

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 3151 of 2022

With

CRAN 1 of 2022

Sudipta Ray Chowdhury

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Sekhar Kumar Basu, Sr. Adv.,
Mr. Sabyasachi Banerjee, Adv.,
Mr. Anirban Guha Thakurta, Adv.,
Mr. Antarikshya Basu, Adv.,
Mr. Abhijit Chowdhury, Adv.

For the Applicant No.2: Mr. Ayan Bhattacharjee, Adv.,
Mr. Akash Dutta, Adv.,

For the State: Mr. Saswata Gopal Mukherjee, Ld. PP.,
Mr. Ranabir Roy Chowdhury, Adv.,
Mr. Prosun Kumar Dutta, Ld. APP.,
Mr. Rudradipta Nandy, Ld. APP.,
Md. Kuttubuddin , Adv.

Heard on: 12 September, 2022.

Judgment on: 12 September, 2022.

BIBEK CHAUDHURI, J. : –

1. This is an application filed jointly by the defacto complainant/opposite party No.2 and the petitioner praying for passing

appropriate order quashing and/or setting aside of the entire proceedings in connection with G.R Case No.775 of 2021 arising out Bidhannagar East Police Station Case No.76 of 2021 dated 17th July, 2021 under Sections 420/467/468/471/120B of the IPC presently pending before the learned Additional Chief Judicial Magistrate at Bidhannagar on the ground that both the defacto complainant and the accused persons have settled the dispute amicably. The learned Public Prosecutor on behalf of the opposite party No.1 has raised vehement objection against the prayer for settlement of the dispute between the parties on compromise.

2. Before dealing with the respective submissions made by the learned Counsels for the parties, it is necessary to narrate the brief facts leading to the filing of the instant revision:-

3. The opposite party No.2 lodged a written complaint with the Officer-in-Charge, Bidhannagar East Police Station stating, inter alia, that during life time of his father he learnt from his father that his father was allotted with a leasehold land measuring about 2 kathas at Premises No.AL143, Sector-II, Bidhannagar. However his father could not construct any house over the said plot of land due to his financial hardship. About two years after marriage of the father of the defacto complainant one Shyamal Das and Sudipta Ray Chowdhury came to the house of the defacto complainant and informed him that Plot No.AL143 was transferred in the name of Sudipta Ray Chowdhury and the defacto complainant and his brother would be required to put their signature on certain documents in court. They also discussed that as the father of the defacto complainant

was the original lessee, he and his brother would get some amount of money from Sudipta Ray Chowdhury. The defacto complainant informed the matter to his brother who resides at Bilashpur in the State of Madhya Pradesh. Subsequently, the brother of the defacto complainant came to Kolkata then they went to the house of the said Shyamal Das. They found Sudipta Ray Chowdhury and another person present in the house of Shyamal Das. Sudipta Ray Chowdhury introduced himself as an elected member of Legislative Assembly and he introduced a lady with him as his wife and Assistant Commissioner of Police. Subsequently, under the instruction of Shyamal Das, Sudipta Ray Chowdhury and another person the defacto complainant and his brother went to a court and signed on some documents. They in turn paid a sum of Rs.3 lakhs in cash and cheque to the defacto complainant and his brother. Subsequently, the defacto complainant came to know that the said Sudipta Ray Chowdhury manufactured a false will in the name of his and father and obtained probate in respect of the said will. By impersonification and grab the leasehold's property dishonestly and fraudulently by manufacturing certain documents and using them as genuine before the different Government Authorities. The opposite party has, therefore, alleged that the said Sudipta Ray Chowdhury, Shyamal Das with another person were involved in a deep rooted conspiracy and cheating and illegally grabbed the immovable property of the father of the defacto complainant.

4. Mr. Sekhar Kumar Basu, learned Counsel on behalf of the petitioner submits that the defacto complainant made written objection

before the Officer-in-Charge, CID, Fraud and Anti-Cheating Branch stating, inter alia, that he lodged the aforesaid complaint on 17th July, 2021 with the Officer-in-Charge of Bidhannagar East Police Station stating, inter alia, that the said complaint was filed due to misunderstanding and at present the dispute between the defacto complainant, Sudipta Ray Chowdhury and Shyamal Das has been amicably settled by the intervention of well-wisher and friends and he has no allegation what was very nature against the accused persons and he does not want to proceed with the aforesaid criminal case.

