

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2075 of 2014

**Nilotpal Acharya
-Vs-
Arun Agarwal & Anr.**

For the Petitioner	: Mr. Bhaskar Seth Mr. Pradeep Kumar Singh
For the Opposite Party No. 1	: Mr. Abirlal Chakraborti Ms. Dipanwita Das Mr. Debarshee Bhattacharya Ms. Arka Mukherjee
Heard on	: 03.07.2023, 19.07.2023, 02.08.2023, 25.09.2023, 04.10.2023
Judgment on	: 18.12.2023.

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed by petitioner for quashing of the proceeding of Complaint Case being C.R. No. 101 of 2014 process whereof issued under Section 420 of the Indian Penal Code now pending before the Learned Judicial Magistrate, 3rd Court at Siliguri and all orders passed therein and an order dated 25.02.2014 passed by the Learned Judicial Magistrate, 3rd Court at Siliguri in the Complaint Case being C.R. No. 101 of 2014 and all subsequent and other orders passed therein.

2. On the basis of a petition of complaint filed before the Learned Additional Chief Judicial Magistrate, by one Sri Arun Agarwal, allegedly the director of Maa Bhawani Heights Pvt. Ltd., on the basis of which a complaint case being C.R. No. 101 of 2014 was initiated against the petitioner herein. Having taken cognizance of the case, the Learned Additional Chief Judicial Magistrate transferred the same to the court of the Learned 3rd Judicial Magistrate, Siliguri for compliance of Section 200 of the Code of Criminal Procedure.
3. The allegation made in the said petition of complaint is to the effect that –
 - a) The accused/petitioner is engaged inter alia in the business of preparing aspiring students who appear for Entrance and Competitive Examinations including IIT – JEE (IIT Joint Entrance Examination), AIEEE (All India Engineering Entrance Examination) etc.
 - b) Bansal Classes Private Limited, Kota specializes in providing academic content and training methodologies for conducting coaching classes for IIT – JEE, AIEEE, Pre-Medical and other coaching activities.
 - c) The accused/petitioner academically tied-up with said Bansal Classes Private Limited, Kota to implement its said aims and objectives through Satellite Learning Program.
 - d) On 20.07.2013 the complainant/opposite party no. 1 had been appointed as a franchisee of the accused/petitioner vide. IODL SLPC set up agreement dated 20.07.2013 between the accused/petitioner and the complainant/opposite party no. 1 for carrying out Satellite Learning

Program of preparing aspiring students who appear for Entrance and Competitive Examinations including IIT – JEE etc. at its center through Bansal Classes Private Limited, Kota.

- e) In view of such appointment, as per instructions of the accused/petitioner vide. Email communication dated 14.05.2013 at 19:00 IST, the complainant/opposite party no. 1 paid to the petitioner through three Demand Drafts all being drawn in favour of the petitioner a sum Rs. 4,62,972/- and on acceptance of those Demand Drafts the petitioner issued three receipt vouchers.
 - f) Due to certain unforeseen circumstances, Bansal Classes Private Limited, Kota declined to continue the said tie-up with the petitioner for which the scheduled classes could not be commenced from April, 2014.
 - g) Accordingly the complainant/opposite party no. 1 withdrew himself as a franchisee of the accused/petitioner and on 02.01.2014 made necessary communication to that extent to the petitioner and asked to refund the entire amount paid to/by the complainant to the accused and the accused/petitioner had promised to refund the same by 17.01.2014 but ultimately refused to return the said amount on 16.01.2014.
4. The petitioner stated that on 25.02.2014 the Learned Magistrate having perused the said petition of complaint filed by the complainant/opposite party no. 1 and after having examined the said complainant under Section 200 of the Code of Criminal Procedure, had been pleased to issue process against the petitioner under Section 420 of the Indian Penal Code.

