J.

Petitioner was appointed in the respondent-Insurance Company on 20.07.1987. Petitioner submitted an application seeking voluntary retirement on 23.02.2004. The prayer of the petitioner was accepted by passing the order under the Special Voluntary Retirement Scheme, 2004, the services of the petitioner with the Company came to an end w.e.f. 12.03.2004. However, petitioner was granted all the retiral benefits except the pension.

2. Petitioner approached this Court seeking pension by filing a Writ Petition No.958 of 2014 (S/S). It was decided on 23.08.2016. According to the contention of learned counsel appearing on behalf of Insurance Company/ respondents, the case of the petitioner was squarely covered by the judgment rendered by their Lordships of Hon'ble Supreme Court in **Civil Appeal No.256 of 2014 (National Insurance Company Ltd. and another Vs. Kripal Singh)**, on 10.01.2014. Petitioner was permitted to file a representation before the competent authority. The representation made by the petitioner was rejected on 18.10.2016.

3. The attention of this Court has been drawn towards paragraph 6 of SVRS of 2004 dated 01.01.2004, whereby the qualifying service was to be reckoned as per paragraph 14 of the General Insurance (Employees) Pension Scheme, 1995 (hereinafter referred to as "the Pension Scheme, 1995). Paragraph 14 of the Pension Scheme of 1995 permitted the employees to seek pension after 10 years of the service.

4. The case of the petitioner has been rejected primarily on the ground that he had not completed 20 years of qualifying service. This question is no more *res integra* in view of the judgment rendered by their Lordships of Hon'ble Supreme Court in **Civil Appeal No.256 of 2014 (National Insurance Company Ltd. and another Vs. Kripal Singh)**, on 10.01.2014. Their Lordships have held as under :-

"5. In para 5 of the scheme those seeking voluntary retirement were held entitled to ex-gratia amount to be determined according to the said provision. In Para 6 of the scheme were stipulated other benefits to which the employees opting for voluntary retirement under the scheme would be entitled. It reads as under:

"6. Other benefits.-

1) An employee opting for the scheme shall also be eligible for the following benefits in addition to the ex-gratia amount mentioned in para 5 namely:-

a) Provident Fund,

b) Gratuity as per Payment of Gratuity Act, 1972 (39 of 1972) or gratuity payable under the Rationalisation Scheme, as the case may be;

c) Pension (including commuted value of pension) as per General Insurance (Employee's) Pension Scheme 1995, if eligible. However, the additional notional benefit of the five years of added service

quantum of pension and commutation of pension.

d) Leave encashment.

2) An employee who is opting for the scheme shall not be entitled to avail Leave Travel Subsidy and also encashment of leave while in service during the period of sixty days from the date of notification of this scheme.”
(emphasis supplied)

6. The respondents who opted for voluntary retirement in terms of the SVRS of 2004 aforementioned appear to have claimed pension as one of the benefits admissible to them under para 6 above. The claim was rejected by the appellants forcing the respondents to agitate the matter before the High Court in separate writ petitions filed by them. The High Court has by a common order dated 25th January, 2008, allowed the said petitions holding the respondents to be entitled to claim pension. The High Court has taken the view that para 6 of the SVRS of 2004 read with para 14 of the General Insurance (Employees) Pension Scheme 1995 entitled the employees to claim pension so long as they had rendered a minimum of ten years of service in the Corporation/Company from whose service they were seeking retirement. Para 14 of the Pension Scheme 1995 reads as under:

“Qualifying Service: Subject to the other condition contained in this scheme, an employee who has rendered a minimum ten years of service in the Corporation or a Company, on the date of retirement shall qualify for pension.”

