

**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Appellate Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 1142 of 2019**

**Rajendra Kumar Rathi & Ors.**

**Vs.**

**The State of West Bengal & Anr.**

**For the Petitioner No. 1** : Mr. S.k. Bhattacharyya,  
Ms. S. Basu,  
Mr. D. D. Banerjee.

**For the Petitioner Nos. 3, 4, & 5** : Mr. Ayan Bhattacharria,  
: Mr. S. Ash.

**For The Opposite Party No. 2** : Mr. Anand Keshary

**For the State** : Mr. S. G. Mukherjee,  
Mr. Puspita Saha,  
Mr. B. K. Podder.

Heard on : 27.09.2022

Judgment on : 16.11.2022

**Shampa Dutt (Paul), J.:**

In this revisional application Mr. S.K. Bhattacharya learned Counsel for the petitioner submits that the instant case has been initiated against the present applicants/petitioners through a petition of complaint filed by the opposite party No.2 herein before the Learned Chief Metropolitan Magistrate, Calcutta. By Order dated 13.09.2018, the Learned Chief Metropolitan Magistrate, Calcutta was pleased to take cognizance of the same and transferred the instant case to the Learned Metropolitan Magistrate, 6<sup>th</sup> court, Calcutta for enquiry and disposal. The Learned Metropolitan Magistrate, 6<sup>th</sup> Court in complainant Case No. 82645 of 2018 was pleased to examine the opposite party no. 2 herein under the provisions of Section 200 of the Code of Criminal Procedure and by his Order dated 28.11.2018 was pleased to issue process and summons against the applicants/petitioners.

The allegations against the applicants/petitioners as made out from the petition of complaint and the deposition under Section 200 of the Code of Criminal Procedure, in gist is that the applicants/petitioners entered into a criminal conspiracy to oust the opposite party no. 2 from the premises being Nos. 6A and 6B, Pretoria Street, Kolkata – 700071, where they are the rightful tenants. It was further alleged that the applicant/ petitioner no. 1, being the elder brother of the sole proprietor of the opposite party no. 2 had fraudulently and surreptitiously, in order to trespass into the said premises, represented himself as the sole proprietor of the opposite party no. 2 and secured a surrender of tenancy from the other tenant in respect of 4(four) rooms in the

said premises. It was further alleged that failing in his attempt to gain access over the said premises, the applicant/petitioner no.1 falsely and fraudulently executed a deed of lease with the applicant/petitioner no. 5 in respect of a portion of the premises being 6A, Pretoria Street, Kolkata – 700071. It was thus alleged that in such manner the applicants/petitioners were acting in connivance and conspiracy with one another to oust the opposite party no. 2 and his family members from the said premises.

On receiving summons from the Learned Metropolitan Magistrate, 6<sup>th</sup> Court, Calcutta, the applicants/petitioners appeared before the Learned Court, surrendered and got an order of bail.

The petitioners have denied the entire case and have stated that as the said complaint is not based on proper evidence and as the materials don't disclose the ingredients of the alleged offences, the impugned proceedings is liable to be quashed.

The petitioners case is that In the year 1971, the applicant/petitioner No. 1, herein took the entire premises, which were then premises no. 6, Pretoria Street, Kolkata – 700071, on a long term registered Lease for a period of 62 years from Mr. Kishore Churn law, the owner of the said premises, vide a Lease Deed dated 3<sup>rd</sup> March 1971.

Subsequently in the year 1973, the applicant/petitioner No.1, herein entered into an Agreement of Sub Lease by way of a registered Indenture dated 19<sup>th</sup> December, 1973 with M/s Krebs & Cie (India) Private Limited for a

period of 55 years in respect of a portion of vacant land measuring approximately 8 cottahs, 4 chattaks, 24 sq.ft. situated in the eastern portion of the premises being no. 6, Pretoria Street, Kolkata – 700071, facing the road. The complainant's further case is that as per the terms of the sub lease agreement between him and Krebs & Cie (India) Private Limited, they were to construct a one single storied building for his use on the ground floor by using the western wall of the premises.

