

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 165 of 2020

With

CRAN 1 of 2023

Nibir Dasgupta

Vs

State of West Bengal & Anr.

For the Petitioner : Mr. L. Vishal Kumar,
Mr. Dipanjan Dutt,
Mr. Surojit Saha.

For the State : Ms. Rita Dutta.

For the Opposite Party : Mr. Sudipto Moitra, Sr. Adv.
Mr. Vijay Verma,
Mr. Dwaipayan Biswas.

Heard on : 20.03.2023

Judgment on : 01.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being Garfa P.S. Case No. 314 of 2019 dated 28.07.2019 corresponding to ACGR No. 3478 of 2019 under Sections 509/323/324/114 of the Indian Penal Code pending before the Learned Additional Chief Judicial Magistrate, Alipore, 24 Parganas.
2. The petitioner's case is that Ruchira Residency Apartment Owners' Association (RRAOA) is a registered Apartment ownership Association of 576 Members/Flat owners. There are 576 flats in 8 (Eight) Towers each comprising 72 flats of uneven measurement and there is a Board of Managers duly elected in the Annual General Meeting in terms of the provisions of West Bengal Apartment Ownership Act, 1972 and the Rules framed thereunder. The present strength of the Board of Managers is 24. Shri Nibir Dasgupta is the president of the RRAOA.
3. Sri Amitava Chakraborty is the owner of Flat No. 5/2, Tower – 6 and is a member of the Association.
4. The Association has its own Bye-laws.
5. Yishi Chakraborty, the Opposite Party No.2 has made a complaint to the police authorities wherein it is stated that Yishi Chakraborty claiming to be the daughter of Amitava Chakraborty suddenly came to the office around 7.30 p.m. on 22nd July, 2019 when some Members of the Association were talking amongst themselves in the office room of the

Association, shouting and accusing the management for existing norms without mentioning any deficiency or cause with dirty language.

6. Garfa P.S. registered a case under Sections 509/341/323/324/114 I.P.C. against the petitioner and the security guard.
7. The petitioner also lodged a complaint with the Officer-in-Charge, Garfa Police Station against the unruly behavior, motivated and fabricated complaint of Yishi Chakraborty which was treated as FIR, under Sections 506/323/324 IPC.
8. It is submitted that, this case is absolutely out of personal vengeance against the President of the Association.
9. The allegations brought against the petitioner/applicant herein does not constitute any offence punishable under Sections 509/341/323/324/114 IPC and as such the impugned proceeding is thus liable to be quashed.
10. At this stage a **joint petition of compromise** has been filed being CRAN 1 of 2023.
11. **Both the parties have stated that the dispute between them has been amicably settled and the complainant in this case has no objection if the proceedings which is in respect of compoundable offences is quashed.**
12. The parties in their Joint Application on Affidavit in CRAN 1 of 2023 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 complainant is no more willing to proceed any further against petitioner.

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

Para 61. *“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.”

14. 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).*

15. 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 Garfa P.S. Case No. 314 of 2019 dated 28.07.2019 corresponding to ACGR No. 3478 of 2019 under Sections 509/323/324/114 of the Indian Penal Code pending before the Learned Additional Chief Judicial Magistrate, Alipore, 24 Parganas.
16. From the materials on record, it is clear that dispute in the present case is a private dispute relating to a housing complex 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***).
17. 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.
18. **CRR 165 of 2020 along with CRAN 1 of 2023 are allowed.**

19. The proceedings being Garfa P.S. Case No. 314 of 2019 dated 28.07.2019 corresponding to ACGR No. 3478 of 2019 under Sections 509/323/324/114 of the Indian Penal Code pending before the Learned Additional Chief Judicial Magistrate, Alipore, 24 Parganas, is hereby quashed.
20. There will be no order as to costs.
21. All connected Applications stand disposed of.
22. Interim order if any stands vacated.
23. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
24. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)