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Serial no.9
Piya
Ct. No. 30

CRR 290 of 2020
+
IA No.: CRAN 2 of 2023

Mayukh Roy
vs.
The State of West Bengal & Anr.

Mr. Milon Mukherjee
..... for the Petitioner

Mr. Madhusudan Sur
Mr. Dipankar Paramanick
... for the State

Mr. Shibaji Kumar Das
Ms. Rupsa Sreemani
... for the O.P. no. 2/Applicant no. 2

The present revision has been preferred praying for quashing of the proceedings of G.R. Case No. 942/2017, pending before the Court of the learned Judicial Magistrate, 5th Court, Barrackpore which arose out of Khardah Police Station Case No. 139/2017 dated 14.02.2017 under Sections 493/420/406/506 of the Indian Penal Code.

CRAN 2 of 2023 filed, is a joint application on affidavit stating that the parties have arrived at an amicable settlement in the present case and the complainant/opposite party does not have any grievance if the proceedings in the present case is quashed in respect of the petitioner.

The following rulings are relied upon by this Court considering the facts and circumstances of the case herein:-

(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).*

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 the criminal case against the petitioners being no. Khardah P.S. Case No. 139 of 2017 (G.R. Case No. 942 of 2017)

pending before the learned Judicial Magistrate, 5th Court, Barrackpore.

From the materials on record, it is clear that dispute in the present case is a private dispute 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, (Supra))**.

One of the offences alleged is under Section 493 IPC.

Section 493 of IPC, lays down:-

“493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.-Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished 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 Section 493 are as follows:-

- (1) The accused practiced deception on a woman;
- (2) The intention of the accused to practise deceit was to induce a woman

(complainant) to believe that she was lawfully married to the accused;

(3) There was cohabitation or sexual intercourse as a result of the deception.”

It is seen that the ingredients required to constitute the offence alleged under Section 493 IPC is clearly absent in the present case, as there was no deception on the part of the petitioner to make the defacto complainant believe that she was lawfully married to the petitioner, as no such steps were ever taken by the petitioner.

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.

Accordingly, the revisional application being CRR 290 of 2020 is allowed.

The proceedings of G.R. Case No. 942/2017, pending before the Court of the learned Judicial Magistrate, 5th Court, Barrackpore which arose out of Khardah Police Station Case No. 139/2017 dated 14.02.2017 under Sections 493/420/406/506 of the Indian Penal Code, is hereby quashed in respect of the petitioner Mayukh Roy.

There will be no order as to costs.

All connected Applications, if any, stands disposed of.

Interim order, if any, stands vacated.

Copy of this order be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)