

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.R.R. 128 of 2017

Ghanshyam Das Kankani

Vs.

The State of West Bengal & Anr.

For the Petitioner

:Mr. Ayan Bhattacharjee, Adv.

Mr. Pawan Kr. Gupta, Adv.

Mr. Suman Majumder, Adv.

Ms. Sofia Nesar, Adv.

For the State/

:Mr. Prasun Kumar Dutta, Ld. A.P.P.

Opposite party no.1

Mr. Binoy Panda, Ld. A.P.P.

Ms. Manashi Roy, Adv.

Mr. Santanu Deb Roy, Adv.

Heard on

: August 03, 2023

Judgment on

: August 08, 2023

Bibhas Ranjan De, J.

1. This revision application challenged the proceeding of GR Case No. 2469 of 2016 arising out of Hare Street Police Station Case No. 647 dated 18.12.2016 under Section 120B, 448, 453, 380, 506, 509, 427,188 of the Indian Penal Code with a prayer for quashing the same.
2. The proceeding was initiated by a written complaint submitted by private opposite party no. 2, Sujata Ghosh, claiming herself to be the owner of the shop number 106 /108 in the T. Sur and Company situated at Vhikhanchand Market, ground floor, 14/2 old China Bazar Street, Kolkata-700001 under Police Station Hare Street alleged that on 08.12.2016 Raju Singh, Ramchandra Rout and Mr. Ghanshyam Das Kankani (petitioner) had broken the padlock of her two shop rooms. At that time, she went to bring her daughter from school. She came over there at about 12.15 and found huge gathering in front of her two shops. He saw Raju Singh and Ramchandra Rout were standing over there. She protested but they replied that they had been there to take possession of the rooms on behalf of Ghanshyam Das Kankani, owner of the shops. But,

they could not produce any document of ownership. It was further alleged that several litigations are pending between the parties and she obtained injunction order in her favour in Title Suit No. 880 of 2012 pending before XIII Bench, City Civil Court, Calcutta. They also abused her in filthy languages.

3. On receipt of that complaint Hare Street Police Station Case No. 647 dated 08.12.2016 was started.
4. Ld. Advocate, Mr. Ayan Bhattacharjee, appearing on behalf of the petitioner has drawn my attention to the order of this Hon'ble Court in CS no. 378 of 1995 as well as the order passed by Ld. Judge XIII Bench, City Civil Court, Calcutta passed in Title Suit No. 879 of 2012 and 880 of 2012 and submitted that several litigations are pending and parties were directed to maintain *status quo* over the shops in question by promulgating an order by the Ld. Judge, XIII Bench, City Civil Court, Calcutta. In support of his contention, he relied on a case on ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujarat and another*** reported in ***(2017) 9 Supreme Court Cases 641***.

- 5.** Mr. Bhattacharjee has further drawn my attention to the Title Suit No. 879 of 2012 wherein Smt. Sujata Ghosh (opposite party no. 2) categorically stated that tenancy was surrendered in favour of the landlord, Broadway Centre particularly in paragraph 16 and 17 of the plaint. Though, it was alleged that tenancy was surrendered illegally. Mr. Bhattacharjee also pointed out the schedule of the plaint identifying one of the shop rooms in question.
- 6.** Mr. Bhattacharjee also submitted by referring to the plaint of the suit bearing no. 880 of 2012 that Sujata Ghosh being one of the plaintiff reiterated the same facts of illegal surrender of tenancy in favour of landlord, Broadway Centre (defendant no. 2).
- 7.** Per Contra, Ld. Advocate, Mr. Prasun Kumar Dutta, appearing on behalf of the State /opposite party no. 1 has stated that the dispute regarding private parties are to be decided by the Civil Court where suits are pending.
- 8.** After scrutiny of the plaints of the Title Suit No. 879 of 2012 & 880 of 2012, I find that petitioner of this revision application being partner of Broadway Centre cannot be said to be not in possession of the shop rooms no. 106 &108 of T. Sur and

Company situated at Vikhanchand Market. That apart, from the order passed in Title Suit No. 879 of 2012 & 880 of 2012 Ld. Judge, XIII Bench, City Civil Court, Calcutta passed an order directing both the parties to this revision application to maintain *status quo* till the disposal of the suit.

9. From the aforesaid discussion in terms of documents mentioned above, it is apparent that petitioner is somehow in possession of the two shop rooms so question of breaking a padlock of those shop rooms does not arise.

10. In ***Parbatbhai Aahir*** (supra) Hon'ble Apex Court (Hon'ble three Judges Bench) laid down the following principles to exercise the power under Section 482 of the Code of Criminal Procedure by the High Court:-

“ 16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to

quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. *In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.*

16.4. *While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.*

16.5. *The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.*

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.*

16.7. *As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.*

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*

6.10. *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."*

- 11.** What I have discussed earlier it is found that the dispute between the parties is a purely civil in nature and more so petitioner being landlord is in possession of the shop rooms in question while surrender of tenancy is in dispute before the Civil Court. In this circumstances, I have no hesitation to exercise power under Section 482 of the Code of Criminal Procedure for quashing the instant proceeding.
- 12.** Thus, the proceeding in connection with GR Case No. 2469 of 2016 arising out of Hare Street Police Station Case No. 647 dated 18.12.2016 pending before the Ld. Chief Metropolitan Magistrate, Calcutta Stands quashed.
- 13.** Accordingly, Criminal Revision Application being no. CRR 128 of 2017 Stands disposed of.
- 14.** Pending applications, if there be any, stand disposed of.

- 15.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 16.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]