

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1650 of 2014

With

CRAN 2 of 2023

Sew Mongal Chowdhury & Ors.

-Vs-

The State of West Bengal

For the Petitioners : Mr. Tapas Ghosh
Mr. Tanmoy Chowdhury

For the O.P. Nos. 5 & 6 : Mr. Somnath Gangopadhyay

For the State : Ms. Faria Hossain
Ms. Baisali Basu

Heard on : 28.03.2023, 07.08.2023

Judgment on : 25.09.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed being aggrieved by and dissatisfied with the judgment and order dated 24th April, 2014 passed by Learned Sessions Judge, Hooghly in Criminal Appeal No. 46 of 2013 confirming thereby the judgment and order dated

13.08.2013 passed by the Learned Chief Judicial Magistrate, Hooghly in G.R. Case No. 1396 of 2006 whereby the petitioners have been convicted under Section 323/448 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for one year for the offence under Section 323 of the Indian Penal Code and to pay a fine of Rs. 500/- each, in default to suffer simple imprisonment for 15 days more and also sentencing them to suffer rigorous imprisonment for six months for the offence under Section 448 of the Indian Penal Code and to pay a fine of Rs. 500/- each in default to suffer imprisonment for 15 days more which will run concurrently.

2. Subsequently CRAN Application being No. 2 of 2023 as an application of joint compromise for compounding of the offences under Section 320 of Cr.P.C. 1973 which inter alia stated as follows:

- i. The instant prosecution case originated out of a complaint lodged by the applicant no. 5 against the present applicant no. 1 to 4 which was filed before the court of the Learned Chief Judicial Magistrate, Hooghly on 25.10.2006 which was sent to the Officer-in-Charge of Mogra Police Station with a direction under Section 156(3) of the Code of Criminal Procedure Code. Subsequently Mogra Police Station Case No. 174 of 2006 dated 13.12.2006 under Section 448/427/323/325/379/307/506/34 of the Indian

Penal Code, corresponding to G.R. No. 1396 of 2006 was instituted.

- ii. After completion of investigation, Charge-Sheet was submitted under Section 448/427/323/325/379/307/506/34 of the Indian Penal Code on 17.11.2007 being Charge-Sheet on 03 of 2007.
- iii. The prosecution case reflected on 07.10.2006 at about 9-9 hours the present applicant no. 1 to 4 the accused persons being armed with certain offending weapons entered into the house of the applicant no. 5 and invaded the room of the applicant no. 5 situated on the first floor of the building. They assaulted the members of the family concerning previous incident of quarrel which took place in the morning between the children of the applicant no. 5 and the children of the present applicant no. 1 when the applicant no. 2 inflicted physical assault upon the son of the applicant no. 5 for which the applicant no. 6 was admitted to Kesoram Rayon Factory Health Centre, wherefrom he was referred to Immabara Sadar Hospital at Chinsurah.
- iv. On behalf of the prosecution 11 witnesses were examined to prove its case and some documents were exhibited when none was examined on behalf of the

defence nor any document was produced on their behalf.

- v. The Learned Chief Judicial Magistrate after considering the material on record was pleased to hold the present applicants no. 1 to 4 guilty for commission of the offence punishable under Sections 323/448 of the Indian Penal Code. The Learned Magistrate was also pleased to pass sentence against the present applicant nos. 1 to 4 under Section 448 of the Indian Penal Code to suffer rigorous imprisonment for six months for the offence and to pay a fine of Rs. 500/- each, in default to suffer simple imprisonment for 15 days more and also to pass sentence against the present petitioners under Section 323 of the Indian Penal Code to suffer rigorous imprisonment for one year for the offence and to pay a fine of Rs. 500/- each, in default simple imprisonment for 15 days more.
- vi. Being aggrieved by and dissatisfied with the judgment and order dated 13.08.2013 passed by the Learned Chief Judicial Magistrate, Hooghly in G.R. No. 1396 of 2006, the present applicant nos. 1 to 4 preferred an appeal before the Court of the Learned Sessions

Judge, Hooghly which gave rise to Criminal Appeal No. 46 of 2013.

- vii. The Learned Sessions Judge, Hooghly after considering the material present before her and hearing the submissions made on behalf of the applicant nos. 1 to 4 as also the prosecution has been pleased to confirm the order passed by the Learned Chief Judicial Magistrate, Hooghly being judgment and order dated 13.08.2013 in G.R. Case No. 1396 of 2006.
- viii. The applicants state being aggrieved by and dissatisfied with the judgment and order dated 24th April, 2014 passed by Learned Sessions Judge, Hooghly in Criminal Appeal No. 46 of 2013 the applicants nos. 1 to 4 had preferred the present Revisional Application before this Hon'ble Court which gave rise to CRR No. 1650 of 2014.
- ix. With the interference of well-wishers and some adjoining neighbours, both sides decided to resolve the dispute existing in between them forever and both the families being the neighbours want to maintain a healthy, peaceful and cordial relation.