In the year 1976/77 due to the mutation carried out by the Calcutta Municipal Corporation (as it then was) the premises was divided into no. 6A, Pretoria Street, and 6B Pretoria Street. After the division of the premises by the Calcutta Municipal Corporation, the area of land of 8 Cottahs, 4 Chattaks, 24 Sq. ft., which had been sub-leased to Krebs & Cie (India) Private Limited was numbered as premises No. 6B, Pretoria Street while the remaining portion of the premises was re-numbered as premises no. 6A, Pretoria Street. Thus Premises no. 6A and 6B, Pretoria Street became two exclusive and separate premises with no connection with one and other. The one single storied building which had been constructed according to the terms and conditions of the Agreement of Sub-Lease fell under premises no. 6A, Pretoria Street and was converted into an office by the applicant/petitioner no. 1 in order to run his business.

By a Supplementary Deed dated 30<sup>th</sup> August, 2002, duly registered before the Additional Registrar of Assurances, Calcutta vide Book no. 1, Being

No. 4434 for the year 2002 between the applicant/petitioner no. 1 and the said Mr. Kishore Churn Law, the right of Lease of the applicant/petitioner no. 1 over the entire premises being premises no. 6 Pretoria Street, Calcutta – 700071 subsequently divided into premises no. 6A & 6B, Pretoria Street, Calcutta 700071 was extended for a further period of 20 years after the expiry of the earlier Lease Period as stipulated in the Deed of Lease dated 3<sup>rd</sup> March, 1971. Thus, the total period of lease now remains valid until 28<sup>th</sup> February, 2053

The opposite party no. 2 herein, once used to stay in one room on the premises No. 6A, Pretoria Street, till 1995, when he moved along with his family to his present address at 21B, Belvedere Road, Police Station – Alipore, Kolkata – 700029. The opposite party no. 2 also used to run his business from a space measuring approximately 150 sq. ft. in the office premises of the applicant/petitioner no. 1 at 6A, Pretoria Street. This was allowed by the applicant/petitioner no. 1 out of love and affection to the proprietor of the opposite party no. 2 who is his younger brother.

On 25.09.2017 the applicant/petitioner no.1, surrendered his leasehold rights in respect of the premises no. 6A Pretoria Street, Calcutta - 700071 to one Mr. Joy Prakash Law, the present owner of the said premises and the said Mr. Joy Prakash Law subsequently granted a fresh Lease of the Said premises being no. 6A, Pretoria Street, Calcutta – 700071 to Pretoria Propertied LLP for a period of 99 years vide an Agreement of Lease dated 25<sup>th</sup> September, 2017 which was duly registered with the office of the Registrar of Assurance-II,

Calcutta vide Book No. 1, Volume No. 1902-2017, Page from 111639 to 111684, Being 190203314 for the year 2017. The applicant/petitioner no. 1 was a confirming party to the said Lease Agreement between Mr. Joy Prakash Law and Pretoria Properties LLP.

That the opposite party no. 2 herein has falsely stated in the petition of complaint that they are a notified tenant of the said premises since the year 1970 and they have no legal right over the premises. It is further submitted that the instant criminal proceedings have been initiated by the Opposite Party No. 2 in a desperate attempt to hold on to their office space of 150 sq. ft. in the office building in Premises No. 6A, Pretoria Street, which they had been allowed to occupy thus far, simply out of the love and affection of the applicant/petitioner No. 1

