

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

**C.R.R. 850 of 2015
(Via Video Conference)**

Ramesh Chand Singh & Ors.

-vs.-

The State of West Bengal & Anr.

For the Petitioners : Mr. Sekhar Basu, Sr. Adv.,
Mr. Shiladitya Banerjee

For the State : Mr. Arijit Ganguly,
Mr. Sandip Chakraborty

Heard on : 17.08.2021, 01.09.2021 and 07.09.2021

Judgment on : 23.09.2021

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the proceeding relating to Burrabazar Police Station case no. 809 of 2014 dated 22.12.2014 under Sections 354/114 of Indian Penal Code (corresponding to GR No. 3660/14).

The allegations made in the First Information Report are set out in verbatim as follows:

“I, Seema Upadhaya, wife of Sandeep Upadhaya, residing at 4th floor at premises no. 167, N.S. Road, Kolkata – 7, with my husband and my mother-in-law and three children i.e. two daughter and one son and all my childrens are aged about 5,7 & 11 years old respectively and they are minor and school going children.

Sir, the person under reference, Ramesh Singh and Santosh Singh & Rohit Singh who are also residing in the said premises no. 167, N.S. Road, Kolkata – 7 in the 5th floor and they are very much quarrel some in nature and always give trouble to me and for bad eyes on me and on the ways they always tease me and use Vulger languages towards me and when ever I raised objection on their high handed activities they are threatening me for dire consequence.

Sir, on 18.12.2014 at about 9.30 p.m. the said Ramesh Singh, Santosh Singh and Umesh Singh and with their 4/5 associates those are the local hooligans, come to my room and used vulger languages to me and thrown out my household articles here and there and when I raised objection and told them not to use abusive languages to me then Santosh Singh, Ramesh Singh and Umesh Singh put their hands on my sarees and blouse and tear it down and also use physical force and assaulted me by fists and blows and Ramesh Singh put his hand on my breast and on my buttack and molested me and hust my modesty and by using criminal force intend to disrobe me and tear up my blouse and sarees and Santosh Singh also pushed me on the ground and at that time my mother-in-law Pushpa Upadhyay came to my rescue then Ramesh Singh, Santosh Singh and Umesh Singh use criminal force upon my mother-in-law too and also molest her and use criminal force upon her and she also molested by them.

Sir, at that time other tenants of the premises came therein and seeing then said Ramesh Singh, Santosh Singh and Umesh Singh along with 4/5 associates left the place by saying me that if I lodge

any complaint to P.S. or to any Police Authority, then they will teach me a good lesson and put me and my whole family members behind the bar in different false criminal case, and when my husband Sandeep Upadhyay came to my house then the said Ramesh Singh, Santosh Singh and Umesh Singh on false allegation and on false complaint put my husband behind the bar in a case vide Burrabazar P.S. Case no. 792 dt. 19.12.2014 State – Vs. – Sandeep Upadhyay U/s. 307 I.P.C. and R.W. 25/27 Arms Act and make arrest my husband in the said false case and put him behind the bar and now I am living in my said room alone with my three minor children and with my old ailing mother-in-law and the said Ramesh Singh, Santosh Singh and Umesh Singh may again make attempt on my life and do wrongful act to me.

Sir, due to their such physical assault and molestation, I loss my prestige and dignity and my modesty hurt badly and due to their threatening for dire consequences and fear of my life and considering my minor childrens life, I was not to able to lodge complaint on 18.12.2014 but when my relatives came and on their assurance I got courage and come forward to your goodself on the 22.12.2014 with my this letter of complaint for F.I.R.

Therefore you please look into the matter and do the needful for safety and security of my life and also take necessary and appropriate legal action against the said Ramesh Singh, Santosh Singh and Umesh Singh and others and booked them as per law of the land and treat my this letter of complaint as F.I.R. and obliged.”