5. Petitioner stated that the petitioner and the opposite party no. 1 entered into an agreement dated 20.07.2013 which mentioned any dispute if arose out of the said agreement should be solved by an arbitration proceeding and the said agreement provided a clause of force majeure vide clause no. 33.11 which specifically stated that none of the parties should be liable for any failure to perform any of its obligations under the said agreement if the performance was prevented, hindered or delayed by a force majeure event and in such case its obligations should be suspended for so long as the force majeure event continued and each party should promptly inform the others of the existence of a force majeure event and should consult together to find a mutually acceptable solution. Furthermore the clause no. 36.1 provided that the jurisdiction for such arbitration proceeding regard any dispute arising out of the said agreement should be at the place of Noida (U.P.).
6. Petitioner state that the opposite party no. 2 entered such agreement at Noida and aforementioned demand drafts had been handed over to the petitioner at Noida and as such, the Learned Magistrate of the place of Siliguri could not assume jurisdiction in the above case on the said purported allegation.
7. Petitioner stated that cause of action as shown in the said complaint petition was completely civil in nature and as such could not raise the ground for initiation of the above criminal proceeding in as much as when the petitioner was ready to provide service through 'Eduwave' satellite classes which was in all respect equal in quality of service like 'Bansal Classes Private Limited'.

8. Petitioner stated that it was well within the knowledge of the opposite party no. 1 as to why and under what circumstances the petitioner was unable to provide the service of said Bansal Classes Private Limited., Kota to the opposite party no. 1 and as such the said fact unambiguously falls under the said clause of the agreement dated 20.07.2013 which stipulated for 'force majeure'.
9. Petitioner stated that the event was not under his control and could not have been foreseen earlier and as such the petitioner could not be made liable and 'novation' to the said agreement became indispensable.
10. Petitioner stated when the petitioner entered into the said agreement with the opposite party no. 1, there were a good relation subsisting between the petitioner and the said Bansal Classes Private Limited, Kota and relying on them the petitioner accepted the offer made by the opposite party no. 1 to provide service from the said Bansal Classes Private Limited. However a betrayal by the said company constrained the petitioner to make an offer to the opposite party for being the franchisee of satellite classes of 'Eduwave'. Therefore the petitioner neither had any intention to deceive the opposite party at any point of time nor had ever induced the opposite party to enter into such agreement with IODL Education Pvt. Ltd. knowingly that such unwanted situation shall arise in future.
11. Petitioner stated that on bare perusal of the petition of complaint it appeared the alleged transactions had been taken place within the jurisdiction of Noida, under Sector-20 Police Station under the District – Goutam Buddha

Nagar, Uttar Pradesh which had been beyond the territorial jurisdiction of the Learned Court below and as such the Learned Magistrate had no jurisdiction to take cognizance of the offence.

12. Petitioner stated that it appeared from the said petition of complaint neither the said purported orders had been placed within the territorial limit of the Learned Magistrate nor any payment had been made within its jurisdiction and as such no such alleged cause of action arose for which the Learned Magistrate could have taken cognizance of the offence.

13. Petitioner stated that it was the fact admitted that the petitioner was residing beyond the territorial jurisdiction of the Learned Magistrate. Therefore, it was incumbent on the part of the Learned Magistrate that the Learned Magistrate should in a case where an accused was residing at a place beyond the area in which he exercised his jurisdiction, postponing the issuance of process against the accused, either inquire into the case himself or directed an investigation to be made by a police officer or by a person as he thought fit for the purpose of deciding whether or not there was sufficient ground for proceeding. In the present case, having not been complied with the said provision of law as provided under Section 202 of the Code of Criminal Procedure, the Learned Magistrate has committed grave error in law and as such issuance of such process against the petitioner non-complying of such provision is erroneous and is therefore liable to be set aside.

