IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Before:

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.R. 2209 of 2014
Nirmal Kumar Lunawat & Anr.

-Vs-

The State of West Bengal & Anr.

For the Petitioners:	Mr. Sanjoy Banerjee, Adv. Ms. Chandrani Das, Adv. Ms. Riti Basu, Adv
For the State:	Mr. Madhusudan Sur, Ld.A.P.P., Mr. Dipankar Pramanick, Adv.
For the Opposite Party No. 2:	Mr. Anil Kumar Gupta, Adv.
Heard on :	16.02.2022
Judgment on:	17.03 2022.

Ananda Kumar Mukherjee, J. :-

1. Petitioners being accused in G.R Case No.300 of 2012 have preferred this revision under section 401 read with section 482 of the Code of Criminal Procedure 1973, praying for quashing of proceedings in G.R. Case No. 300 of 2012, arising out of Hare Street Police Station Case No. 90 of 2012 dated 24.01.2012 under sections 186/353/114 of the Indian Penal Code, pending before the Court of learned Chief Metropolitan Magistrate at Calcutta.

2. A brief profile of the case leading to this revision is that, on 24.01.2012 at about 10:A.M Mr. Sunil Kumar Agarwal, Deputy Director Income Tax Investigation Unit 1(3) Aayakar Bhawan Kolkata along with Mr. Satyacharan Naskar, ITO, Mr. Samir Kumar Shah, ITO and some other Inspectors went to the petitioners' premises having their address as "Forum Builders Private Limited" at 4/1, Red Cross Place, Kolkata-700001 to execute a search warrant issued under Section 132 of the I.T. Act. The Income Tax Officials showed the search warrant to Mr. N.K. Lunawat and tried to enter the premises but the petitioner no.1 along with his staff members including Mr. Sudhakar Ayala Somayajula abused the Income Tax Officials in filthy language and manhandled them for the purpose of obstructing them from carrying out their official duty.

3. A written complaint was lodged by Mr. Sunil Kumar Agarwal, D.D Income Tax Investigation Unit on 24.01.2012, addressed to the Officer-in-Charge Hare Street Police Station. On the basis of the written complaint, police registered Hare Street Police Case No. 90 dated 24.01.2012 under sections 186/353/114 of the Indian Penal Code against the petitioners. After completion of investigation police submitted charge sheet against the petitioners on 10.12.2013 under sections 186/353 and 114 of the Indian Penal Code. Learned Chief Metropolitan Magistrate took cognizance of the offence on 17.12.2013.

4. Being aggrieved and dissatisfied with the charge sheet and the proceedings arising there from, the petitioners filed this application praying for

quashing of GR Case No. 300 of 2012 on the grounds inter alia that the impugned proceeding is a glaring example of abuse of the process of court and the same is liable to be set aside forthwith. That the petitioners and Opposite Party No. 2 have arrived at a compromise and have mutually settled their disputes and differences and the Opposite Party has communicated in writing by his letter dated 06.02.2012 that the department does not wish to continue the proceeding in view of an amicable settlement between the parties. It is further urged that in exercise of the plenary and the inherent power vested in this court, for achieving ends of justice, the impugned proceedings should be quashed. According to the petitioners there are no satisfactory provisions under the Code of Criminal Procedure which can affect the inherent power of the Court under section 482 and even non-compoundable offences under section 320(9) of Cr. P.C can also be quashed if the parties amicably settled the dispute.

5. Learned advocate for the petitioner argued that there was some misunderstanding between the petitioners and the Opposite Party No. 2 when the Income Tax Officials reached their premises on 24.01.2012. Due to misunderstanding and some altercation which took place, opposite party no. 2 lodged a complaint against the petitioners but subsequently on 27.03.2012 opposite party no.2 issued a letter in his official capacity address to the Officer-in-Charge Hare Street Police Station informing that the dispute and differences between him and the petitioners have been resolved and the department is not willing to pursue the aforesaid complain anymore. Laying stress upon this

amicable settlement learned advocate for the petitioners urged that after a compromise has been arrived at between the alleged aggrieved party and the petitioners, there is no point in proceeding with the case as it would amount to an abuse of the process of court. Petitioners therefore prayed for quashing of the proceedings in GR Case No. 300 of 2012 pending before the Court of learned Chief Metropolitan Magistrate.