5. The petitioner also filed an affidavit before this Court under testamentary and intestate jurisdiction in G.A Case No.3 of 2022 sometimes in August, 2022 stating, inter alia, that his father Hemanta Kr. Karmakar, since deceased had executed a will bequeath his property at Plot No.143, Block AL, Salt Lake in favour of Sudipta Ray Chowdhury. On the basis of such affidavit, probate was granted in respect of the said will and on the basis of the said probate accused Sudipta Ray Chowdhury mutated his name in respect of Plot No.AL-143, Salt Lake City. Considering the act of the defacto complainant subsequent to filing of the written complaint, the instant revision may be disposed of on the basis of the joint petition for compromise and the further proceeding in G.R Case No.775 of 2021 pending before the learned Additional Chief Judicial Magistrate at Bidhannagar may be quashed.

6. Mr. Saswata Gopal Mukherjee, learned Public Prosecutor has raised vehement objection against the aforesaid prayer made jointly by the petitioner and the opposite party No.2.

7. It is submitted by the learned Public Prosecutor that during investigation of the Bidhannagar East P.S Case No.76 of 2021 which was subsequently taken over by the CID, Anti-Cheating Branch, it was ascertained that the FIR named accused persons forged a will of one Hemanta Kr. Karmakar, since deceased in order to grab a plot of land in Salt Lake. During investigation, the Investigating Officer could ascertain that the FIR named accused persons not only grab the property on the basis of the forged will alleged executed by Hemanta Kr. Karmakar but also used the said will in this Court in its testamentary and intestate jurisdiction to obtain probate of the said will. This Court granted probate in respect of the said forged will in favour of the petitioner/accused No.1 Sudipta Ray Chowdhury who was shown as executor of the said will. Accused Shyamal Das and wife Mithu Shaw were the executor of the said will. During investigation of the case some incriminating documents were seized from the office of accused Shyamal Das under the name and style of Supriya Enterprise situated at FE-261, Salt Lake. The investigation also revealed that an illegal transaction of Rs.1 crore 45 lacks was made between Shyamal Das and Sudipta Ray Chowdhury on 5th September, 2015 as a consideration of handing over peaceful and vacant possession of Plot No.AL143 in favour of Sudipta Ray Chowdhury. There is also serious doubt about notarization of the said will. From the document of

the said forged will it was found that one Arkaprabha Samanta, Bar Association, Small Causes Court, Calcutta drafted the said will, but during investigation it was ascertained that there was no such Advocate named Arkaprabha Samanta in the Bar Association of Small Causes Court, Calcutta. The accused persons in collusion with the defacto complainant and his brother committed fraud upon this Court in PLA No.9 of 2017 declaring the said forged will as genuine one and obtained probate of the said will in PLA No.9 of 2017.

8. Under such backdrop, it is submitted by the learned Advocate for the State of West Bengal that the accused persons operated a racket to grab leasehold property in Salt Lake allotted by the Government of West Bengal to long term lessee, namely, Hamanta Kr. Karmakar under hand transaction of huge amount of money was made between the said Shyamal Das and Sudipta Ray Chowdhury. The facts and circumstances reveal a deep rooted conspiracy having great social and financial impact not only to the State Administration but also the highest seat of Judiciary in the State was made to accept a false document as genuine so that the property in question may be grabbed by the petitioner. Under such circumstances, the learned P.P-in-Charge has prayed for rejection of the application filed jointly by the petitioner and the opposite party No.2.

