

30.09.2020
SL No. 4

CRR No. 4058 of 2009
with
IA CRAN No. 2 of 2020 (Old CRAN No. 1097 of 2020
With
IA CRAN No. 3 of 2020 (Old CRAN No. 2914 of 2020

(Via Video Conference)

In the matter of:- Amit Luharuka @ Amit Loharka
petitioner

Mr. Kalyan Kumar Bandyopadhyay, Ld. Sr. Advo.
Mr. Ram Anand Agarwal,
Mr. Subhamoy Bhattacharya,
Ms. Nibedita Pal,
Mr. Ananda Gopal Mukherjee,
Mr. Shankar Mukherjee for the petitioner

Mr. Rana Mukherjee for the State.

This is a proceeding under Section 482 of the Code of Criminal Procedure (hereinafter described as 'the Code') filed by one Amit Luharuka @ Amit Loharka (hereinafter described as 'the petitioner) praying for quashing of the proceeding of Hare Street P.S./DD (Special Cell) Case No. 536 dated 15th October 2009 corresponding to Section G 536 of 2009 under Sections 420/406/467/468/471/120B of the Indian Penal Code presently pending before the Learned Chief Metropolitan Magistrate, Calcutta.

The aforesaid case was registered on the basis of a written complaint submitted by opposite party no. 2 before the Deputy Commissioner of Police, Detective Department alleging inter alia that one Anand Lohia

being the Manager (Sales) of Advent Group of Companies allured her to invest money to different Mutual Funds through his Company in order to get exorbitant return. Being allured, a huge sum of money was invested through the said Company, namely, Advent Group of Companies by the opposite party no. 2 and her husband. A sum of Rs. 25,39,000/- was transferred from the Bank Account of the opposite party no. 2 and her husband for depositing the same in Mutual Funds and it was misappropriated by the said Company. It is also alleged that the Director of the said company was vicariously liable for such misappropriation. On the basis of such allegation the aforementioned case was registered.

It is rightly pointed out by Mr. Kalyan Kumar Bandyopadhyay, learned Senior Counsel appearing for the petitioner that one Rishi Somani @ Rishi Kumar Somani was one of the Directors of the said Advent Group of Companies. He was one of the co-accused. He moved an application being CRR No. 710 of 2011 under Section 482 of the Code and vide order dated 5th June 2011 by a co-ordinate Bench of this court, he was discharged on the ground that the entire amount has been paid. Other documents, namely, copy of the orders passed by the Learned Chief Metropolitan Magistrate also show that the amount for which the instant case was registered was duly paid to the opposite party no. 2. Therefore, it is submitted by Mr. Bandyopadhyay that the application

filed by the present petitioner also deserves the same fate and he should be discharged and the proceeding is required to be quashed as against him.

Mr. Rana Mukherjee, learned P.P.-in-Charge fairly submits that when one of the accused was discharged after the company made payment of entire money to the opposite party no. 2 and the dispute has been settled, the present petitioner is also entitled to be discharged from the case.

The question as to whether cognizable and non-compoundable cases where out of court settlement is arrived at such cases can be dropped and proceeding can be quashed under Section 482 of the Code, came up for consideration before the Hon'ble Supreme Court in Parbatbhai Aahir @ Parbatbhai -vs- The State of Gujrat (Judgement delivered on 4th October 2017) and the Hon'ble Supreme Court referring to the various precedents summarized the following principles which governs the power of the High Courts under Section 482 of the Cr. P.C. :-

- (i) 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 recognizes and preserves powers which inhere in the High Court;

- (ii) 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.
- (iii) In forming an opinion whether a criminal proceeding or a 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;
- (iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised;
 - (i) to secure ends of justice or (ii) to prevent an abuse of the process of any court;
- (v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and the victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no

exhaustive elaboration of principles can be formulated;

(vi) In 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;

(vii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essential civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

The above propositions laid down by the Hon'ble Supreme Court is squarely applicable in the instant case. The factual aspect of the matter, at the risk of repetition, is that the opposite party no. 2 paid certain sum of amount to the Manager of a Company of

which the petitioner was a Director to deposit the same in some Mutual Funds, which would bring higher return to the opposite party no. 2. The Manager of the Advent Group of Companies failed to deposit the said amount. The money was returned. The dispute has been settled between the parties. The dispute between the parties does not have any big Financial or Commercial ramification. Payment of such money was made, as a result of a contract between the Manager of the said Company and the opposite party no. 2 for investing certain Mutual Funds which the Company did not. Therefore, the dispute between the parties had element that is civil in nature.

So considering the facts and circumstances of the case as well as the guidelines as to quashing of the criminal proceeding in a cognizable and non-compundable offence where settlement has been arrived at, this court is of the view that the present proceeding should be quashed as against the petitioner.

Accordingly, the instant criminal revision is allowed on contest, however, without costs.

The criminal case being Hare Street Police Station/ DD (Special Cell) Case No. 536 dated 15th October 2009 corresponding to Section G 536 of 2009 under Sections 420/406/467/468/471/120B pending before the Court of the Learned Chief Metropolitan Magistrate, Calcutta, presently pending before the Learned

Metropolitan Magistrate, 5th Court, Bankshall Court,
Calcutta be quashed as against the petitioner, Amit
Luharuka @ Amit Loharka.

Appointment of Mr. Rana Mukherjee, as Learned P.P.
in-Charge in the instant case be regularized.

Urgent photostat certified copy of this order be
supplied to the parties, if applied for, as early as
possible.

(Bibek Chaudhuri, J.)