

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 121 of 2019

Smt. Sharmila Bhattacharjee & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioner

: Mr. Rajdeep Majumder,
Mr. Moyukh Mukherjee,
Mr. Abhijit Singh.

For the State

: Mr. Binoy Panda,
Ms. Puspita Saha.

Heard on

: 10.01.2023

Judgment on

: 31.01.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred by the petitioners/accused persons praying for quashing of the proceedings being GR Case No. 393/2017 arising out of Bidhannagar (North) Police Station Case No. 92/2017 dated 16.05.2017 under Sections 420/406/120B of the Indian Penal Code pending before the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas.

The petitioner's case is centered around a property which is situated at BE – 91, Salt Lake, Kolkata – 700 064. The petitioner no. 1 and her husband were the lawful owners of the said plot, which measures about 5 cottahs, wherein a two storied building was constructed by the late husband of the petitioner no. 1, namely, Manik Lal Bhattacharjee (since deceased) and the petitioner no. 1 along with her husband were lawfully possessing the said property.

After the death of the husband of the petitioner no. 1, in the year 2014, the complainant along with one Debabrata Banik approached the petitioner no. 1 herein through one Rabin Arya an erstwhile household help working in the house of the petitioner no.1.

Based on the intentions of the complainant and said Debabrata Banik to purchase the aforesaid property, the petitioner no.1 (being a law abiding citizen), entered into a memorandum of understanding with

the complainant and said Debabrata Banik. The consideration value in the said **memorandum of understanding** with regard to the said property was to the tune of Rs. 4 crores. Moreover a certain sum was paid by the complainant and Debabrata Banik to the petitioner no. 1.

However the said complainant and Debabrata Banik, did not act as per the conditions stipulated in the said contract. The complainant and said Debabrata Banik were supposed to clear the outstanding payments within a period of six months from the date of signing of the memorandum of understanding. But the outstanding payments were not made within the stipulated period/time frame. On the contrary, **the petitioner no.1 has not only returned the advance sum which was paid to her, but has also paid in excess.**

Suppressing the aforesaid facts and circumstances a complaint was lodged by the Opposite Party No. 2 against the petitioners herein, with the Officer in Charge of Bidhannagar (North) Police Station therein alleging commission of offences punishable under Sections 420/406/120B of the Indian Penal Code, 1860.

It was alleged that the petitioner no. 1 and her son, namely Shivaji Bhattacharjee, approached the complainant, stating that they were the lawful owners of a property situated at BE 91, Salt Lake, Kolkata – 700 064, and that they were in a financial crunch and for which they wanted the sale of the property. It was further alleged that

pursuant to a memorandum of understanding, a sum of Rs. 39 Lakhs was paid by the complainant. It was further alleged that the petitioners/accused persons did not act as per the terms and conditions of the said contract, and the petitioner no. 2 started hurling coercive threats to the complainant.

On the basis of the written complaint lodged by the Opposite Party no. 2, the Officer in Charge of Bidhannagar (North) Police Station registered a case being Bidhannagar (North) Police Station Case No. 92/17 dated 16.05.2017 under Sections 420/406/120B of the Indian Penal Code, against the petitioners.

Upon completion of investigation, the investigating agency submitted its report in final form being Charge Sheet No. 101/18 dated 30.06.2018 under Sections 420/406/120B of the Indian Penal Code. Co-accused namely, Shivaji Bhattacharjee (son of petitioner no. 1) was not charge sheeted in the instant case. On the basis of the said charge sheet the Learned Additional Chief Judicial Magistrate, Bidhannagar was pleased to take cognizance vide order dated 07.07.2018.

The petitioners submit that the instant proceeding as initiated against the present petitioners is absolutely baseless, frivolous and displays a clear misuse of the provisions of criminal law and fails to disclose any commission of offence by the petitioners. It is submitted

that attempt has been made by the opposite party no. 2 to give a colour of criminal proceeding to a dispute of different nature (contract).

Mr. Rajdeep Majumder Learned counsel for the petitioners has submitted that the impugned proceeding and all orders passed in connection with the said proceeding are otherwise bad in law and are liable to be set aside and/or quashed.

The opposite party no. 2 in the instant proceedings set the criminal law into motion by twisting material facts.

The malicious intention of filing the instant criminal case, becomes ostensible, when one observes the conduct of the Opposite Party No. 2. Furthermore an inherently improbable story has been hatched to implicate the petitioner herein, though there is no evidentiary value to support the same.

It is further submitted that the factual scenario as depicted in the instant case, hereinabove, clearly portrays a picture which runs contrary to the basic ingredients which constitute offences punishable under Sections 420/406/120B of the Indian Penal Code. The said offences alleged have no manner of application so far as the present petitioners are concerned and thus petitioners cannot be said, by any stretch of imagination, to possess such mens rea which would bring their actions within the ambit of Sections 406/420/120B IPC as defined

in the Indian Penal Code and on this score alone the impugned proceeding is liable to be quashed.