7. A conjoint reading of para 6 of SVRS of 2004 and para 14 of the Pension Scheme 1995, would leave no manner of doubt that any employee retiring from the service of the company/corporation would qualify for payment of pension if he/she has rendered a minimum of ten years of service on the date of retirement. The expression ‘retirement’ has been defined in para 2 (t) of the Pension Scheme 1995 as under:

“2 Definition:- In this Scheme, unless the context otherwise requires:-

xxx

xxx

xxx

(t) "retirement" means -

(i) the retirement in accordance with the provisions contained in paragraph 12 of General Insurance (Rationalisation and Revision of Pay Scales and Other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974 notified under the notification of Government of India, in the Ministry of Finance (Department of Revenue and Insurance) number S.O.326(E) dated the 27th May, 1974;

(ii) the retirement in accordance with the provisions contained in paragraph 4 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976 notified under notification of Government of India, in the Ministry of Finance (Department of Economic Affairs) number S.O.627(E) dated 21st September, 1976;

(iii) voluntary retirement in accordance with the provisions contained in paragraph 30 of this scheme;

8. It was contended on behalf of the appellant-companies that in terms of para 6 of SVRS of 2004 (supra) pension will be admissible to those seeking voluntary retirement only if they were eligible for the same under the Pension Scheme 1995. Para 30 of the Pension Scheme 1995 in turn made only such employees eligible for pension who had completed twenty years of qualifying service. Inasmuch as the respondents had not admittedly completed twenty years of qualifying service on the date of their voluntary retirement, they were not eligible for pension under the Pension Scheme 1995.

9. On behalf of the respondents, it was argued that the respondents had not sought voluntary retirement in terms of para 30 of the Pension Scheme 1995 which is a general provision and which stipulates twenty years of qualifying service for being eligible to claim pension nor was it a case where the SVRS of 2004 either specifically or by necessary implication adopted para 30 of the Pension Scheme 1995 for determining the eligibility of those seeking retirement under the said scheme. The respondents had, it was contended, voluntarily retired pursuant to the SVRS of 2004 which was different from what

was envisaged under para 30 of the Pension Scheme 1995. The condition of eligibility for pension stipulated under para 30 viz. twenty years of qualifying service had, therefore, no application to the respondents implying thereby that the claim for pension ought to be seen in the light of Para 14 of the Pension Scheme 1995 treating retirement under the Special Scheme of 2004 also as a retirement for the purposes of that para.

10. We find considerable force in the contention urged on behalf of the respondents. The Pension Scheme 1995 provides for "superannuation pension" and "pension on voluntary retirement". Superannuation pension is regulated by para 29 of the Pension Scheme 1995 while voluntary retirement pension is governed by para 30 which read as under:

"29. Superannuation Pension: Subject to the other condition contained in this scheme, an employee who has rendered a minimum ten years of service in the Corporation or a Company, on the date of retirement shall qualify for pension.

30. Pension on voluntary retirement: (1) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than ninety days, writing to the appointing authority, retire from service.

xxx xxx xxx

(5) The qualifying service of an employee retiring voluntarily under this paragraph shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by the employee shall not in any case exceed thirty years and it does not take him beyond the date of retirement." (6) The pension of an employee retiring under this paragraph shall be based on the average emoluments as defined under clause (d) of paragraph 2 of this scheme and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension"

11. The SVRS of 2004 does not obviously rest the claim for payment of pension on any one of the above two provisions. That is because what is claimed by the employees-

respondents before us is not superannuation pension nor is it pension on voluntary retirement within the meaning of para 30 (supra). As a matter of fact, para 6 (1)(c) of the SVRS of 2004 specifically provides that the notional benefit of additional five years to be added to the service of the retiring employee as stipulated in para 30 of the pension scheme shall not be admissible for purposes of determining the quantum of pension and commutation of pension. It follows that the SVRS of 2004 did not for the purposes of grant of pension adopt the scheme underlying para 30 of the Pension Scheme 1995. Such being the case, the question is whether the provisions of para 6 of the SVRS of 2004 read with para 14 of the Pension Scheme 1995 which stipulates only ten years qualifying service for an employee who retires from service to entitle him to claim pension would entitle those retiring pursuant to the SVRS of 2004 also to claim pension. Our answer is in the affirmative. If paras 29 and 30 do not govern the entitlement for those seeking the benefit of SVRS of 2004, the only other provision which can possibly be invoked for such pension is para 14 (supra) that prescribes a qualifying service of ten years only as a condition of eligibility. The only impediment in adopting that interpretation lies in the use of the word 'retirement' in Para 14 of the Pension Scheme 1995. A restricted meaning to that expression may mean that Para 14 provides only for retirements in terms of Para (2)(t) (i) to