9. Learned P.P-in-Charge has submitted a report prepared by the Investigating Officer for perusal of the court.

10. The learned Senior Counsel on behalf of the petitioner relying upon a decision in the case of **P. Chidambaram vs. Directorate of**

Enforcement reported in **(2020) 13 SCC 791**, submits that the petitioner is entitled to see the contents of the documents which has been filed by the learned Public Prosecutor in course of hearing in sealed cover. In support of his contention the learned Senior Counsel on behalf of the petitioner has referred to the observation made by the Hon'ble Supreme Court in Paragraph 25-27 of the aforesaid decision. Paragraph 25-27 is quoted below:-

“25. The question as to whether the Court could look into the documents while considering an application for bail had arisen for consideration in the very case between the parties herein in Criminal Appeal No. 1340 of 2019 wherein through the judgment dated 5-9-2019 while considering the matter relating to the order dated 20-8-2019 whereby the High Court had rejected the bail, this Court had held that it would be open for the Court to receive the materials/documents collected during the investigation and peruse the same to satisfy its conscience that the investigation is proceeding in the right lines and for the purpose of consideration of grant of bail/anticipatory bail, etc. At the same time, this Court had disapproved the manner in which the learned Judge of the High Court in the said case had verbatim quoted a note produced by the respondent. If that be the position, in the instant case, the learned Judge while adverting to the materials, ought not have recorded a finding based on the materials produced before him. While the learned Judge was empowered to look at the materials produced in a sealed cover to satisfy his judicial conscience, the learned Judge ought not to have recorded finding based on the materials produced in a sealed cover.

26. Further, while deciding the same case of the appellant in Crl. Appeal No. 1340 of 2019, after holding so, this Court had consciously refrained from opening the sealed cover and perusing the documents lest some observations are made thereon after perusal of the same, which would prejudice the

accused pre-trial. In that circumstance, though it is held that it would be open for the Court to peruse the documents, it would be against the concept of fair trial if in every case the prosecution presents documents in sealed cover and the findings on the same are recorded as if the offence is committed and the same is treated as having a bearing for denial or grant of bail.

27. Having said so, in the present circumstance we were not very much inclined to open the sealed cover although the materials in sealed cover was received from the respondent. However, since the learned Single Judge of the High Court had perused the documents in sealed cover and arrived at certain conclusion and since that order is under challenge, it had become imperative for us to also open the sealed cover and peruse the contents so as to satisfy ourselves to that extent. On perusal we have taken note that the statements of persons concerned have been recorded and the details collected have been collated. The recording of statements and the collation of material is in the nature of allegation against one of the co-accused Karti Chidambaram, son of the appellant of opening shell companies and also purchasing benami properties in the name of relatives at various places in different countries. Except for recording the same, we do not wish to advert to the documents any further since ultimately, these are allegations which would have to be established in the trial wherein the accused/co-accused would have the opportunity of putting forth their case, if any, and an ultimate conclusion would be reached. Hence, in our opinion, the finding recorded by the learned Judge of the High Court based on the material in sealed cover is not justified.”

11. Bare perusal of the aforementioned paragraphs shows that the question as to whether the court could look into the documents submitted by the prosecution while considering an application for bail, came up for decision before the Hon’ble Supreme Court. The Hon’ble Supreme Court

was pleased to hold, “while the learned Judge was empowered to look at the materials produced in a sealed cover to satisfy his judicial conscience, the learned Judge ought not to have recorded finding based on materials produced in a sealed cover.” The Hon’ble Supreme Court had consciously refrained from appointing the sealed cover and perusing the document.” For the above name paragraph it was never stated by the Hon’ble Supreme Court that the prosecution should be directed to hand over materials contained in a sealed cover to the learned Advocate for the petitioner for perusal and making submission on the veracity of such documents.

12. In the instant case, the Public Prosecutor submitted a report of the Investigating Officer stating, updated status report in respect of the investigation. The learned Public Prosecutor did not submit any document for perusal of this Court. The Public Prosecutor has made his submission on the basis of the report which has been recorded hereinabove. The learned Senior Counsel on behalf of the petitioner did not make any submission *per contra* the submission made by learned Public Prosecutor. Therefore, I do not find any cogent ground for raising objection by the learned Senior Counsel on behalf of the petitioner for which I may refrain myself to look into the said report submitted by the Investigating Officer. However, while passing the order I have recorded the submission made by the learned Public Prosecutor, High Court, Calcutta and refrain myself from going through the report of the Investigating Officer.

