

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 1590 of 2013
With
CRAN 1 of 2013 (Old CRAN 1843 of 2013)
With
CRAN 2 of 2022**

**Debasis Samajpaty
-Vs-
The State of West Bengal & Anr.**

For the Petitioner : Mr. Tanmay Chowdhury
Ms. Ritoprita Ghosh

For the State : Ms. Anasuya Sinha
Mr. Pinak Kumar Mitra

For the Opposite Party No.2 : Ms. Sangita Jangra
Mr. Subhranil Ray

Heard on : 07.07.2023

Judgment on : 26.09.2023

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application is filed by the petitioner praying for Quashing of the proceeding in GR Case No.808 of 2013 arising out of Dum Dum Police Station Case No. 117 dated 28.02.2013 under Sections 419/465/468/471/120B/506 of the Indian Penal Code pending before the Additional Chief Judicial Magistrate, Barackpore.

2. The Dum Dum Police Station Case No. 117 dated 28.02.2013 was registered for investigation on the basis of a petition of complaint filed by Dipali Samajpaty before the Learned Additional Chief Judicial Magistrate, Barrackpore, inter alia alleging commission of offences by the petitioner and others punishable under Sections 419/ 465/468/471/120B/506 of the Indian Penal Code.

The allegations of the complaint inter alia stated premises no. 272, Shyamnagar Road, Police Station Dum Dum was purchased by the husband of the defacto complainant from Rabindra Nath Neogi by registered sale deed.

The Bholanath Samajpaty died being survived by his wife and two sons Debasis Samajpaty and Dipankar Samajpaty respectively on whom the undivided property devolved in equal shares.

On 08.01.2013 the complainant came to know through a registered letter sent by Block Land & Land Reforms Officer (hereinafter referred to as the BL & LRO), Sodepur, that the accused, complainant and her other son had applied before office of BL & LRO for mutation of the aforesaid property.

It was alleged that the complainant and her son Dipankar Samajpaty never made any application for mutation of the aforesaid property at any time before the office of BL & LRO, Sodepur.

The complainant and her son Dipankar raised objection before BL & LRO and other authorities on 22.1.2013, 29.1.2013 and 31.1.2013 against the fraudulent and dishonest forgery, illegal and motivated acts and deeds on the part of the accused/petitioner who had committed the aforesaid

offences, thereby causing wrongful gain to himself and consequent wrongful loss to the complainant and her son.

It was further alleged the complainant raised protest against the illegal and motivated acts of the petitioner for which the petitioner was constantly threatening the complainant and her other son with dire consequences.

It was also alleged that the accused/petitioner deliberately and motivatedly, in order to cheat the complainant and her son, had forged the signature of the complainant.

3. The petitioner stated that the complainant being his mother was totally misdirected by persons with vested interest to file the alleged complaint against the petitioner. Petitioner being the elder son rightly felt it was his duty to apply for mutation to keep the record correct.
4. The petitioner is the son of the defacto complainant and there has been long standing family dispute between the petitioner and the defacto complainant as well as the other son.
5. The father of the petitioner namely Bholanath Samajpaty died intestate on 18.8.1993 leaving behind the defacto complainant and two sons, the petitioner and Dipankar Samajpaty. Since the said demise of his father, the relationship between the petitioner and his younger brother as well as mother deteriorated. After his father's demise, the brother of the petitioner tried to grab the entire property and compelled the petitioner to sign on several documents, deeds, bank guarantee etc.

6. Debdeep Tyres Pvt Ltd had been a company where the petitioner, defacto complainant and his brother namely Dipankar had equal shares. But by forging signature of the petitioner on vakalatnama in O.A. Case No. 14 of 2005, brother, Dipankar submitted before Learned DRT-II, Kolkata that the petitioner had a consent to sell the asset of the said company to M/s Luna Tyre Pvt. Ltd. which would appear from the order passed by this Hon'ble Court in C.O. No. 1209 of 2005.
7. The younger brother, Dipankar in collusion with the defacto complainant forced the petitioner the demise of their father to transfer the proprietorship namely Dipkon Rubber Industries in his name where the petitioner had been the proprietor since 1985. Said younger brother also opened a bank account in his name by showing forged affidavit. The petitioner filed a Title Suit being no. 143 of 2006 before the Learned Civil Judge, Sealdah court wherein he obtained an order of injunction. The brother and mother with the help of some miscreants tried to shut down another rubber factor namely Debdeep Rubber Works (P) Ltd for the purpose to sell the land of the factory for their own gain but the petitioner saved the said factory for the interest and benefit of the workers, by filing Civil Suit in Sealdah Court being title Suit No. 138 of 2011 and also filing Civil Revision Case in the Hon'ble High Court and the aforesaid Civil matter had been pending in Court of Law.
8. The younger brother of petitioner in collusion with his mother one after another lodged false and fabricated complaints before various authorities. Finding no alternative the petitioner approached the respectable persons