That following the execution of the Deed of Lease dated 25<sup>th</sup> September, 2017 by which Pretoria Properties LLP, were granted the lease hold rights in respect of premises no. 6A, Pretoria Street, the opposite party no. 2 began initiating one frivolous litigation after another, in a desperate attempt, to ensure that he does not have to surrender his office space of 150 sq. ft. in the premises no. 6A, Pretoria Street, in which he has no lawful right of tenancy over. Such litigation includes a Civil Suit being Title Suit No. 1471 of 2017, pending before the Learned Judge, 6<sup>th</sup> Bench, City Civil Court, Calcutta, where the opposite party no. 2 was initially able to obtain an ex-parte order of injunction. However, subsequently, the applicants/petitioners appeared

through their Learned Lawyers and after hearing both parties the Learned Court was pleased to vacate the order of injunction. In the said order vacating the injunction, the Learned Judge has clearly observed that the opposite party no. 2 herein, was unable to produce any tenancy agreement as claimed by him. An appeal against the said order vacating the interim injunction was preferred by the opposite party no. 2 herein and the same is pending before this Hon'ble Court. The applicants/petitioners further submit that the opposite party no. 2 had also filed two applications under Section 144(2) of the Code of Criminal Procedure before the Learned Executive Magistrate, 10<sup>th</sup> Court at Calcutta, vide Misc. Case No. M/563 of 2017 and Misc. Case No. M/123 of 2018, However in both the cases, the application of the opposite party no. 2 herein was ultimately dismissed as the Learned Magistrate found the dispute to be civil in nature. The opposite party no. 2 also filed a revisional application being Criminal Revision No. 14 of 2018 before the Learned Chief Judge, City Sessions' Court, Calcutta, against the order dated 12.12.2017 passed by the Learned Executive Magistrate, 10<sup>th</sup> Court in Misc. Case No. M- 563 of 2017. Once again the applicants/petitioners appeared in the matter through their Learned Advocates and the Learned Chief Judge by an order dated 15.05.2018 was pleased to dismiss the said revisional application without any interference to the challenged order.

It is further submitted that in the petition of complaint, there appears to be a specific allegation against the applicant/petitioner no. 1 that he has fraudulently represented himself to be a proprietor/authorized representative

of the opposite party no. 2, in order to receive the delivery of possession in respect of the four room situated at premises No. 6A Pretoria Street, from the sub tenant M/s. jenny Christensen (Service Apartments) Pvt. Ltd. Such averment in the petition of complaint is completely false, as in the letter delivering the possession in respect of the portion of the said premises, nowhere has it been mentioned that Mr. Rajendra Kumar Rathi, the applicant/petitioner no. 1 herein, has represented himself to be the proprietor/authorized representative of the opposite party no. 2. The applicants/petitioners further submit that nowhere in the petition of complaint nor in the initial deposition under Section 200 of the Code of Criminal Procedure has the opposite party no. 2 herein produced any document to substantiate his claim in this regard. Thus the said averment is simply and attempt to mislead to the Learned Court.

The applicants/petitioners further submit that it appears from the averments made in the petition of complaint that the allegation is that the applicant/petitioner no. 1 executed a Deed of Lease with Pretotia Properties LLP, surrendering his Right of lease in respect of the premises being Premises no. 6A, Pretoria Street. The applicants/petitioners state that the same is a false allegation as the Deed of Lease was executed between Pretoria Properties LLP, and Mr. Joy Prakash Lw, The rightful owner of the said premises. The applicant/petitioner no. 1, having earlier surrendered his lease-hold Rights to the said Mr. Joy Prakash Law, was a confirming party to the said Deed of Lease. The applicants/petitioners most humble submit that such false

averment in the petition of complaint is yet another way in which the opposite party no. 2 is attempting to rope in the applicants/petitioners in the criminal proceedings.

That the Learned Magistrate erred in law in issuing process against the applicants under Section 419/420/451/465/467/468/471/120B of the Indian Penal Code and also failed to appreciate that the petition of complaint and its supporting documents were not sufficient for taking cognizance against the applicants/petitioners. And that the Learned Magistrate also failed to appreciate that the dispute between the parties is essentially civil in nature and that the opposite party no. 2 herein, suppressed the fact that they had already filed a civil suit in respect of the said property and in the order vacating the injunction in the said suit, the Learned Civil Court has clearly stated that the opposite party no. 2 herein had failed to produce the tenancy agreement and also failed to disclose that he had already made two applications for protection under Section 144(2) of the Code of Criminal Procedure, which the Learned Executive Magistrate dismissed after hearing both parties as the dispute was essentially one which was civil in nature.

