

**IN THE HIGH COURT AT CALCUTTA**  
**Criminal Revisional Jurisdiction**  
**Appellate Side**

Present:

**The Hon'ble Justice Shekhar B. Saraf**

***C.R.R. 2369 of 2003***  
***K. Paka Singh @ Konthoujam Paka Singh***  
***-Versus-***  
***Miss Nivedita Sengupta & Ors.***

For the Petitioner : Mr. Abhra Mukherjee  
Mr. Sauradeep Dutta

For the State of West Bengal : Mr. Rana Mukherjee

**Heard on : 30.06.2021 & 12.08.2021**

**Judgment on : 12.08.2021**

**Shekhar B. Saraf, J.:**

1. The petitioner has filed this criminal revision against proceedings initiated against him under section 448/500 of IPC before the court of Judicial Magistrate 1<sup>st</sup> court in case no. 50 of 2003. It is prayed by the petitioner that the pending proceedings before the learned judicial magistrate, Purulia are liable to be quashed under Section 482 of the Code of Criminal Procedure.

**Facts:**

2. The complainant is the warden of Girl's Hostel of the Free Progress Academy Centre -1, Hura. She has filed the complaint against the accused father of student named Sharmila residing at the abovementioned institute at the time of commission of the alleged offence. It is alleged in the complaint that on the date of occurrence the accused gained entry into the campus on the plea of meeting his sons who were also studying at the same institution. Thereafter, he gained unauthorised entry into the Girl's Hostel and after entering he called the complainant by her name. Later on, the accused asked the complainant, "Have you shown naked picture (Pornography) to my daughter Sharmila?"
3. After hearing about this statement in front of the staff, the complainant advised the accused to file a written complaint before appropriate authorities. The complainant felt insulted and defamed before the staff of the Academy and sought an apology from the accused before he left the institution. Since no apology was tendered by the accused the complainant decided to file a criminal complaint before Chief Judicial Magistrate, Purulia. On the basis of examination of complaint filed before the Court of Chief Judicial Magistrate, process was issued against the petitioner to appear before the court of Judicial Magistrate 1<sup>st</sup> court. On the day of appearance, the accused was granted bail.

**Arguments**

4. Learned Counsel for the petitioner submits that the allegations made in the complaint do not form a case under Section 448 and Section 500 of the India Penal Code, 1860. He further submits that the ingredients of offence under Section 448/500 are not attracted and the complaint has been filed 21 months subsequent to the date of the alleged offences. In light of the delay in filing of the complaint, the petitioner submits that the bar of taking cognizance under Section 468 Cr. P.C. has kicked in.
5. It is submitted by the petitioner that facts of the case show that the complaint was filed as a counter blast of two suits for defamation and cheating filed by the accused against the complainant. Further submission made by the petitioner is that no case of defamation is made out as no publication was made whatsoever in the instant case. Finally, the petitioner submits that the complaint has been filed with a mala fide intent to harass the petitioner.

**Analysis with Order**

6. I have heard the submissions and perused the materials placed on record by the learned counsel for the petitioner. Since this criminal revision

seeks to quash the criminal proceedings pending before the Learned Judicial Magistrate, Purulia, I would like to discuss the principles laid down by the Hon'ble Supreme Court wherein quashing power of the High Courts under Section 482 Cr. P. C. can be exercised.

7. In the landmark case of ***State of Haryana -v- Bhajan Lal*** reported in ***(1992) SCC (Cri) 426***, the Hon'ble Supreme Court listed the following categories of cases where power under Section 482 could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice: (SCC pp. 378-79, para 102)

*"102. (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.”*

It in aforementioned judgement it was also made clear that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such power could be exercised.

8. In a recent judgement delivered by the Apex Court, ***Neeharika Infrastructure Pvt. Ltd. & Ors. -v- State of Maharashtra*** reported in ***(2020) 10 SCC 118***, a three-judge bench discussed the scope of power exercised by the High Courts under Section 482 Cr. P.C. It exhaustively lays down various principles which the courts must keep in mind while quashing criminal proceedings under Section 482. Relevant paragraph of the judgement is mentioned below for reference:

*“80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/charge sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:*

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*

viii) *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*

ix) *The functions of the judiciary and the police are complementary, not overlapping;*

x) *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xi) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

xiii) *The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*

xiv) *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by*

*law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;*

*xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;*

*xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.*

*xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give*

*brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.*

*xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”*

9. The aforementioned latest judgement of the Hon’ble Supreme Court does not restrict the power of High Courts to quash criminal proceedings in certain category of cases as mentioned in the case of **Bhajan Lal (Supra)**. This begs the question whether the instant case falls under any of the categories as delineated in the case of **Bhajan Lal (Supra)**. In order to answer this question, it must be examined whether an offence has actually been made out against the accused which would justify continuation of proceedings in the interest of justice.

10. “Defamation” is defined under Section 499 IPC. It reads as under:

*“499. Defamation. —Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation*

*of such person, is said, except in the cases hereinafter excepted, to defame that person.”*

In the case of **Jeffrey J. Diermeier –v- State of W.B.** reported in **(2010) 6 SCC 243**, ingredients of defamation under Section 499 of IPC have been discussed by the Apex Court. Relevant paragraph of the judgement is mentioned below:

*“29. To constitute “defamation” under Section 499 IPC, there must be an imputation and such imputation must have been made with the intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. In essence, the offence of defamation is the harm caused to the reputation of a person. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged.”*

11. From the abovementioned discussion it flows that the ingredients essential to constitute an offence under Section 500 of IPC are not fulfilled based on present factual scenario. Moreover, there is no publication of the alleged defamatory statement which would justify criminal proceedings before the Learned Judicial Magistrate. Hence, this case squarely falls under the 1<sup>st</sup> category described in the case of **Bhajan Lal (Supra)**, and accordingly, the criminal proceeding under Section 500 is not justified. As far as offence under Section 448 is concerned, I am of the view that filing

of such complaint would be barred by Section 468(2)(b) of Cr. P.C. because there is a delay of 21 months in filing of the complaint. The prescribed limitation period under Section 468 of Cr. PC is not more than one year i.e., 12 months.

12. Upon considering the submissions made before this Court, I am of the view that this is a good case for quashing of the complaint and the proceedings thereunder. Accordingly, the complaint case no. 50 of 2003 and all proceedings thereunder are quashed.

13. With this observation the revisional application is allowed.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

**(Shekhar B. Saraf, J.)**