of the locality and well wishers of the family for mutual settlement of the family dispute. As per decisions arrived by present petitioner and defacto complainant and her younger son, at the instance of said persons, it was decided that brother and defacto complainant will receive money of about Rs 4 crores and transfer their share and interest over the entire property excepting land near Aditya Hospital at Nager Bazar and house of Burdwan Town as per the said agreement to be executed. It was also decided that petitioner will pay municipal tax or revenue in respect of immovable properties till date of agreement. Accordingly the petitioner paid entire dues regarding tax of immovable properties to South Dum Dum Municipality and BLLRO OFFICE and found from the record of municipality that land of JL No. 32/211 dag no. 544, 655 and 533, khatian 146 and 404 to have been mutated in the name of defacto complainant and her 2 sons. However, in the record of the BL LRO the aforesaid land has not been mutated in the name of the father, Bholanath Samajpaty who purchased said land from one Rabindranth Neogy. The amount of tax of said 3 plots namely 544, 655 and 533 of Dum Dum Municipality was Rs. 2 lakhs and BLLRO was Rs. 20,419 which was paid by petitioner on behalf of others.

9. The petitioner stated that instant case was initiated initiated by the defacto complainant at the instance of her younger son only to harass and humiliate present petitioner for ousted the petitioner from his ancestral property. The dispute is civil in nature.

10. The petitioner stated that the instant criminal proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the petitioner and with a view to spite him who has a deep root in the society due to family rivalry.
11. The petitioner stated that the allegations contained in the petition of complaint made by the opposite party no.2 that the petitioner forged the signature of the complainant and her another son in the prescribed form for mutation of the property and sworn an affidavit and filed those documents to the office of the BL & LRO for mutation of the property in question.

If the above mentioned allegation are taken at their face value and accepted in their entirety, does not make out any offence, in as much as making application for mutation is a legal formality to correct the record of rights. By making such an application petitioner does not gain and/or achieve anything in deprivation of others.

It is admitted fact that the petitioner is a co-sharer and/or co-owner of the property in question. Mutation application required removal of the name of the dead person and subtraction by the name of the legal heirs.

12. During the pendency of the instant revisional application an application for compromise had been filed vide CRAN No. 2/22 inter alia stating that:-
- i. The Applicants stated that the Applicant no. 2 being the mother of the applicant no.1 was totally misdirected by some vested interest persons to file the alleged complainant against the Applicant No.1.

The Applicant No.1 being the elder son rightly felt as it was his duty to apply for mutation to keep the record correct.

- ii. The Applicants stated that the Applicant No.1 is the son of Applicant no.2 herein and there was long standing family dispute between the Applicant no.1 and his younger brother and as such the instant case is an outcome of such family dispute.
- iii. The Applicants stated that Applicant no.2 is permanently residing in the address mentioned in the cause title along with the Applicant no.1 and his family. The brother of the Applicant no.1 namely Dipankar Samajpaty is residing at his father-in-law's house since his marriage.
- iv. The Applicants stated that Dipali Samajpaty, the Applicant no.2 herein, has mistakenly lodged the complaint before the magistrate against her elder son out of misconception, created by her younger son as well as his in-law's. Later the Applicant no.2 realized that her elder son, i.e., the Petitioner in the instant proceeding has made the application for mutation of the above said property on her behalf in good faith as well as also on behalf of his younger brother as he had rightly taken the responsibility for correction of the record of rights on behalf of all the legal heirs of Late Bholanath Samajpaty, that is the father of the Petitioner herein.

The Applicants No.2 after realizing the same out of repentance has already approached before Learned Court below for withdrawal of her complaint but, unfortunately no fruitful result

has come from the Learned Court below. Thereafter, finding no other way the Applicant no. 2 filed this joint compromise settlement proposal before this Hon'ble High Court, Calcutta.

- v. The Applicants stated that the instant matter is pending before the Learned Court below and the dispute relating to the instant matter has been settled out of court between the Parties and in fact the Applicant No.2 has already realized that everything was misrepresented to her by her younger son as well as his in-laws', whereas, the Applicant no.1 is innocent and he had no fault in respect of making Application for Mutation of the Joint Property in the name of all legal heirs and as such the Petitioner in the instant revisional application had/has no wrongful intention.
- vi. The Applicants most respectfully submits that the G.R. Case no. 808 of 2013 is still pending before the Learned Court below though the entire dispute relating to the issue involved in the said criminal case has been settled by and between the Parties and the De-facto Complainant i.e., the Applicant No.2 is not willing to proceed with the matter furthermore, and as such she wants to withdraw her Complaint. Thus the continuation of the instant proceeding is an abuse of process of law as well as abuse of process of time in the Court of Law.
- vii. The Applicants submitted that the Applicant No.2, having realization of the innocence of her elder son and upon settlement of the dispute, has no grievances against the Applicant No.1 and both

the applicants are staying in a same house like a family ever resides, therefore, your applicants are praying for quashing of the G.R Case No. 808 of 2013, pending before the Learned Additional Chief Judicial Magistrate, Barrackpore, otherwise, your Applicants will suffer irreparable loss and injury.