- x. The applicants state that to show a good gesture and to maintain a good relation with each other the applicant nos. 5 and 6 being the defacto complainant and alleged victim of the case came forward at their own volition before this Hon'ble Court affirming that they have no grievance at present against the applicant nos. 1 to 4.
- xi. The applicants state that out of such mutual feelings of understanding and compromise the applicant nos. 5 and 6 have come before this Hon'ble Court to file this joint compromise application so that the applicant nos. 1 to 4 may be exonerated from the charges with which they have been convicted by the Learned Magistrate, subsequently affirmed by the Learned Sessions Judge, Hooghly.
- xii. The applicants state that though the applicant no. 6 being the alleged injured victim was minor at the time of alleged occurrence but presently after attaining majority realising the intention of both sides to maintain a happy and healthy relation, like his father i.e. the applicant no. 5 had come before this Hon'ble Court to file this Application.

- xiii. The applicants state that so far as the charges with which the applicant nos. 1 to 4 were convicted by the Learned Magistrate are Sections 323/448 of the Indian Penal Code which are compoundable offences in terms of Section 320 of the Code of Criminal Procedure and considering the said aspect and also keeping in mind the approach of the applicant nos. 5 and 6 being the defacto complainant and victim of the case, this Hon'ble Court may be pleased to set aside the judgment and order of conviction imposed by the Learned Magistrate Court as affirmed by the Learned Appellate Court.
- xiv. The applicants state that the applicant nos. 5 and 6 at their own volition without being forced, coerced and / or pressurized have come forward to file this joint compromise application before this Hon'ble Court and considering their bonafide approach this Hon'ble Court may further be pleased to allow the Revisional Application recording the joint compromise arrived in between both sides.

3. Section 323 of Indian Penal Code state as follows:

“323. Punishment for voluntarily causing hurt.—
Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with

imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

4. Section 448 of Indian Penal Code state as follows:

“448. Punishment for house-trespass.—*Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”*

5. Section 320 of the Code of Criminal Procedure, 1973 state as follows:

“320. Compounding of offences.

(1) *The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:-*

Section of the Indian Penal Code	Person by whom offence applicable may be compounded	Offence
298	any person.	Uttering words, etc., with deliberate intent to wound religious feelings
323, 334	any person.	Causing hurt or grievous hurt
341, 342	any person.	Wrongfully restraining or confining
352, 355, 358	any person.	Assault or use of criminal force
426, 427	any person.	Mischief, when the only loss or damage caused is loss or damage to a private person
447	any person.	Criminal trespass
448	any person.	House-trespass
491	any person.	Breach of contract
497	any person.	Adultery
500	any person.	Defamation, except such cases as are specified against section 500 of the Indian Penal Code in column 1 of the Table under sub-section (2).
501	any person.	Printing or engraving matter, knowing it to be defamatory
502	any person.	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter
504	any person.	Insult intended to provoke a breach of the peace
506	any person.	Criminal intimidation, when the offence is punishable with imprisonment for seven years
508	any person.	Act causing a person to believe that he will be the object of divine displeasure or temporal punishment

Section of the Indian Offence Penal Code Person by whom offence applicable may be compounded 1 2 3 Insult intended to provoke 504 The person insulted. a breach of the peace. Criminal intimidation except 506 The person intimidated. when the offence is punishable with imprisonment for seven years. Act caused by making a person 508 The person against whom believe that he will be an the offence was committed. object of divine displeasure. tted.

- (2) *The offences punishable under the sections of the Indian Penal (45 of 1860) Code specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table: TABLE Section of the Indian Offence Penal Code Person by whom offence applicable may be compounded 1 2 3*
- Voluntarily causing hurt by 324 The person to whom hurt dangerous weapons or means. is caused. Voluntarily causing grievous 325 Ditto. hurt. Voluntarily causing grievous 335 Ditto. hurt on grave and sudden provocation. Causing hurt by doing an act 337 Ditto, so rashly and negligently as to endanger human life or the personal safety of others. Causing grievous hurt by 338 Ditto. doing an act so rashly and negligently as to endanger human life or the personal safety of others. Wrongfully confining a person 343 The person confined. for three days or more.*