14. Petitioner stated that the said complaint case being registered against a Company, duly incorporated under the Companies Act, 1956, no process could be issued against the said Company under Section 420 of the Indian Penal Code and as such the said proceeding was liable to be quashed.
15. Petitioner stated that the Learned Court below lacked jurisdiction to try the above case and as such the proceeding was liable to be quashed and all the orders passed therein were liable to be set aside.
16. Petitioner stated that under the facts and circumstances particularly if the examination of the complainant under Section 200 of the Code of Criminal Procedure was taken into consideration, the impugned proceeding should have been quashed.
17. Petitioner stated unless the said proceeding is quashed, the petitioner shall suffer irreparable loss and injury.
18. Learned Advocate for the petitioner submitted that –
- i. Cause of action as shown in the said complaint petition is a completely civil in nature and as such cannot raised the ground for initiation of the above criminal proceeding in as much as when the petitioner is ready to provide service through 'Eduwave' satellite classes which is in all respect equal in quality of service like 'Bansal Classes Private Limited'.
 - ii. It was well within the knowledge of the opposite party no. 1 as to why and under what circumstances the petitioner was unable to provide the service of said Bansal Classes Private Limited, Kota to the opposite party

no. 1 and as such the said fact unambiguously file under the said clause of the agreement dated 20.07.2013 which stipulated for 'force majeure'.

- iii. When the petitioner entered into the said agreement with the opposite party no. 1, there was a good relation subsisting between the petitioner and the said Bansal Classes Private Limited, Kota and relying on them the petitioner accepted the offer made by the opposite party no. 1 to provide service from the said Bansal Classes Private Limited but a betrayal by the said company constrained the petitioner to make an offer to the opposite party for being the franchisee of satellite classes of 'Eduwave'. Therefore the petitioner neither had any intention to deceive the opposite party at any point of time nor had ever induced the opposite party to enter into such agreement with IODL Education Pvt. Ltd. knowingly that such unwanted situation shall arise in future.
- iv. On bare perusal of the petition of complaint it appeared that all the alleged transactions had taken place within the jurisdiction of Noida, under Sector-20 Police Station under the District – Goutam Buddha Nagar, Uttar Pradesh which was beyond the territorial Jurisdiction of the Learned Trial Court and as such the Learned Magistrate had no jurisdiction to take cognizance of the offence.
- v. The Learned Magistrate failed to comply the provisions enacted in Section 202 of Cr.P.C.

- vi. The Learned Court below lacks jurisdiction to try the above case and as such the proceeding is liable to be quashed and all the orders passed therein are liable to be set aside.
 - vii. The ingredients of the offence under Section 420 of the Indian Penal Code are absent in the facts in hand and as such, no criminal proceeding can be continued on the facts and circumstances of the case.
 - viii. The said issuance of process is erroneous and the proceeding is bad in law.
 - ix. The maintaining of the said impugned proceeding regarding the alleged offences committed by the petitioners on the face of the circumstances narrated above tantamount to abuse of process of court and would render miscarriage of justice.
19. In the case of ***Paramjeet Batra v. State of Uttarakhand***¹, the Hon'ble Supreme Court held as follows:-

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a

¹(2013) 11 SCC 673

criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.

13. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by Respondent 2 against him alleging offence under Section 406 IPC. Possession of the shop in question has also been handed over by the appellant to Respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise.”

20. In **Jaswant Singh vs State of Punjab and Another**², the Hon'ble Supreme Court held as follows:

“17. A three-Judge Bench of this Court in Gian Singh v. State of Punjab⁵ again summarized the legal position which emerged

²2021 SCC OnLine SC 1007

regarding powers of the High Court in quashing criminal proceedings in exercise of power under Section 482 Cr.P.C. R.M. Lodha, J., (as he then was) speaking for the Bench, clearly observed in paragraph 61 of the report that 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. The relevant extract from paragraph 61 is reproduced below:

“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 (in) 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.”

18. A three-Judge Bench of this Court in Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur v. State Gujarat⁶ laid down the broad principles for exercising the inherent powers of the High Court under section 482 Cr.P.C. Dr. D.Y. Chandrachud, J., speaking for the bench, enumerated the principles in paragraph 16 and in sub paragraphs. The same are reproduced below:

“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 Criminal Procedure Code, 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) 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. *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*

16.10. 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.”

