

06.10.2020

Sl. No. 04

Ct. No.05.

Srimanta/Mithun

IA No.CRAN/1/2020

in

CRR /1330/2020

(Via Video Conference)

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the proceedings of G.R. Case No.1445 of 2019 corresponding to Hare Street Police Station Case No.347 dated 1st November, 2019 under Sections 409/420/120B of the Indian Penal Code, 1860 and under Sections 409/420/467/468/471/120B of the Indian Penal Code, 1860 (subsequently added) pending before the Court of the learned Chief Metropolitan Magistrate at Calcutta.

And

In the matter of : Vineet Nahata

... Petitioner

Mr. Avik Ghatak, Adv,
Ms. Saheli Sen, Adv.,
Mr. Rakesh Sarkar, Adv.,

... for the petitioner.

Mr. Swapan Banerjee,Adv.,
Mrs.Purnima Ghosh,Adv.

... for the State.

Mr.Kunal Saraogi, Adv,

... for the de facto complainant

This is a proceeding under Section 482 of the Code of Criminal Procedure filed by the petitioner praying for quashing of the proceedings in connection with G.R. Case No.1445 of 2019 arising out of Hare Street Police Station Case No.347 dated 1st November, 2019 under Section 409/420/120B of the

Indian Penal Code. It is pertinent to note that during investigation of the case the Investigating Officer, with the expressed order of the learned Jurisdictional Magistrate added Section 467/468/471/120B of the Indian Penal Code against the accused persons. The investigation is in progress. The petitioner have prayed for quashing of the F.I.R. filed by one M/s. UAL Industries Limited against the petitioner for cheating huge amount of money and subsequently forging and fabricating certain contract notes to show payment of money in favour of the de facto complainant/Company.

It is submitted by Mr. Bandhopadhyay, learned Senior Counsel for the petitioner that the petitioner have already paid entire amount on the basis of the settlement arrived by and between the petitioner and the de facto complainant for which the instant case was initiated. Therefore, further proceeding by way of investigation of Hare Street Police Station Case No.347 dated 1st November, 2019 would be a futile formality and abuse of the process of law.

Learned Advocate for the de facto complainant also submits that the de facto complainant/Company received the entire amount from the petitioner and at present it has no grievance against the petitioner.

The only point for consideration in the instant case is that Hare Street Police Station Case No.347 was instituted against the petitioner for committing certain offences which

are non-compoundable. Under such circumstances, can the Court quash the further proceeding of Hare Street Police Station Case No.347?

"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."

Relying on the aforesaid decision of the Hon'ble Supreme Court, this Court on an almost identical matter quashed further proceeding in connection with Hare Street P.S./DD (Special Cell) Case No.536 dated 15th October, 2009 in C.R.R. No.4058 of 2009 (**Amit Luharuka @ Amit**

Loharka Vs. State of West Bengal) by a judgment dated 30th September, 2020.

Following the guidelines laid down in ***Parbatbhai Aahir's case*** (supra), this Court is of the view that further investigation in Hare Street Police Station Case No.347 would be a futile exercise of the authority of police officer to investigate into a cognizable offence and accordingly abuse of the process of law.

For the reasons recorded above, the instant proceeding is quashed. The instant criminal revision is, thus, allowed on contest, however without costs.

In view of the disposal of the criminal revision, CRAN 1/2020 is also disposed of.

The petitioner is at liberty to take step for defreezing the account.

As the proceeding has already been quashed, all orders passed by the learned Court below be treated as non-est and quashed.

(Bibek Chaudhuri, J.)