Section of the Indian Offence Penal Code Person by whom offence applicable may be compounded 1 2 3 Wrongfully confining for ten 344 The person confined. or more days. Wrongfully confining a person 346 Ditto. in secret. Assault or criminal force to 354 The woman assaulted to woman with intent to outrage whom the criminal force her modesty. was used. Assault or criminal force in 357 The person assaulted or attempting wrongfully to con- to whom the force was fine a person. used. Theft, where the value of 379 The owner of the pro- property stolen does not perty stolen. exceed two hundred and fifty rupees. Theft, by clerk or servant 381 Ditto. of property in possession of master, where the value of the property stolen does not exceed two hundred and fifty rupees. Dishonest misappropriation 403 The owner of the property of property misappropriated. Criminal breach of trust, 406 The owner of the property where the value of the pro- in respect of which the perty does not exceed two breach of trust has been hundred and a fifty rupees. committed. Criminal breach of trust, 407 Ditto. by a carrier, wharfinger, etc., where the value of the property does not exc- eed two hundred and afifty rupees. Criminal breach of trust by 408 Ditto. a clerk or servant, where the value of the property does not exceed two hundred and fifty rupees. Dishonestly, receiving 411 The owner of the property stolen property, knowing stolen. it to be stolen, when the value of the stolen pro- perty does not exceed two hundred and fifty rupees. Assuming in the concealment 414 Ditto. or disposal of stolen pro- perty, knowing it to be stolen, where the value of the stolen property does not exceed two hundred and fifty rupees. Cheating.----- 417 The person cheated. Cheating a person whose in- 418 Ditto. terest the offender was bound, either by law or by legal contract, to protect.

Section of the Indian Offence Penal Code Person by whom offence applicable may be compounded 1 2 3 Cheating by personation 419 The person cheated. Cheating and dishonestly in- 420 Ditto. ducing delivery of property or the making alternation or distruction of a valuable security. Fraudulent removal over 421 The creditors who are concealment of property, affected thereby. etc., to prevent distribution among

creditors. Fraudulently preventing from 422 Ditto. being made available for his creditors a debt or demand due to the offender. Fraudulent execution of deed 423 The person affected of transfer containing false thereby. statement of consideration. Fraudulent removal or con- 424 Ditto. cealment of property. Mischief by killing or mai- 428 The owner of the animal. ming animal of the value of ten rupees or upwards. Mischief by killing or mai- 429 The owner of the cattle ming cattle, etc., of any or animal. value or any other animal of the value of fifty rupees or upwards. Mischief by injury to work of 430 The person to whom the irrigation by wrongfully diver- the loss or damage is ting water when the only loss caused. or damage caused is loss or damage to a private person. House- trespass to commit an 451 The person in possession offence (other than theft) of the house trespassed punishable with imprisonment. upon. Using a false trade or pro- 482 The person to whom loss perty mark or injury is caused by such use. Counterfeiting a trade or 483 The person whose trade or property mark used by anot- property mark is counter- her. feited. Knowingly selling, or expo- 486 Ditto. sing or possessing for sale or for manufacturing purpose, goods marked with a counter- feit property mark. Marrying again during the 494 The husband or wife of lifetime of a husband or wife. the person so marrying. Section of the Indian Offence Penal Code Person by whom offence applicable may be compounded 1 2 3 Defamation against the Presi- 500 The person defamed. dent or the Vice-President or the Governor of a State or the Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor. Uttering words or sounds or 509 The woman whom it was making gestures or exhibiting intended to insult or any object intending to insult whose privacy was intru- the modesty of a woman or in- ded upon. truding upon the privacy of a woman.

- (3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.
- (4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.
 (b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908), of such person may, with the consent of the Court, compound such offence.
- (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.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.”

6. Relying on the observation of the Hon’ble Supreme Court in **(i) Gian Singh Vs. State of Punjab and Another¹**, **(ii) Parbatbhai Aahir Alias Parbatbhai Bhimsinghbhai Karmur and Others Vs. State of Gujrat and Another²** and **(iii) Madan Mohan Abbot Vs. State of Punjab³** the criminal proceedings in the instant case can be quashed on the basis of a compromise between the parties where the disputes are personal in nature inclusive of private disputants without public interest being affected.
7. In view of the compromise, the judgment and order dated 24th April, 2014 passed by Learned Sessions Judge, Hooghly in Criminal Appeal No. 46 of 2013 confirming thereby the judgment and order dated 13.08.2013 passed by the Learned Chief Judicial Magistrate, Hooghly in G.R. Case No. 1396 of 2006 are set aside.

¹ (2012) 10 Supreme Court Cases 303

² (2017) 9 Supreme Court Cases 641

³ 2008 CRI. L. J. 2243

8. Both the parties shall approbate the terms of settlement between them and shall remain bound by the same as stated in the application being CRAN 2 of 2023.
9. This criminal revision application being CRR 1650 of 2014 is allowed. CRAN 2 of 2023 is accordingly disposed of.
10. There is no order as to cost.
11. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.
12. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)