Mr. Sekhar Basu, learned Senior Advocate appearing for the petitioners submitted that prior to the initiation of the present case another case was registered at the same police station being Burrabazar Police Station Case No. 792/14 dated 19.12.2014 under Section 307 of the Indian Penal Code read with Section 25/27 of the Arms Act, the foundation of

which was based on the statement of the complainant namely, Santosh Kumar Singh (the present petitioner no.2).

In view of the contentions advanced by the petitioners the Case Diary of both the cases being Burrabazar Police Case No. 809 of 2014 under Section 354/114 of Indian Penal Code and Burrabazar Police Station Case No. 792 dated 19.12.2014 under Section 307 of Indian Penal Code and 25/27 of the Arms Act were directed to be produced before the Court.

The records reflected that Burrabazar Police Station Case no. 792 dated 19.12.2014 was registered pursuant to the General Diary reference entry no. 1758 at about 01.00 hours in reference to an offence of 18.12.2014 at about 21.00 hours. The complainant admittedly is Santosh Kumar Singh son of Ramesh Chand Singh. This case was registered on the basis of statement of Santosh Kumar Singh. The allegations in brief are to the effect that on 18.12.2014 at about 21.00 hours while the complainant was leaving his office at the 2nd floor of 167, Netaji Subhash Road, Rajakarta, PS.- Burrabazar, Kolkata-700007, after closing the same, he proceeded towards the common passage of the said 2nd Floor of the building, when one Sandeep Upadhaya collided with him. At the time complainant asked the person to be vigilant while walking, the said Sandeep Upadhaya thereafter, reverted by threatening that if the complainant act like this he will have to face dire consequences and while threatening the said Sandeep Upadhaya took out a pistol from his waist and fired at the complainant. The complainant narrowly escaped any bullet injury, but hearing such sound many persons from other floors rushed to the place of occurrence and the said Sandeep

Upadhaya was apprehended. Police authorities were informed who came down and took the said Sandeep Upadhaya in custody after searching him and after conducting necessary seizures in respect of the arms and ammunitions which were available. Record of this case also reflected that there are two seizure lists the first seizure list which was prepared is with reference to Burrabazar P.S. G.D.E. No. 1754 dated 18.12.2014 in between 23.20 hours at the common passage of 2nd floor of 167, Netaji Subhash Road, Rajakarta, PS.- Burrabazar, Kolkata-700007 and the following articles were seized:

- (1) *One fired tinted bullet head.*
- (2) *One empty cartridge having inscription 'KF 765' on its back.*

The Second seizure list which was prepared in reference to the same G.D.E. no on the same place referred the following items:

- i) *"One improvised iron made pistol measuring about 7½ inches (approx).*
- ii) *One live cartidge loaded in the barrel of item no. i.*
- iii) *One magazine case.*
- iv) *Four live cartridges loaded in the magazine."*

The investigating Agency on conclusion of investigation submitted charge-sheet on 22nd January, 2015 under Section 307 of the Indian Penal Code incorporating the said seizure items and relying upon 17 witnesses to prove its case. Subsequently, the investigating authorities also submitted a supplementary charge-sheet on 31.03.2015 and the same was after receiving FSL report and the sanction from the concerned authorities under Section 25(1B)(a)/27 of the Arms Act. The investigating Agency in course of

investigation in connection with this case also relied upon materials regarding the previous conduct of the said Sandeep Upadhaya which reflected that earlier in connection with Asansole GRPS case no. 03/12 dated 14.01.12 one revolver and three rounds ammunitions were seized.