13. The question as to whether any compromise between the victim and the offender in relation to the offences under special statutes, like, Prevention of Corruption Act or the offences committed by Public Servant while working in that capacity etc would provide for any basis for quashing criminal proceedings involving such offences came up for consideration in **Gian Singh vs. State of Punjab** reported in **(2012) 10 SCC 303**. The ratio of the said decision is subsequently followed in **P. Dharamaraj vs. Shanmugam & Ors.** reported in **2022 SCC OnLine SC 1186**. It is held by the Hon'ble Supreme Court in P. Dharamaraj that in these category of cases, the High Court may quash criminal proceedings if in its view, because of the compromise between the offender and 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 was entrusted with the onerous task to 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 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 affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

14. In **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. vs. State of Gujarat & Anr.** reported in **(2017) 9 SCC 641**, a three Judges Bench of the Hon'ble Supreme Court has summarized the broad principles on the question of quashment of criminal proceeding. Paragraphs 16.6 and 16.8-16.10 of the aforesaid decisions are relevant and therefore, reproduced below:-

“16.6. In the 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.”

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

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

15. Finally in **P. Dharamaraj** (supra) the Hon'ble Supreme Court held that the Court should proceed slowly even while exercising jurisdiction under Section 482 of the Cr.P.C or Article 226 of the Constitution in the matter of quashing of criminal proceedings on the basis of a settlement reached between the parties, when the offences are capable of having an impact not merely on the complainant and the accused but also on others.

16. In **CBI vs. Jagjit Singh** reported in **(2013) 10 SCC 686**, the Hon'ble Supreme Court held as hereunder:-

“15. The debt which was due to the Bank was recovered by the Bank pursuant to an order passed by the Debts Recovery Tribunal. Therefore, it cannot be said that there is a compromise between the offender and the victim. The offences when committed in relation with banking activities including offences under Sections 420/471 IPC have harmful effect on the public and threaten the well-being of the society. These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima facie, one may state that the bank is the victim in such cases but, in fact, the society in general, including customers of the bank is the sufferer. In the present case, there was neither an allegation regarding any abuse of process of any court nor anything on record to suggest that the offenders were entitled to secure the order in the ends of justice.”

17. On the basis of a written complaint submitted by one Prashanta Karmakar opposite party No.2 herein Bidhannagar P.S Case No.76 of 2021 was registered under Sections 420/467/468/471/120B of the IPC against the FIR named accused persons. Up to date investigation reveals that the accused not only forged a will allegedly executed by one Hemanta Kr. Karmakar but he also used the said will as genuine before the

concerned authorities of the Government and also before this Court in testamentary and intestate jurisdiction to obtain probate of such forged will. After the written complaint being lodged by the defacto complainant, he and his brother was gained over by the accused and they had sworn affidavits before this Court in PLA 9 of 2017 declaring the will in question as a genuine will. In his affidavit the defacto complainant had shown that the said will was executed by his father in his presence. Surprisingly enough, the defacto complainant was not even an attesting witness of the said will though as per his affidavit filed before this Court he was present at the time of execution of the will by the testator. The act and conduct of not only the FIR named accused but also the defacto complainant and his brother have widest ramification because they do not even induce the Government Departments to record the property in question in the name of the petitioner, but also committed forgery upon this Court. The offence committed by not only the petitioners but subsequently colluded by the defacto complainant and his brother shows that the gravity of the offence, its impact upon not only the society but also upon the fundamental institutions and culpable mental state of mind of the accused persons do not inspire me to quash the criminal proceeding on the basis of joint compromise petition or in exercise of the power under Section 482 of the Code of Criminal Procedure.

18. In view of the above discussion, the application being CRAN 1 of 2022 and consequently CRR 3151 of 2022 are dismissed on contest.

19. The Investigating Officer of this case is at liberty to implead the defacto complainant and his brother in the array of accused persons if lawyers discovered during investigation prima facie lead him to hold that they are also part of greater conspiracy in committing the offence.

(Bibek Chaudhuri, J.)