

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1022 of 2019

With

CRAN 1 of 2023

Rounak Chowdhury & Ors.

Vs

The State of West Bengal & Ors.

For the Petitioners : Mr. Pawan Kr. Gupta,
Mr. Raj Sharma,
Ms. Sofia Nesar.

For the State : Mr. Manoranjan Mahata.

For the Opposite Party Nos.2, 3 & 4 : Ms. Chandni Sharma,
Mr. Santanu Sett.

Hearing Concluded on : 28.08.2023

Judgment on : 21.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings of Barabazar Police Station Case No. 362 of 2017, dated 07.09.2017, under Sections 341/324/323/427/506/34 of the Indian Penal Code, 1860 and Barabazar Police Station Charge Sheet No. 295 of 2017 dated 31.10.2017, under Sections 341/324/323/427/506/34 of the Indian Penal Code, 1860 now pending as G.R. Case No. 1554 of 2017, before the Learned Metropolitan Magistrate, 16th Court, Kolkata.
2. The petitioners case is that the petitioners have been arraigned as accuseds in the above noted police case on the basis of a written complaint lodged by the opposite party no. 2 stating therein that allegedly the petitioners with previous grudge and in connivance of each other's intentionally and wrongfully restrained the opposite party no. 2, 3 and 4 and also assaulted them by means of slap and fist. It was further alleged that the goods of the shop were also damaged.
3. The aforesaid written complaint was treated as First Information Report and investigation taken up. On completion of investigation Charge Sheet was submitted vide Barabazar Police Station Charge Sheet No. 295 of 2017, dated 31.10.2017, under Sections 341/324/323/427/506/34 of the Indian Penal Code.
4. G.R. Case No. 1554 of 2017, arising out of Burrabazar Police Station Case No. 362 of 2017, dated 07.09.2017, under Sections

341/323/324/427/506/34 of the Indian Penal Code, 1860 is now pending before the Learned 16th Metropolitan Magistrate, Calcutta.

5. It is stated that the dispute in this proceedings being a private dispute has been settled between the parties/applicants after the intervention of friends and well-wishers.
6. **CRAN 1 of 2023 filed, is a joint petition of compromise.**
7. On the basis of the said application, it is submitted that the applicants have settled the disputes between themselves which is pending for last 6 years and now both the parties are unwilling to continue with the proceedings pending before the Trial Court.
8. That the applicants state that under such facts and circumstance the respondent/complaint/applicant no. 2 has no objection if the impugned proceeding is quashed by this Hon'ble Court by exercising its power under Section 482 of the Code of Criminal Procedure, 1973.
9. All the Sections except Section 324 of the Indian Penal Code are compoundable.
10. One of the allegations in the case is that there is an amount due from the Accused to the petitioner part of which has been paid.
11. But there is no prima facie materials on record to show that the ingredients to constitute an offence under Section 324 of the Indian Penal Code is even prima facie present against the petitioner.

12. In **Pravat Chandra Mohanty vs The State of Odisha, Criminal Appeal No. 125 of 2021, on 11 February, 2021**, the Supreme Court

held:-

“26. Now, we come to the submission, which has been much pressed by learned counsel for the appellant, i.e., **composition of offence under Section 324 IPC.** Section 320 of the Code of Criminal Procedure, 1973, provides for compounding of offence. Sub-Section (1) of Section 320 contains a table which may be compounded by persons mentioned in third column of the table whereas sub-section (2) of Section 320 provides: -

“320(2). The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may, with the permission of Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table.”

27. Sub-Section (5) of Section 320 provides as follows: -

“320(5). When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.”

28. The present is a case where accused has already been convicted for offence under Section 324 IPC. By Cr.P.C. (Amendment) Act, 2005, offence under Section 324 IPC has been made non-compoundable offence. Prior to the aforesaid amendment, offence under Section 324 was compoundable.....”

13. **Section 324 of the Indian Penal Code, lays down:-**

“324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any

substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ingredients of offence.- *The essential ingredients of the offence under Section 324 are as follows:-*

- (1) Accused voluntarily caused bodily pain, disease or infirmity to the victim;*
- (2) Accused must commit an act with the knowledge that thereby he was likely to cause hurt or grievous hurt to the victim.*
- (3) It was caused-*
 - (a) By any shooting instrument; or*
 - (b) By any stabbing instrument; or*
 - (c) By any cutting instrument; or*
 - (d) By any instrument, if used as a weapon of offence, likely to cause death; or*
 - (e) By means of any poison; or*
 - (f) By means of any corrosive substance; or*
 - (g) By means of any explosive substance; or*
 - (h) By means of any animal.”*

- 14. In the present case,** the medical report in the case diary and the nature of complaint there in does not make out a case under Section 324 IPC as none of the ingredients are present in the said report and the case diary.
- 15. A Three Judge Bench of the Supreme 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.”

16. 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).*

17. 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 present case against the petitioners being Barabazar Police Station Case No. 362 of 2017, dated 07.09.2017, under Sections 341/324/323/427/506/34 of the Indian Penal Code, 1860 and Barabazar Police Station Charge Sheet No. 295 of 2017 dated 31.10.2017, under Sections

341/324/323/427/506/34 of the Indian Penal Code, 1860 now pending as G.R. Case No. 1554 of 2017, before the Learned Metropolitan Magistrate, 16th Court, Kolkata is quashed in respect of the petitioners herein.

18. **From the materials on record**, it is clear that dispute in the present case is a family dispute relating to property and is private in nature 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***).
19. 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 the dispute has been amicably settled.
20. **Accordingly, the revisional application being CRR 1022 of 2019 is allowed.**

- 21.** The proceedings of Barabazar Police Station Case No. 362 of 2017, dated 07.09.2017, under Sections 341/324/323/427/506/34 of the Indian Penal Code, 1860 and Barabazar Police Station Charge Sheet No. 295 of 2017 dated 31.10.2017, under Sections 341/324/323/427/506/34 of the Indian Penal Code, 1860 now pending as G.R. Case No. 1554 of 2017, before the Learned Metropolitan Magistrate, 16th Court, Kolkata, **is hereby quashed.**
- 22.** All connected applications, if any, stands disposed of.
- 23.** Interim order, if any, stands vacated.
- 24.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 25.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)