The present case which is subject matter of challenge i.e., Burrabazar Police Station case no. 809 dated 22.12.2014 under Section 354/114 of the Indian Penal Code was in reference to General Diary entry no. 2142 at 20.10 hours and the date of occurrence refers to 18.10.2014 at 21.30 hours. The crux of the allegation in the complaint dated 22.12.2014 which was initiated by one Seema Upadhaya wife of the said Sandeep Upadhaya reference has been made to the incident of 18.12.2014 at about 09.30 PM and she alleged that Ramesh Chand Singh, Santosh Singh and Umesh Singh along with four/five associates used vulgar languages at her, threw away her household articles and when objection was raised the above named persons tried to tear away her wearing apparels and also used physical force, thereby assaulting her. The complainant also alleges of molestation by the present petitioners who had inappropriately touched her private parts and tried to disrobe her. It has further been alleged that she was thrown at the ground and when her mother-in-law came to her rescue, the petitioners also used physical force upon her mother-in-law and molested her by using criminal force.

The materials collected during the investigation also reflected that the statement under Section 164 of the Code of Criminal Procedure of Seema Upadhaya was recorded before the learned Magistrate. The contentions

which are reflected in the statement are that the complainant reported to her husband that she was teased at the street, when her husband went to the said persons, he was assaulted and when the complainant and her mother-in-law tried to prevent such assault being inflicted upon her husband, her mother-in-law was thrown away and she was removed by holding the tuft of her hair. There is a gulf of differences between the allegation wherein the complainant never alleged regarding outraging her modesty or her wearing apparels being torn or she was attempted to be disrobed by the accused persons.

Mr. Basu, learned Senior advocate by drawing the reference and analogy in respect of the time and place of occurrence as well as the involvement of the complainant and the petitioners emphasized that the present case being Burrabazar PS no. 809/2014 was registered pursuant to the complaint lodged by the wife of the accused (in Burrabazar PS Case no. 792 dated 19.12.2014, Sandeep Upadhaya) after about 3/4 days of the incident. According to the learned Senior advocate the present case has been initiated in order to create circumstances for defence by the accused as the complainant along with his father and brother had been roped in the instant case with an ulterior motive for wreaking vengeance and for settling of her private and personal grudge.

Mr. S. Chakraborty, learned advocate appearing for the State opposes the contentions advanced by Mr. Basu and submitted that the allegations in the FIR taken as a whole makes out an offence thereby calling upon the accused persons to face trial in a Court of Law. Learned advocate for the State has also drawn the

attention of this Court to the statement of the witnesses as also the statement of the complainant under Section 164 of the Code of Criminal Procedure which was stated before the learned Magistrate.

I have taken into account the contentions advanced by both the parties and also considered the judgment of the Hon'ble Supreme Court in Vineet Kumar and Ors. –Vs. – State of Uttar Pradesh and Anr., reported in (2017) 13 SCC 369 and Ahmad Ali Quraishi and Anr. –Vs. – State of Uttar Pradesh and Anr., reported in (2020) 13 SCC 435. The learned Senior Advocate for the petitioners has also drawn the attention of this Court to an un-reported judgment of this Court being Rajkumar Mondal @ Raja –Vs. – The State of West Bengal (CRR 2917 of 2014) where by relying upon the aforesaid two judgments of Hon'ble Supreme Court, proceedings were quashed.

In Vineet Kumar (supra) the Hon'ble Supreme Court relied upon State of Karnataka –Vs. – L. Muniswamy and Ors., (1977) 2 SCC 699 and reminded the powers of the High Court vested under Section 482 Cr.P.C. by referring to paragraph 7 of the said judgment which is as follows:

“7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling

necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

The Hon’ble Supreme Court also relied upon *State of Haryana and Ors. –Vs. – Bhajan Lal and Ors.*, 1992 SCC (Cri) 426 and relied upon the categories of cases where power can be exercised under Section 482 of Cr.P.C. which is available in paragraph 102 of the said judgment and is as follows:

“102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

The Hon'ble Supreme Court also referred to State of Karnataka –Vs. – M. Devendrappa, (2002) 3 SCC 89 and relied upon paragraph 6 and 8 of the said judgment which are as follows:

“6. ... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts

exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

8. *... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] .”*

Before arriving at its conclusion the Hon’ble Supreme Court also relied upon Priya Vrat Singh and Ors. –Vs.- Shyam Ji Sahai, (2008) 8 SCC 232; Janata Dal – Vs.- H.S. Chowdhary and Anr., (1992) 4 SCC 305; Dr. Raghubir Saran –Vs. - State of Bihar and Anr., AIR 1964 SC 1 and Minu Kumari and Anr –Vs. – State of Bihar and Ors., (2006) 4 SCC 359.

