

13.01.2023

Sl. No. 01

Srimanta

Ct.No. 42

CRR/1958/2022

In the matter of : **Transworld Terminals Pvt. Ltd.**

Mr. Soubhik Mitter, Adv.,
Mr. K. Chunder, Adv.,
Ms. Jayeeta Sengupta, Adv.,
Ms. Rajnandini Das, Adv.

...for the petitioner.

Mr. Ranabir Roychowdhury, Adv.,
Mr. Mainak Gupta, Adv.

...for the State.

Mr. Goutram Dinda, Adv.,
Mr. Anindya Sundar Chatterjee, Adv.

...for the K.M.C.

It was the allegation of the Kolkata Municipal Corporation that the petitioner was making an unauthorized construction by erecting a gate on the Municipal land. Accordingly, a complaint was filed before the jurisdictional Police Station for initiating a proceeding under Section 401A of the Kolkata Municipal Corporation Act. Subsequently on the prayer of the petitioner the said unauthorized construction was regularized in accordance with the provision of the said Act. The *de facto* complainant under official instruction requested the Officer-in-Charge of the jurisdictional Police Station in writing that the matter has been amicably resolved by and between the petitioner and the Kolkata Municipal Corporation and the Municipal Corporation does not want to proceed with the case. On the basis of such report, Police submitted final report in the said case. However, the learned Municipal Magistrate refused to accept such final report and directed the Officer-in-Charge to appoint another Investigating Officer for *de novo* investigation. The petitioner

has challenged the said order passed by the learned Municipal Magistrate on 30th September, 2021 in the instant revision. It is needless to say that the Supreme Court time and again reiterated that if a settlement is arrived at by and between the contesting parties such settlement should be taken into consideration and criminal proceeding should be dropped invoking the provision under Section 482 of the Code of Criminal Procedure. It is held in ***Parbatbhai Aahir @ Parbatbhai –Vs.- The State of Gujarat*** reported in **(2017) 9 SCC 641** – As distinct from serious offence, there may be criminal cases which happen overwhelming or predominant element of civil dispute. They stand on a distinct footing insofar as the exercise of inherent power to quash is concerned. A particular portion of the land belonging to the Kolkata Municipal Corporation if illegally possessed or not by the petitioner consists of predominant element of a civil dispute though Section 401A provides a penal provision for unauthorized and illegal construction within the jurisdiction of Kolkata Municipal Corporation, when the parties have settled the dispute, the learned Magistrate cannot insist upon carriage of such criminal proceeding.

Accordingly Criminal Misc. Case No. 1089/2017 arising out of West Port Police Station Case No. 120/2017 dated 29th April, 2017 under Section 401A of the Kolkata Municipal Corporation Act be quashed.

Parties are at liberty to act on the server copy of the order.

The report submitted by the Kolkata Municipal Corporation be kept with the record.

(Bibek Chaudhuri, J.)