

(2023) 01 CAL CK 0071

In the Calcutta High Court

Case No : Criminal Revision No. 499 Of 2020, IA No. : CRAN 1 Of 2020, (Old No. CRAN 650 Of 2020)

Kashmira Begum & Ors.

APPELLANT

Vs

Sayad Mosiar Rahman @ Syed Moshir Rahman & Anr.

RESPONDENT

Date of Decision : 16-01-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 341, 506
Code Of Criminal Procedure, 1973 — Section 320

Citation : (2023) 01 CAL CK 0071

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Apurba Kumar Dutta, Syed Najmul Hosior, Arijit Ganguly, Sanjib Kumar Dan

Final Decision : Disposed Of

Judgement

Shampa Dutt (Paul), J

The revisional application is preferred praying for quashing of the proceedings in G.R. 3318/2011 in Connection with Bagnan P.S. Case No. 553/2011 dated 16.12.2011, pending before the Learned Additional Chief Judicial Magistrate, Uluberia, Howrah.

The said case was started on the basis of an incident which occurred on 16.12.2011 at about 4.35 pm when Sakib Ahmed was allegedly assaulted by the petitioner, when he was passing the petitioner's house with one Mainuddin Sakib and was then treated at Uluberia Sub-divisional Hospital.

At the time of hearing, a report has been submitted by S.I. Sudipta Chakraborty of Bagnan Police Station through the Learned Counsel for the state where in it has been stated that the matter/dispute has been amicably settled between the parties and the defacto complainant has no allegations/grievances now against the petitioners. And the defacto complainant is not intending to continue the

prosecution in the present case in Bagnan P.S. Case 553/11 under Sections 341/323/506/34 of the Indian Penal Code and has submitted a written declaration to that effect and wants to withdraw the same.

Considered the said stand of the defacto complainant, materials on records and the report of the concerned Police Station and also the submissions of Learned Counsel for the parties.

The following rulings are relied upon by this Court considering the facts and circumstances of the case herein:-

(1) (2012) 10 Supreme Court Cases, 303.

(2) (2018) 3 Supreme Court Cases, 290.

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 predominately 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).

From the materials on record it is clear that the facts and circumstances in the present case is a personal dispute between the parties and is thus private in nature and the parties have now resolved their entire dispute by way of a compromise/settlement on affidavit and continuation of this case would put the petitioner to great oppression and prejudice and extreme injustice could be caused to him by not setting aside the judgment under revision 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) (supra). The offences alleged are under Sections 341/323/506/34 of the Indian Penal Code, which are compoundable in nature.

As such this court is of the view that it would be unfair and contrary to the interest of justice to not set aside/quash the judgment under revision, which would tantamount to abuse of process of law in view of the settlement arrived at between the parties in respect of their dispute and to secure the ends of justice it would be prudent to set aside/quash the judgment under revision as prayed for.

CRR 499 of 2020 along with CRAN 1 of 2020 (Old CRAN No. 650 of 2020) are accordingly disposed of.

The proceedings in G.R. 3318/2011 in Connection with Bagnan P.S. Case No. 553/2011 dated 16.12.2011, under Sections 341/323/506/34 Indian Penal Code (compoundable) pending before the Learned Additional Chief Judicial Magistrate, Uluberia, Howrah, is hereby set aside and quashed.

No order as to cost.

All connected applications stand disposed of.

Interim order if any stands vacated.

Let a copy of this judgment be sent to the concerned court for information.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.