13. Section 419 of Indian Penal Code states as follows:-

“Punishment for cheating by personation-Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

14. Section 465 of the Indian Penal Code states as follows:-

“Punishment for forgery-Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

15. Section 468 of Indian Penal Code states as follows:-

“Forgery for purpose of cheating- Whoever commits forgery, intending that the 1[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

16. Section 471 of Indian Penal Code states as follows:-

“Using as genuine a forged 1[document or electronic record]-Whoever fraudulently or dishonestly uses as genuine any 1[document or electronic record] which he knows or has reason to believe to be a forged 1[document or electronic record], shall be

punished in the same manner as if he had forged such 1[document or electronic record].”

17. Section 120B of Indian Penal Code states as follows:-

“Punishment of criminal conspiracy- *Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

18. Section 506 of Indian Penal Code states as follows:-

“Punishment for criminal intimidation.- *Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;*

If threat be to cause death or grievous hurt, etc. and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

19. Offences under Sections 465, 468, 471 of IPC are non-compoundable.

20. In the case of “**Ramgopal and anr. vs. The State of Madhya Pradesh**”¹, the Hon’ble Supreme Court has observed that:

“6. When both these appeals came up for hearing, a two-Judge Bench of this Court, vide common order dated 21st September 2012 granted leave to appeal. The Bench further directed the appeals to be listed after the disposal of reference made in Gian Singh v. State of Punjab¹, where a 3-Judge Bench of this Court, at that point in time, was considering the issue as to whether ‘non-compoundable’ offences can be ‘compounded’ by a Court or in the alternative, whether the High Court in exercise of its inherent powers under Section 482 Cr.P.C. could quash non-compoundable offences, based on a compromise/settlement arrived at between the accused and the victim-complainant, and if so, under what circumstances.

7. The Appellants, in both the appeals, thus seek the Court to invoke powers under Article 142 of the Constitution to do complete justice to them.

ANALYSIS:

8. We have heard learned Counsels for the Appellants and the State(s) at a considerable length. The questions of law concerning the power of a High Court to quash proceedings emanating from noncompoundable offences which have no impact or depraving effect on the society at large, on the basis of a compromise between the accused and the victim-complainant, are no longer res integra and the same have been authoritatively settled by this Court in affirmative. Learned Counsel for the Appellants and Complainant(s) in both the appeals have, therefore, heavily counted on the compromise/settlement between the parties and seek quashing of the criminal prosecution in its entirety, Learned State Counsel(s) without controverting the factum of compromise, vehemently

¹ (2021) SCC OnLine SC 834

opposed such a recourse and asserted that no substantial question of law is involved in these appeals.

9. Before scrutinizing the facts of these cases and rephrasing the scope of powers exercisable by a High Court under Section 482 Cr.P.C., it would be apropos to illuminate the following principles laid down by a 3-Judge Bench of this Court in *Gian Singh (Supra)* case:

“61. ...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.”

(Emphasis Applied)

10. The compendium of these broad fundamentals structured in more than one judicial precedent, has been recapitulated by another 3-Judge Bench of this Court in *State of Madhya Pradesh v. Laxmi Narayan*² elaborating:

“(1) That the power conferred under Section 482 of the Code to quash the criminal proceedings for the noncompoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of

commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

(2) Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

(3) Similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

(4) xxx xxx xxx

(5) While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc.”

(Emphasis Applied)

11. True it is that offences which are ‘non-compoundable’ cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would amount to alteration, addition and modification of Section 320 Cr.P.C, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of

‘compoundable’ offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

12. *The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are noncompoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.”*

21. In view of the aforestated decision, the dispute between the parties are civil in nature involving family dispute private in nature, the possibility of conviction is remote and invoking the inherent Jurisdiction under Section 482 of Cr.P.C. this Court is inclined to allow the prayer as mentioned in the application for compromise.

22. In view of the above discussions, G.R. Case No. 808 of 2013, under Sections 419/465/468/471/120B/506 of the Indian Penal Code, pending before the Learned Additional Chief Judicial Magistrate, Barrackpore, arising out of Dum Dum Police Station Case No. 117 dated 28.02.2013 is quashed.

23. The criminal revisional application being No. 1590 of 2013 is allowed.

24. Accordingly, CRR 1590 of 2013 stands disposed of. Connected application, if there be any, also stands disposed of.

25. There is no order as to cost.

26. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.

27. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)