(iii) which includes voluntary retirement in accordance with the provisions contained in Para 30 of the Pension Scheme. There is, however, no reason why the expression 'retirement' should receive such a restricted meaning especially when the context in which that expression is being examined by us would justify a more liberal interpretation; not only because the provision for payment of pension is a beneficial provision which ought to be interpreted more liberally to favour grant rather than refusal of the benefit but also because the Voluntary Retirement Scheme itself was intended to reduce surplus manpower by encouraging, if not alluring employees to opt for retirement

by offering them benefits like *ex-gratia* payment and pension not otherwise admissible to the employees in the ordinary course. We are, therefore, inclined to hold that the expression "Retirement" appearing in Para 14 of the Pension scheme 1995 should not only apply to cases which fall under Para 30 of the said scheme but also to a case falling under a Special Voluntary Retirement Scheme of 2004. So interpreted, those opting for voluntary retirement under the said SVRS of 2004 would also qualify for payment of pension as they had put in the qualifying service of ten years stipulated under Para 14 of the Pension Scheme 1995."

5. Learned Senior Counsel appearing on behalf of insurance company/respondents has vehemently argued that the matter was required to be referred to the Central Government under para 9 of the Scheme. There is no merit in this contention. There was no dispute qua the applicability of the scheme.

6. He has also argued that petitioner has filed this petition after 10 years. No limitation is prescribed for filing the writ petitions. Though the delay and laches may be relevant in the writ matters. The question of delay/laches would be relevant in those cases where the rights of third parties have intervened.

7. In the present case, the petitioner's relief has been partly allowed by accepting his application dated 23.02.2004 but the pension has been denied contrary to the Pension Scheme, 1995 read in conjunction with Para 6 of SVRS of 2004 dated 01.01.2004.

8. Accordingly, the writ petition is allowed. Impugned order dated 18.10.2016 is quashed and set aside. Respondents are directed to release the pension

to the petitioner within a period of 10 weeks from today
with interest @ 10% per annum.

Sd/-
(Rajiv Sharma, J.)

01.05.2017

JKJ

Compared by - JB

PHOTOSTAT
TRUE COPY

JS
30/5/17

Court No. - 51

Case :- CRIMINAL MISC. WRIT PETITION No. - 27000 of 2017

Petitioner :- Aditya Sanghi And 3 Ors.

Respondent :- State Of U.P. And 2 Ors.

Counsel for Petitioner :- Laxmi Narayan Mishra

Counsel for Respondent :- G.A.,Swetashwa Agarwal

Hon'ble Vipin Sinha,J.

Hon'ble J.J. Munir,J.

Heard Sri H.K. Chaturvedi holding brief of Sri Laxmi Narayan Mishra learned counsel for the petitioners, learned A.G.A. for the State and Swetashwa Agarwal learned counsel for the complainant.

Exemption Application is allowed.

It is submitted by learned counsel for the petitioners that the first informant is the wife who left the matrimonial house on 31.3.2016. It has been mentioned in para 14 and 15 of the writ petition that divorce petition is pending between the parties and civil suit is also pending between them. The present matter relates to a matrimonial dispute between husband and wife and the said matter can be well considered by Mediation Centre of this Court. It is further contended that there are chances of reconciliation between husband and wife, therefore the matter may be referred to the Mediation Centre of this Court.

Having considered the arguments advanced across the bar, I have a feeling that Court owes a duty to the society to strive to the utmost to repair the frayed relations between the parties so that the wounded situation may be healed into a healthy rapprochement. The matter in had also appears to be one of those cases in which reconciliation should be tried between the disputing parties.

It is directed that petitioners shall deposit a sum of Rs. 25,000/- within one month from today with the Mediation Centre of which Rs.20,000/- shall be paid to the opposite party no.3 for appearance before the Mediation Centre.

The matter is remitted to the Mediation Centre with the direction that same may be decided after giving notices to both the parties.

It is directed that Mediation Centre shall decide the matter expeditiously preferably within a period of three months. Thereafter the case shall be listed before appropriate Bench.

Till further orders, the petitioners shall not be arrested pursuant to FIR registerd as Case Crime No.0318 of 2017 u/s 498A, 323, 504, 506 IPC read with Section 3/4 DP Act PS Lalkurti District Meerut.

After depositing the amount, aforesaid, notice shall be issued to the parties and in the case the aforesaid amount is not deposited within the aforesaid period, the interim protection granted above shall automatically be vacated.

