

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 196 of 2019

With

CRAN 1 of 2022

Sri Aninda Biswas.

Vs.

Smt. Sananda Biswas nee De & Anr.

For the Petitioner

: Mr. D. Trivedi,
Mr. S. Lahiri,
Mr. S. Azam.

For the Opposite Party (No. 1)

: Ms. B. Khatun.

Heard on

: 23.11.2022

Judgment on

: 01.12.2022

Shampa Dutt (Paul), J.:

The Revisional application under Section 482 of code of Criminal Procedure has been filed by the petitioner/Husband praying for setting aside of the Judgment and order dated 5th October, 2018 passed by the Learned Additional Principal Judge, Family Court, Calcutta, in Misc. Case 65 of 2015.

The parties were married on 30.11.2011.

Due to differences the opposite party no. 1/wife left her matrimonial home on 26.04.2015.

Several cases relating to their Matrimonial disputes and also maintenance was filed.

Now a joint application being CRAN 1/2022 has been filed, stating that the matter has been amicably settled.

Learned Counsels for both sides have submitted that a settlement has been arrived at between the parties and on the basis of the said settlement the joint applicants have submitted that the present revisional application be allowed by setting aside of the judgment and order under revision.

The opposite party no. 1/wife has submitted an affidavit that the matter has been amicably settled and she has no objections if this revision is allowed by setting aside the judgment under revision.

Considered the said stand and materials on record and the joint compromise arrived at between the parties and submitted by way of a joint

application being CRAN 1 of 2022 on affidavit before this Court and also considered the submissions of the learned lawyers for both sides.

The following rulings are relied upon by this Court considering the facts and circumstances of the case herein:-

(1) (2012) 10 Supreme Court Cases, 303.

(2) (2018) 3 Supreme Court Cases, 290.

The Three Judge Bench of the Court in **(2012) 10 Supreme Court Cases, 303, Gian Singh vs State of Punjab** and another has cleared the position in respect of the power of the High Court in quashing a criminal proceedings in exercise of its inherent jurisdiction in para 61 of the judgment, which is reproduced here in:-

“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. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to

him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

In Anita Maria Dias & Anr. vs The State of Maharashtra & Anr.
(2018) 3 SCC 290.

The Court held:-

- (a) Offences which are predominant of civil character, commercial transaction should be quashed when parties have resolved their dispute.*
- (b) Timing of settlement would be crucial for exercise of power or declining to exercise power (stage of proceedings).*

The joint application on affidavit filed by the parties clearly show that an amicable settlement and compromise has been arrived at between the parties and the opposite party no. 1 has submitted that she does not have any objection if the judgment and order dated 5th October, 2018 passed by the Learned Additional Principal Judge, Family Court, Calcutta in Misc. 65 of 2015 is set aside/quashed

From the materials on record it is clear that the facts and circumstances in the present case is a **matrimonial dispute** between the parties and is thus private in nature and the parties have now resolved their entire dispute by way of a compromise/settlement on affidavit and continuation of this case would put the petitioner to great oppression and prejudice and extreme injustice could be caused to him by not setting aside the judgment under revision despite full and complete settlement and compromise with the complainant. (As in the words of the Supreme Court in ***Gian Singh Vs. State of Punjab and another***) (**supra**).

As such this court is of the view that it would be unfair and contrary to the interest of justice to not set aside/quash the judgment under revision, which would tantamount to abuse of process of law in view of the settlement arrived at between the parties in respect of their dispute and to secure the ends of justice it would be prudent to set aside/quash the judgment under revision as prayed for.

Accordingly, the revisional application being CRR 196 of 2019 is allowed.

The Judgment and order dated 5th October, 2018 passed the Learned Additional Principal Judge, Family Court, Calcutta, In Misc Case 65 of 2015, is hereby set aside and quashed.

No order as to cost.

All connected applications including CRAN 1/2022 stand disposed of.

Interim order if any stands vacated.

Let a copy of this order be sent to the concerned court for information.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)