

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3401 of 2019

Jagdish Prasad Kedia

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. S.K. Mallick,
Mr. A. Majumder.

For the State : Mr. S. Ghosh,
Mr. Bitasok Banerjee.

For the Opposite Party no. 2 : None.

Heard on : 06.12.2022

Judgment on : 05.01.2023

Shampa Dutt (Paul), J.:

The revision has been preferred praying for quashing of Proceeding, being G. R. Case No. 754/2017, presently pending before the Court of the Learned Judicial Magistrate, 4th Court Asansol, Paschim Burdwan, arising out of Asansol (South) Police Station Case No. 128/2017 dated 04.04.2017 alleging commission of offence under Section 406/420/422 of the Indian Penal Code including order dated 21.08.2019 so passed by the Learned Judicial Magistrate, 4th Court, Asansol, Paschim Burdwan.

The petitioner was the owner of Vacant Land at Mouza Asansol Plot No. 793 Murgasole Ward No. 19 (New Ward No. 41) of Asansol Municipality.

With a view to commercially exploit the said Land the Petitioner decided to raise a multi storied building over the said Land consisting of several independent units/apartment. Thereafter the construction was started with respect to Block A of the said apartment after obtaining the sanction of the building plan from office of the Opposite Party no. 2, in the year 1992. The building comprising of Block A was completed in the year 1996.

After the completion of the construction of the said building comprising of Block A, the units were handed over to the respective purchaser after registration of Deed of Conveyance.

In the year 2003 application for sanction of Building Plan for Block B and Block C of the said apartments was placed and accordingly the building Plans were sanctioned by the Municipal Authorities on 4th June 2003 vide their Memo No. 272 (4) AMC/BP/2003.

The construction work of the building commenced and the same was completed in the year 2008. The Opposite Party no. 2 after full satisfaction and inspection have duly issued the occupancy certificate, vide their Memo No. 344/AMC/PW/ENGG/08 dated 26.12.2008.

The petitioner originally being the owner of the Land and developer of the said blocks of building facilitated the water connection to all residential units.

The units in the said Blocks are purely residential in nature and water supplied by the Opposite party no. 2 has been consumed and used by the respective unit/Flat owners for their mere habitation.

The Opposite Party No. 2 for the first time in the year 2016, by their three memos addressed to the secretary of three blocks being Memo Nos. 29/PW/Eng/16, 30/PW/Eng/16 and 31/PW/Eng/16 all

dated 25.04.2016 demanded a sum of Rs. 16,68,873/- as water charges for the period from January 1999 to March 2016.

The Opposite party no.2 after issuing the alleged demand, thereafter by their Memo No. 63/PW/Eng/16 and Memo No. 64/PW/Eng/16 both dated 06.05.2016 and Memo No. 80/PW/Eng/16 dated 12.05.2016 once again demanded the water charges for the period from January 2009 to March 2016 in respect of Block A, Block B and Block C of the said apartment to the tune of Rs. 8,96,317.00/- which includes the connection charges of Rs. 1,20,0000/-.

The Opposite party No. 2 by their two Memo being No. 60/PW/Eng/16 and 61/PW/Eng/16 both dated 06.05.2016 and Memo No. 81/PW/Eng/16 dated 12.05.2016 demanded from the petitioner herein a total sum of Rs. 7,73,067/- as water usage charges for the period 1999 to 2008 in respect of Block A, B and C.

The petitioner states that pursuant to order dated 16.05.2017, the petitioner deposited a sum of Rs. 1,50,000/- with Asansol Municipal Corporation by Demand Draft bearing No. 505241 dated 19.05.2017 drawn on ICICI Bank, Asansol, without prejudice to his rights and contentions in respect of the alleged demand so raised by the Opposite Party no. 2.

That subsequent to the receipt of the notice demanding justice dated 31.03.2017, on 01.04.2017, immediately the Opposite Party no. 2

herein, without taking recourse as available under the West Bengal Municipal Corporation Act 2006, on 04.04.2017 lodged a written complaint vide memo no. 1983/PW/Eng/17 dated 04.04.2017 with the Officer In Charge of Asansol (South) Police Station giving rise to Asansol (South) Police Station 128/2017 dated 04.04.2017 corresponding to G.R. Case No. 754/2017 alleging commission of offence under section 403/406/418/420/422/426 of the Indian Penal Code.

The allegations made in the aforesaid complaint are inter alia to the effect that the petitioner allegedly allured the employees of Asansol Municipal Corporation to provide water supply in the said apartment known as “Sri Lakshmi Apartment”, at G.T. Road, Murgasole, Asansol, Pin – 713303 and by such alleged allurement the petitioner obtained water supply in the said apartment. It is further alleged that though the petitioner allegedly assured the corporation to make payment for such water supply when demanded by the Corporation, since at that relevant point of time the petitioner allegedly did not have fund to pay. Lastly, it is alleged that when the Asansol Municipal Corporation served a notice of demand for a sum of Rs. 7,73,067/- vide memo no. 1884/PW/Eng/17 dated 16.03.2017, the petitioner allegedly refused to pay the same.

Thereafter upon conducting a perfunctory investigation, the investigation agency submitted charge sheet, vide Asansol (South) Police

Station Charge Sheet No. 128/2017 dated 06.05.2017 under Sections 403/406/418/420/422/426 of the Indian Penal Code against the petitioner herein.