Order Date :- 5.12.2017

SP

Court No. - 33

Case :- CRIMINAL MISC. WRIT PETITION No. - 28443 of 2018

Petitioner :- Krishn Bihari Chaturvedi

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Lalit Kumar Shukla, Laxmi Narayan Mishra

Counsel for Respondent :- G.A., A.K. Mishra, Suresh Chandra Pandey

Hon'ble Manoj Misra, J.

Hon'ble Suresh Kumar Gupta, J.

Heard learned counsel for the petitioner; learned A.G.A. for the respondents 1 and 2; and Sri S.C. Pandey for the respondent no.3; and perused the record.

The instant petition seeks quashing of the first information report dated 12.09.2018 registered as Case Crime No.1159 of 2018, under Sections 420, 467, 468, 471, 120-B IPC, P.S. Kotwali, District Mathura.

The allegation in the impugned first information report is that the informant and the accused (the petitioner) had set up a partnership firm by the name of M/s K.B. Chaturvedi and Associates. It is alleged that both partners had 50% share in the partnership. A partnership Account No.37704364794 was opened at State Bank of India, Branch Krishna Nagar, Mathura, on 16.05.2018. It is alleged that the intention of the accused was dishonest from the very beginning and therefore he opened a separate account of the partnership at Andhra Bank, Branch Dampiyar Nagar, Mathura which was exclusively operated by the petitioner on the basis of a forged power of attorney which was never executed by the informant. It is alleged that proceeds payable to the firm were fraudulently diverted to that account to the tune of Rs.16,76,060/- and, thereafter, the accused fraudulently transferred the money to several of his relatives account thereby causing loss to the informant. It is also alleged that to enable opening of account at Mathura there had been manipulation in documents to show the address of the firm at Mathura in place of Mumbai.

The contention of the learned counsel for the petitioner is that the partnership deed enabled the

person incharge of the branch office to operate and control the bank account of that place. It has been submitted that, admittedly, the petitioner (the accused) was a resident of Mathura, therefore, by virtue of Clause 3 of the partnership firm, he could control the bank operations in respect of the branch office at Mathura. It has also been contended that there is no evidence to suggest that the bank account at Mathura was opened on the basis of a forged power of attorney.

On the other hand, learned counsel for the informant has submitted that the allegations clearly reveal that a forged power of attorney was submitted for the purposes of opening bank account in Andhra Bank and through that account, partnership receipt to the tune of Rs.16,76,060/- was transferred to that account as a consequence of which, there was a defalcation of funds of the partnership.

Having considered the rival submissions and having perused the record, we are of the view that as the allegations made in the impugned first information report disclose commission of cognizable offence, the prayer of the petitioner to quash the impugned first information report cannot be accepted.

It may also be observed that, on 09.10.2018, the Court had referred the matter to the Mediation Centre for exploring possibility of a settlement between the parties.

Pursuant to the reference order, the Mediation Centre has submitted a report that the mediation process was completed but no agreement could be arrived at between the parties.

In view of the above, as the impugned first information report discloses commission of cognizable offence, the matter would have to be investigated and therefore the prayer of the petitioner to quash the impugned first information report cannot be accepted.

At this stage, learned counsel for the petitioner has submitted that it is not mandatory to arrest an

accused during the pendency of the investigation more so when it can be ascertained with the help of documents whether the bank account in Andhra Bank, as alleged in the impugned first information report, was opened on the basis of power of attorney or not and whether that power of attorney was forged or not.

Considering the facts and circumstances of the case as also the submissions made, we deem it appropriate to dispose off this petition by providing that the investigating agency before proceeding to arrest the petitioner in the above case shall ascertain whether the alleged Bank Account was opened on the basis of forged documents or not. The above protection shall in no case be available after submission of police report under Section 173(2) Cr.P.C. It is also made clear that the above protection would be available only if the petitioner cooperates in the investigation and makes himself available for interrogation and provide specimen signature, etc. as and when required by the investigating agency. It is further made clear that there is no restriction on investigation and the same shall be brought to its logical conclusion.

With the aforesaid observation/direction, the petition is **disposed off**.

Order Date :- 24.4.2019

AKShukla/-