And that the continuation of the instant proceeding is otherwise bad in law and is liable to be set aside.

Mr. Binoy Panda Learned counsel for the State (opposite party no. 1) has produced the case diary and submits that **the petitioners have admittedly repaid more than the amount that was paid by the complainant/private opposite party.**

The opposite party no. 2 has not appeared in spite of being duly served.

From the materials on record and the case diary it is seen that the statements of the complainant/opposite party no. 2 and Debabrata Banik recorded under Section 161 Cr.P.C., clearly show that the petitioners have repaid a total amount of Rs. 40,00,00,00/- (Rupees Forty lacs). Rs. 20,00,00,00/- (Rupees Twenty Lacs) by demand draft and Rupees 20 Lacs in cash. The receipt of the said amount has been admitted by the opposite party no. 2 (complainant) and the said Debabrata Banik.

Admittedly at the time of agreement an amount of Rupees thirty nine (39) Lacs had been paid by the complainant to the petitioners.

The statement of the opposite party no. 2 shows that he has been paid the entire amount due **on 03.09.2018**. Admittedly, part payment was made on **11.06.2018**. In spite of the said development **initial charge sheet was filed on 30.06.2018**.

The statements of the opposite party no. 2/complainant and Debabrata Banik show that they are not interested in proceeding with the case as the dispute between the parties has been **settled on refund of the total amount due**. In addition a sum of rupees One Lakh more was paid. Total a sum of Rupees 40 lacs was paid against an outstanding amount of rupees 39 lacs.

It is clear that the dispute between the parties was a private dispute relating to purchase of a property. Time was the essence of the contract. And as the parties could not perform their part of the contract the contract failed.

The amount paid as advance was repaid by the accuseds on 30.06.2018. A supplementary charge sheet has been filed on 19th July 2020, in spite of the fact that the complainant and Debabrata Banik have both clearly stated that they have been paid the total amount due on 03.09.2018 along with an additional sum of Rs. One lakh.

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 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).

In the present case it is clear that the dispute between the parties was for sale of a property and the advance given was allegedly not being returned on the contract having failed.

The petitioners are senior citizens aged about/more than 72 years. The ingredients required to constitute the offences as alleged against the petitioners have not been prima facie proved during investigation. There is no materials in the case diary to show that the ingredients required to constitute the offences as alleged are present. As such there is no prima facie case of any cognizable offence being committed by the petitioners, and to let the proceedings continue would be an abuse of the process of law/Court.

The petitioner no. 1 is a mother, whose son lives abroad and the petitioner no. 2 is her brother in law, also a senior citizen.

The senior citizens in our lives need our care and with respect also our guidance and support regarding their total welfare. More so, those who are left alone to spend their remaining days, missing the warmth of a family that disintegrated with time. Children moving out for better opportunities and then progressing to set up their own families elsewhere leaving behind the guardians

with only their memories. Seniors/guardians who sheltered their growing up years with unconditional love and guidance.

The hollow (empty) feeling of living alone cannot be described in words.

To live a life, without the close comfort of family members, requires tremendous effort to carry on without any expectation and accept it, till one finally gives up.

It is for all of us, (who too apprehend such future) to pay extra attention and care to the tired hearts nurturing generations.

Such kind of cases should be resolved at the earliest instead of burdening the courts and also the public. The role of the police/investigating agency was to assist in the matter when it was being settled. **The offences alleged being compoundable. Instead the police and investigating agency in spite of there being no prima facie materials on record and the matter having been settled (on 30.06.2018) proceeded to file a supplementary charge sheet (on 19.07.2020) against the senior citizens/petitioners.**

The concerned police officers have been heard through the state. A report as called for has been submitted and made part of the record.

In the present case, the materials on record and the facts and circumstances in the present case clearly show that the dispute

between the parties was private in nature and the parties have resolved their entire dispute and as such the possibility of conviction is remote and bleak and continuation of the criminal case would put the accuseds/petitioners to great oppression and prejudice and extreme injustice could be caused to them by not quashing the criminal case, despite full and complete settlement and there being no ingredients to constitute a prima facie case against the petitioners of the offences as alleged, on record. As such this court is of the view that it would be unfair and contrary to the interest of justice to continue with the criminal proceedings which would tantamount to abuse of process of law in view of the settlement between the parties in respect of their dispute (as per statements in the case diary) and to secure the ends of justice it would be prudent to quash the proceedings in the case as prayed for.

The present status of the case before the Trial Court is that chargesheet has been filed and cognizance has been taken, and it is presumed that trial might have not commenced as yet.

Accordingly, the revisional application being **CRR 121 of 2019** **is allowed.**

Proceedings being G.R. Case No. 393 of 2017 pending before the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas, in connection with Bidhannagar Police Station Case No.

92/17 dated 16.05.2017 under Sections 420/406/120B of the Indian Penal Code is hereby quashed.

All connected Application stand disposed of.

Interim order if any stands vacated.

There will be no order as to costs.

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.)