19. From the above discussion on the settled legal principles, it is clear from the facts of the present case that there was a clear abuse of the process of the Court and further that the Court had a duty to secure the ends of justice. We say so for the following reasons:

a) The allegations made in the FIR had an overwhelmingly and predominatingly a civil flavour inasmuch as the complainant alleged that he had paid money to Gurmeet Singh, the main accused to get employment for his son abroad. If Gurmeet Singh failed the complainant could have filed a suit for recovery of the amount paid for not fulfilling the promise.

b) Initially, the investigating officer and two superior officers of the economic wing has found that there is no substance in the complaint making out even a prima facie triable case and had therefore, recommended for closure. However, on the orders of the Senior

Superintendent of Police, the FIR was registered and the matter was investigated. No criminal breach of trust was found and the charge sheet was submitted only against Gurmeet Singh under section 420 I.P.C.

c) The complainant Nasib Singh had clearly deposed that he had paid Rs. 4 lacs cash to Gurmeet Singh and had also given a cheque of Rs. 2 lacs favouring Gurmeet Singh which he had encashed.

d) During trial the present appellant as also the other co-accused Gurpreet Singh were summoned in April 2014 invoking powers of Section 319 Cr.P.C., for being tried under Section 420 I.P.C. It may be noted that no specific allegations of cheating are made against these two accused as they were both settled abroad in Italy.

e) The complainant Nasib Singh entered into a compromise with the main accused Gurmeet Singh which was filed before the learned Magistrate and the same was accepted vide order dated 26.09.2014 and the alleged offence being of financial transaction stood compounded. Proceedings against Gurmeet Singh were closed.

f) Right from 2014, the present appellant and other co-accused Gurpreet Singh who were in Italy were being summoned by the Court. The appellant was declared proclaimed offender. The appellant applied before the High Court challenging the order declaring him proclaimed offender and also filed a 482 Cr.P.C.

petition for quashing of the proceedings wherein, he also filed the compounding order of 26.09.2014.

g) The High Court merely perused the FIR and noting the fact that the name of the appellant was mentioned in the FIR, declined to exercise the inherent power under Section 482 Cr.P.C.

20. In our considered view, the High Court erred in firstly not considering the entire material on record and further in not appreciating the fact that the dispute, if any, was civil in nature and that the complainant had already settled his score with the main accused Gurmeet Singh against whom the proceedings have been closed as far back as 26.09.2014. In this scenario, there remains no justification to continue with the proceedings against the appellant.”

21. The Learned Trial Court has issued process without following the procedure enumerated in Section 202 of the Cr.P.C. which is the mandate of the statute to abrogate the possibility of harassment and false indictment of the accused persons and a grave error has been committed accordingly.

22. The ‘Arbitration Clause’ mentioned in the Agreement, dated 20.07.2013 states as follows:-

“36. Jurisdiction & Arbitration:

36.1. The Courts of competent jurisdiction shall be subject to judicial jurisdiction of NOIDA (U.P.) only.

36.2. The parties to this Agreement agree that all disputes or differences that may arise under the terms of this Agreement shall be governed and construed in all respects in accordance with the provisions of the Arbitration & Conciliation Act, 1996 and any subsequent amendments thereof. The parties further agree to refer all disputes to the Delhi High Arbitration Centre ("DAC") and abide by the DAC (Arbitration) Rules for conducting any arbitration proceedings. The decision of the DAC shall be final and binding on both the parties."

23. The dispute between the parties is purely civil nature with agreed terms to seek recourse to "Arbitration Proceedings" for redressal in terms of the agreement dated 20.07.2013. The elements constituting the offence under Section 420 of the Indian Penal Code are absent. To allow to continue the proceedings in a Court will result in abuse of process of Law.
24. In view of the above discussions, the proceeding of Complaint Case being C.R. No. 101 of 2014 process whereof issued under Section 420 of the Indian Penal Code pending before the Learned Judicial Magistrate, 3rd Court at Siliguri and all orders passed therein and an order dated 25.02.2014 passed by the Learned Judicial Magistrate, 3rd Court at Siliguri in the Complaint Case being C.R. No. 101 of 2014 and all subsequent and other orders passed therein is quashed.
25. Under such circumstances, the instant criminal revisional application being CRR 2075 of 2014 is allowed.

26. Accordingly, CRR 2075 of 2014 stands disposed of.

27. There is no order as to cost.

28. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

29. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)