Paragraph 41 of Vineet Kumar (supra) observed as follows:

“41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , which is to the following effect : (SCC p. 379, para 102)

“102. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

On an appreciation of the facts of the case and with reference to paragraph 102 category 7 of Bhajan Lal (supra) the Hon'ble Supreme Court was pleased to quash the proceeding in Vineet Kumar (supra) case.

In Ahmad Ali Quraishi (supra) by referring to Vineet Kumar (supra) case and similar set of cases relied upon in Vineet Kumar (supra), case in paragraph 23 of the said judgment the Hon'ble Supreme Court observed as follows:

“23. In the facts of present case, we are fully satisfied that present is a case where criminal proceedings have been initiated by the complainant with an ulterior motive due to private and personal grudge. The High Court although noticed the judgment of this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] in the impugned judgment but did not examine the facts of the case as to whether present is a case which falls in any of the category as enumerated in Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . The present case clearly falls in Category (7) of Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and the High Court failed to exercise jurisdiction under Section 482 CrPC in quashing the criminal proceeding initiated by the complaint.”

This Court also in an un-reported judgment of Rajkumar Mondal (supra) followed the dictum laid down by the Hon'ble Supreme Court in Vineet Kumar (supra) and Ahmad Ali Quraishi (supra) case and in the factual backgrounds and circumstances of the said case quashed the proceedings. The present case involves three petitioners namely, Ramesh Chand Singh, Santosh Singh alias Vicky and Rohit Singh alias Ricky. The petitioner no.1 happens to be the father and the petitioner nos. 2 and 3 happen to be the two sons of Petitioner no.1. The factual matrix of the case reflects that the case was initiated when the husband of the complainant was taken into custody in connection Burrabazar P.S. case No. 792 dated 19.12.2014 under Section 307 of Indian Penal Code and Section 25/27 of the Arms Act (details of which have been stated above). The letter of complaint which contained the allegations was in respect of an offence which was admitted at the same time when the offence was committed in Burrabazar P.S Case no. 792 dated

19.12.2014. The complaint was filed after 3/4 days and the statement under Section 164 of the Code of Criminal Procedure do not reflect any material under Section 354 of the Indian Penal Code. The initiation of the present case at the behest of the complainant on the face of it reflects that the same was initiated as a pressure tactics for creating circumstances which may compel the present petitioners to dilute their approach in Burrabazar P.S. case No. 792 of 2014 dated 19.12.2014. The facts of the present case as such can be said to fall within the category 7 of paragraph 102 of State of Haryana –Vs. – Bhajan Lal (supra), the circumstances reflect that the case was instituted maliciously with an ulterior motive for wreaking vengeance on the accused/petitioner and with the view to spite them because of private and personal grudge.

The case, therefore, warrants invoking the powers of this Court under Section 482 of the Code of Criminal Procedure, as the continuance of the same is an abuse of the process of law and is bound to cause miscarriage of justice.

Thus, all further proceeding relating to Burrabazar P.S. Case No. 809/14 dated 22.12.2014 under Section 354/114 of the Indian Penal Code pending before the learned Additional Chief Metropolitan Magistrate, Calcutta, so far as the present petitioners are concerned are hereby quashed.

If the petitioners are on bail they must be discharged from their bail bonds.

Accordingly CRR 850 of 2015 is allowed.

Pending applications, if any, is consequently disposed of.

Interim order is made absolute.

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

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)