6. Heard learned advocate for the State and Opposite Party No. 2. Both have opposed the prayer for quashing. It is argued on behalf of the State that investigation has culminated to a charge sheet and the matter which has been contended by learned advocate for the petitioner is a question of fact to be established in course of trial and such issues cannot be decided at the stage of considering an application under section 482 of Cr. P.C. It is submitted that matter relating to alleged offence and plea of misunderstanding can be entertained only at the stage when evidence is adduced by the parties and witnesses stand the test of cross examination.

7. Learned advocate for Opposite Party No. 2, the Deputy Director, Directorate of Income Tax submitted that the department is not aware about any application submitted by Mr. Sunil Kumar Agarwal disclosing that the dispute has been compromised. Furthermore, the offence of obstructing public servant and obstructing them from discharging official duties is not a compoundable offence.

8. I have considered the arguments advanced by learned advocate for the petitioners and Opposite Party No. 1 and 2. The offence disclosed in the

complaint is that the Income Tax Officials were obstructed, abused and manhandled by the petitioners when they went to the office of petitioner no. 1 at 4/1 Red Cross Place, Kolkata for the purpose of executing a search warrant under section 132 of the Income Tax Act. Prima facie the allegation of obstructing officials in discharging the duties appears to be a severe offence. The averment made on behalf of the petitioners that the dispute between the de facto complainant and the petitioners have been amicably resolved is a question of fact and the same has to be established by way of evidence. The person claiming such compromise shall have to stand the test of cross examination. A letter purported to have been written by the de facto complainant address to Hare Street Police Station has been produced by the petitioners. Learned advocate for Opposite Party No. 2 could not inform the genuinity of document. On a perusal of a Xerox copy of the letter it appears that on the top of the Xerox copy of the letter the date has been mentioned as 06.02.2012 but the letter appears to have been signed on 27.03.2012. In the said document it has been stated that the department is not willing to pursue the aforesaid complaint anymore and the same may be treated as withdrawn. However, the learned advocate for Opposite Party No. 2 submitted that he has no instruction from the department regarding any resolution for withdrawing the compliant. The petitioners have not disclosed the custody of the latter. From the copy of the Case Diary produced by learned advocate for the State it appears that Satyacharan Naskar and Sunil Kumar Agarwal have been examined by police and both of them have disclosed that the petitioners abused them and manhandled them when they were on official duties and tried to execute the warrant under section 132 of the Income Tax Act.

9. Therefore, the statements recorded under Section 161 Cr. P.C cannot be reconciled with the contents of the purported letter of Sunil Kumar Agarwal. In view of the contradictions which surface in respect of the material in charge sheet and the story of petitioners of reaching at a compromise, I am of the considered view that such question of facts are in the realm of appreciation of evidence, which cannot be sorted out while considering this application under section 482 of Cr. P.C. I therefore hold that there is no merit in the application filed by the petitioners and there is no ground for quashing the impugned proceeding in GR Case No. 300 of 2012 pending before learned Chief Metropolitan Magistrate, Calcutta. The revisional application is thus dismissed on contest. Copy of the Case Diary be return to the learned advocate for the State.

10. Interim order in connection with this case stands vacated. All connected applications are also disposed of.

11. Let a copy of this judgment be sent to learned Chief Metropolitan Magistrate, Calcutta for information with a direction to expedite the trial of the case in accordance with law.

12. Urgent Photostat certified copy of this order may be supplied to the parties expeditiously if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)