

09.09.2022

BMJR

Sl no.3

Ct no. 30

CRR 3745 of 2019

Akhil Kumar Singh

Vs.

The State of West Bengal & Anr.

Mr. Sandipan Ganguly, (Senior Advocate)
Mr. Dipanjan Dutt
Mr. Rajiv Kumar
Ms. Sambrita B.Chatterjee
...for the Petitioner.

Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta
.....for the State.

Mr. Srijan Nayak
Ms. Rituparna Maitra
...for the Opposite Party no. 2.

In the present application under Section 482 of the Code of Criminal Procedure the petitioner has prayed for quashing of proceeding being G.R. Case No. 1188 of 2017 under Sections 406/409/420 of the Indian Penal Code, pending before the Court of the Learned Chief Judicial Magistrate, Purulia Sadar Court, in connection with Bandwan Police Station Case No. 42 dated 11.08.2017.

Learned Counsel appearing for the petitioner submits that the petitioner is an employee of Thomas Cook India Limited since 22.05.2017 and is employed as General Manager

E-business Department working for gain at Lower Parel, Mumbai. The O.P No.2 filed the complaint with the Officer In-charge, Bandwan Police Station alleging offences committed by Thomas Cook India Limited. On the basis of the said complaint Bandwan Police Station Case No. 42 dated 11.08.2017 has been started.

The case of the O.P No.2 against the petitioner is that in the first week of September, 2016 the wife of the O.P No.2 contacted one Mr. Shaheen Bagwan, an agent of Thomas Cook India Limited for organizing a tour for six members of her family for the period from 25.09.2016 to 30.09.2016. An E-mail was forwarded by Mr. Bagwan offering a Tour package of Rs.4,80,935/- which was finalized at Rs. 4,92,845/-. A part payment of Rs. 2,40,053/- was made towards the tour cost through internet banking by a family friend of O.P No.2 Mr. Amit Singhania. Subsequently the tour package was postponed and on request, Mrs. Khusboo Agarwal made the balance payment of Rs. 2,52,792/- through ICICI Bank, Purulia Branch. Subsequently, on request of Mrs. K. Agarwal for refund of the cash payment, Thomas Cook India Limited kept delaying the refund. Finally, Thomas Cook India Limited sent E-mail stating 100% cancellation of the tour.

It is the contention of the petitioner that he received a notice under Section 41A Cr.P.C. dated 18.01.2019 and appeared before the police authorities. From the records of the

company it was seen that Mrs. Khusboo Agarwal, O.P No.2 had got in touch with Thomas Cook for the tour around of September, 2016. This was about 8 months prior to the petitioner joining Thomas Cook (May, 2017).

It is the further case of the petitioner that Thomas Cook India Limited had informed Mrs. Khusboo Agarwal that in absence of the KYC documents, Thomas Cook (India) Limited will not be able to utilize the payment but Mrs. Khusboo Agarwal did not supply KYC documents in respect of Mr. Sitanath Mahato who had deposited Rs.2,52,792/- in cash. It is the specific case of the company that all along an amount of Rs. 2,52,792/- deposited in cash stood in the Suspense Account of Thomas Cook India Limited but could not be refunded due to want of KYC particulars. The O.P No.2 then approached the consumer forum but could not get any order in his favour. The petitioner apprehending arrest in the said case filed the revision for quashing of the said proceeding before the trial Court.

Petitioner was granted Anticipatory Bail on 31.08.2019 in CRM No.2393 of 2019 in respect of Bandwan Police Station Case No.42/2017. Charge Sheet No.48 of 2019 was filed against the petitioner making out a case under Section 406/409/420 of Indian Penal Code and the learned C.J.M., Purulia took cognizance of such offences.

It is now submitted that **the matter has been settled** between the parties out of court and a copy of the **memorandum of settlement** duly notarized has been annexed to the supplementary affidavit.

The copy of the memorandum of settlement annexed to the supplementary affidavit shows the terms and condition to the said settlement. Learned lawyer for the O.P No. 2, complainant (Mr. Nilay Agarwal) files a letter of authorization dated 04.09.2022. It has been stated there in that Mr. Nilay Agarwal (O.P. no. 2) has “authorised Mr. Amit Kumar Singhania to close matter of Thomas Cook”. The memorandum of settlement is between petitioner, Thomas Cook and the opposite party no. 2 (complainant).

Considered the said stand and the materials on record in during the supplementary affidavit and the submission of the learned lawyer for the O.P No. 2 (complainant).

It is evident from the materials on record that the petitioner (joined on 22nd May, 2017) was not employed with the company Thomas Cook India Pvt. Ltd. at the time of occurrence of incident (September, 2016). At present the matter has been settled between the parties. The O.P No.2 complainant has prayed that the matter may be closed considering the materials on record.

Mr. Sandipan Ganguly, Ld. Advocate for the petitioner has relied upon the following rulings:-

(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).

In the present case it is evident from the materials on record that the petitioner was not in employment of Thomas Cook on the date of incident in this case. The incident occurred in the first week of September 2016. The petitioner joined on 22nd May, 2017. Section 409 of the Indian Penal Code has been added against the petitioner in the present case.

Section 409 of the Indian Penal Code lays down:-

“409. Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ingredients of offence.— The essential ingredients of the offence under sec. 409 are as follows:

- (1) Accused was a public servant, or a banker or merchant or agent or factor or broker or an attorney;
- (2) In such capacity accused was entrusted with certain property or he gained domain over such property which was not his own;
- (3) Accused committed criminal breach of trust with respect to such property.”

The petitioner was designated as the General Manager of Thomas Cook (India Limited). There was no entrustment as required under Section 409 of the Indian Penal Code as the incident occurred prior to the petitioner joining as General Manager and as such the offence of criminal breach of trust is prima facie not complete. The memorandum of settlement annexed to the supplementary affidavit between the parties to this case and the letter of authorization filed before the court clearly shows that the O.P. No. 2, the complainant in the criminal case does not wish to proceed with the proceedings against the petitioner.

From the materials on record is clear that the facts and circumstances in the present case was a commercial, financial, merchantile and civil in nature and the dispute between the parties was private in nature and the parties have resolved their entire dispute by way of a memorandum of settlement 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 3745 of 2019 is allowed.

Proceedings being G.R. Case No. 1188 of 2017 pending before the Chief Judicial Magistrate, Purulia Sadar Court in connection with Bandwan Police Station Case No. 42 dated 11.08.2019 under Sections 406/409/420 of the Indian Penal Code is hereby quashed.

There will be no order as to costs.

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.)