The petitioner states that thereafter the petitioner preferred an application dated 21.08.2019 praying inter alia for discharge of the petitioner from the present case.

That vide order dated 21.08.2019, the Learned Judicial Magistrate, 4th Court, Asansol, Paschim Burdwan, was pleased to dismiss the said application for discharge dated 21.08.2019.

The building comprising in Block A was completed in the year 1996 and thereafter the units has been handed over to the respective flat owners. Further construction of building comprising in Block B and C were started in the year 2003 and was completed in the year 2008 and as such there cannot be any question of water consumption in the said blocks B and C till the period 2008.

That since the construction of building comprising in block A of the said apartment was completed in the year 1996 and was handed over to the respective flat owners, the question of using the water supplied by the Municipal Corporation during the period of 1999 to 2008 by the petitioner does not arise at all and as such the impugned demand by the petitioner is wholly illegal and unjustified.

The petitioner submits that the impugned demand made by the Opposite party no. 2 is further bad in law as much as the same have been made after 8 years from the last period of alleged water usage by the petitioner. The Opposite Party No. 2 after the lapse of 3 years cannot raise any demand in terms of Section 405 of the West Bengal Municipal Act, 1993, as amended up to date.

That the entire allegations, even if taken to be true, does not make out any case in respect of the alleged provisions of the Indian Penal code, and hence the continuation of the present proceeding is devoid of any legal justification and for that is liable to quashed at once by this Hon'ble Court.

The bare reading of the averments of the complaint only projects a purely civil dispute in between the Petitioner and Opposite Party No. 2 which as a shortcut method, has been given a cloak of a criminal proceeding and hence the present proceeding in any manner whatsoever cannot be permitted to continue.

The continuation of the present proceeding is bad in law and is liable to be quashed by this Hon'ble Court.

Hence the revision.

The Learned Counsel for the petitioner Mr. S. K. Mallick, submitted that the impugned demand made by the Opposite Party no. 2

is further bad in law as much as the same have been made after 8 years from the last period of alleged water usage by the petitioner. The Opposite Party No. 2 after the lapse of 3 years cannot raise any demand in terms of Section 405 of the West Bengal Municipal Act, 1993 as amended up to date.

The entire allegations, even if taken to be true, does not make out any case in respect of the alleged provisions of the Indian Penal Code, and hence the continuation of the present proceeding is devoid of any legal justification and for that is liable to quashed at once by this Hon'ble Court.

In order to bring home the charge under Section 420 of the Indian Penal Code, the ingredients of the offence of Cheating as specified under Section 415 of the Indian Penal Code must be satisfactorily established.

That to establish the charge under Section 420 of the Indian Penal Code, initial deception on the part of the person, impleaded as accused, at the very inception of the impugned transaction, must be demonstrated clearly and in absence of which no proceeding in respect of the said charge can be permitted to continue and hence is liable to be quashed.

In terms of Section 405 of the West Bengal Municipal Act 1993 any dues to the municipality on account of any charge, cost, expense,

fee, rate or rent or any other account is recoverable from the concerned person as if it were a property tax and for the purpose of recovery of the same Chapter XII of the said Municipal Act prescribes the procedure for recovery which is the only way to enforce the recovery procedure and hence the present criminal proceeding which is initiated to subside the said procedure beyond the prescribed period of limitation of three years is a clear abuse of the process of law and hence is liable to be quashed at once while exercising the power under Section 482 of the Code of Criminal Procedure.

The dispute as ventilated in the petition of complaint at best, under all reasonable hypothesis, can be said to be a Civil Dispute, appropriate remedy of which is lying before the Civil Forum. Only with an intention to bye-pass the Civil Proceeding, and to put additional pressure this criminal proceeding has been initiated as a shortcut method by using the criminal legal system as a weapon.

It is the apparent that the allegations, so made in the body of the complaint, even if taken on their face value, does not make out any of the charges against the petitioners.

The continuation of the present proceeding is bad in law and is liable to be quashed.

None has appeared for the Opposite Party no. 2 inspite of service.

Supplementary affidavit has been filed by the petitioner. At page 9 of the affidavit is a copy of the notice dated 07.06.2021 issued by the Chairperson Asansol Municipal Corporation asking the petitioner to pay an amount of Rs. 40,436/- towards full and final settlement of water charges. A copy of the receipt showing the said payment is at page 10. At page 12 is the order dated 07.12.2021 of the Learned Magistrate rejecting the application filed by the Opposite Party no. 2 herein praying for withdrawal of the case (G.R. 754 /2017), on the ground that the dispute had been settled by way of compromise by payment of fees, as the prayer had not been made through the Learned Assistant Public Prosecutor and as such he had objection.

Hence this revision.

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 offence alleged herein are under Sections 406/420/422 of the Indian Penal Code, and the matter has been amicably settled between the parties.

The water charges has been paid as full and final settlement and the matter has been admittedly settled. The opposite party also prayed for withdrawal of the case.

From the materials on record and the facts and circumstances in the present case it is clear that the dispute in this case was regarding payment of water charges (due). The parties have resolved their entire dispute by payment of all dues by the petitioner. 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***).

Accordingly, the revisional application being CRR 3401 of 2019 is allowed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

A copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

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

Shampa Dutt (Paul), J.)