It is further submitted that the allegation in the petition of complaint do not reveal any offence against any of the petitioners.

That the entire petition of complaint and the deposition made under Section 200 of the Code does not disclose any of the offences as has been alleged against the applicants in the petition of complaint.

Any further continuation of the proceedings under reference in the Court of the Learned 6<sup>th</sup> Metropolitan Magistrate, Calcutta will be bad in law and as such the intervention of this Hon'ble Court is essential by quashing the entire proceedings against the applicants.

CRAN 2 of 2022 has been filed.

The parties in their Joint Application on Affidavit in CRAN 2 of 2022 have submitted that in the mean time, **an amicable settlement** has been arrived at by and between the parties and as a result whereof, the applicant no. 6 herein is no more willing to proceed any further against the applicant nos. 1,2,3,4, and 5 herein.

That on August 1<sup>st</sup>, 2022 they have filed the Terms of Settlement through an Interlocutory Application being GA/08/2022 in Civil Suit No. 120 of 2020 (Nagendra Kumar Rathi and Ors. -vs- Rajendra Kumar Rathi and Ors.) in the High Court at Calcutta wherein in para 7(j) it is stated how this instant Criminal Revisional Application is to be settled :-

***“7(j)** CRR No. 1142 of 2019 (Rajendra Kumar Rathi and Others -Vs- State and Another) – pending before the Hon'ble High Court at Calcutta Filed by the Partner and employee of the defendant/respondent No. 3 for quashing of the proceedings being CS No. 82645 of 2018, initiated by the plaintiff/petitioner No. 1. The plaintiff/petitioners will give consent to the quashing of the trial Court proceedings at the time of hearing or by way of an affidavit, as required by the Hon'ble Court”.*

By an order dated August 17<sup>th</sup>, 2022, Hon'ble Justice Ravi Krishan Kapur was pleased to dispose of the Interlocutory Application be GA/08/2022 in Civil Suit No. 120 of 2020(Nagendra Kumar Rathi and Ors. –vs- Rajendra Kumar Rathi and Ors.) and further pleased to observe that the Terms of Settlement was lawful and proper and duly executed by the parties and their respective Advocates.

That the parties herein do not have any further grievence/grievances against each other since for their mutual benefit they have amicably resolved the disputes.

As the applicant no. 6 being the complainant in the instant proceeding has no further grievance against the applicants no. 12,3,4 and 5 herein, the instant application deserves to be allowed and the Complaint Case is required to be withdrawn and the parties have thus jointly prayed that in view of the compromise arrived at between the parties, the impugned proceeding in Complaint Case No. 82645 of 2018 under Sections 419/420/451/467/468/471/120B of the Indian Penal Code pending before the Learned Metropolitan Magistrate, 6<sup>th</sup> Court, Calcutta, be quashed.

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 CRAN 2 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 filed by the parties clearly shows that an amicable settlement and compromise has been arrived at between the parties and the complainant does not wish to proceed with the complaint case against the petitioners being no. 82645 of 2018 pending before the learned Metropolitan Magistrate, 6<sup>th</sup> Court, Calcutta.

From the materials on record, it is clear that dispute in the present case is a family dispute relating to property and is private in nature and the parties have now resolved their entire dispute by way of a compromise/settlement on affidavit and as such 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 could be caused to him by not quashing the criminal case 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**).

As such this court is of the view that it would be unfair and contrary to the interest of justice to continue with the criminal proceedings 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 quash the proceedings in the case as prayed for. The present status of the case before the Trial Court is that chargesheet has been filed and cognizance has been taken, and it is presumed that trial might have not commenced as yet.

**Accordingly, the revisional application being CRR 1142 of 2019 is allowed.**

Proceedings being Complaint Case No. 82645 of 2018 pending before the Ld. Metropolitan Magistrate, 6<sup>th</sup> Court, Calcutta under Sections 419/420/451/465/467/468/471/120B of the Indian Penal Code is hereby quashed.

There will be no order as to costs.

All connected Application stand disposed of.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**