

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.R. 2917 of 2014

with

IA NO. CRAN 3 of 2015 (Old No. CRAN 3965 of 2015)

(Via Video Conference)

Rajkumar Mondal @ Raja

-vs.-

The State of West Bengal

For the Petitioner	:	Mr. Debasish Roy, Mr. Sourav Chatterjee, Mr. Soumya Nag
For the State	:	Ranabir Roy Chowdhury, Mr. Ashok Das
Heard on	:	08.07.2021 & 09.07.2021
Judgment on	:	14.07.2021

Tirthankar Ghosh, J:-

The revisional application has been preferred against the judgment and order dated 14.08.2014 passed by the Learned Additional Sessions Judge, Nabadwip, Nadia in connection with S.C. No. 4(6) of 2014 arising out of Nabadwip Police Station case no. 280 of 2013 dated 23.05.2013 under Sections 448/376/511/323/506 of the Indian Penal Code, wherein the learned Sessions Court was pleased to reject the application of the petitioner

under Section 227 of the Code of Criminal Procedure, thereby refusing to discharge the petitioner from the case.

The prosecution case in nutshell is to the effect that one Monika Karmakar lodged a complaint with the Inspector-in-charge of Nabadwip Police Station to the effect that she is a poor woman staying with her mother at Tegharipara, Kalabagan, Bhatarpara P.O & P.S.- Nabadwip, District-Nadia. She alleged that adjacent to her residence one Raja Mondal (hereinafter referred to as “the petitioner”) runs a factory and is very influential in the area. The said Raja Mondal often with his associates indulges in illegal activities including teasing her. However, because of social embarrassment she could not divulge the same to anyone but lastly on 20.05.2013 at about 8.00 pm taking advantage of absence of her mother the petitioner under the influence of alcohol entered her residence and touched her private parts and attempted to rape her by throwing her on the ground. Being afraid of the circumstances, the complainant raised hue and cry when the petitioner threatened her with dire consequences of murdering her. The complainant thereafter informed the incident to her neighbours and being worried of the situation sent the complaint through Postal Authorities to the police station.

On the basis of such complaint being received on 23.05.2013, Nabadwip Police Station case No. 280 of 2013 was registered for investigation under Section 448/354/376/511/323/307 of Indian Penal Code. The Investigating Authorities on completion of investigation submitted charge-sheet under Section 448/376/511/323/506 of Indian Penal Code.

The list of witnesses included the complainant Monika Karmakar and other witnesses namely, Papita Karmakar, Mukti Sarkar, Samir Roy, Narayan Biswas, Laxmi Bala, Goutam Mondal, Dr. Partha Sarathi Sarkar, ASI Basudev Mondal and SI Tapas Kr. Ghosh.

Mr. Debasish Roy, learned advocate appearing for the petitioner drew the attention of this Court to the general diary entry No.37 dated 01.03.2012 wherein it was alleged that one Deboprasad Bhattacharya alleged that one Bangladeshi immigrant namely, Bhabotosh Biswas @ Karmakar has illegally encroached in the tin shade located on his land. The said Deboprasad Bhattacharya subsequently sold the property to the present petitioner one Raja Mondal by way of deed of conveyance of sale. Learned Advocate also drew the attention of this Court to the copy of the FIR relating to Nabadwip Police Station case no 646 of 2012 under Section 420/468/471 of IPC and Section 14 of the Foreigners Act and referred to the accused persons namely, Bhabotosh Biswas @ Karmakar and Rupa Biswas @ Karmakar who have been implicated in the said case because of entering India on the basis of forged documents. Learned advocate also drew the attention of this Court to the order dated 18.12.2013 passed by the Hon'ble High Court, Calcutta in CRM 16309 of 2013 wherein it was held that the epic card and the ration card were forged and as such the bail application of Rupa Biswas was rejected. It has been submitted that the said Rupa Biswas was subsequently granted default bail as the police authorities failed to submit the charge within the statutory period. Learned Advocate thereafter, draws the attention of this Court to a complaint lodged with the Member

Secretary, West Bengal Pollution Control Board, wherein the present complainant was the first signatory and she alleged that because of the factory being run at the area where she is residing the local residents are suffering from pneumonia, allergy, headache, respiratory problems and infection in the eyes. It has been further alleged in the said compliant that the factory is creating pollution in the area and as a result of which the agriculture as well as the total ambience of the area is destroyed. Consequent to such complaint, Senior Environment Engineer directed for necessary regulatory order and taking legal steps against the unit/establishment. Accordingly, an inspection was directed to be carried out. On completion of inspection an inspection report dated 09.01.2014 was submitted in respect of the factory of the present petitioner and on assessment of the same it was categorically observed in the Inspection Report that *“During inspection this type of activity was not observed and the local residents also informed that they have not seen the any stone crushing activity by the unit in this location. Old burnt tyres were also not observed at the time of Inspection.”*

Learned Advocate has also submitted that the witnesses so relied upon by the prosecution are some of the signatories to the complaint which was lodged with the West Bengal Pollution Control Board and/or the persons who are aiding the complainant and his relation to illegally occupy or encroach a part of the land. It has been further pointed out that the petitioner refused to undergo any medical examination which is revealed from the statement of the doctor dated 05.06.2013 and most of the

witnesses have vaguely narrated the incident without any knowledge regarding the same. Learned advocate emphasized that the present complainant being the sister of the said Bhabotosh Biswas alias Karmakar and sister-in-law of Rupa Biswas alias Karmakar who are illegal immigrants from Bangladesh has *mala fidely* implicated the petitioner in the instant case. As such the present proceedings are required to be quashed.

Mr. Ranabir Roy Chowdhury, learned Advocate appearing for the State opposes the prayer of Mr. Roy and supports the order passed by the learned Sessions Court. According to the learned Advocate the Court at the time of consideration of charge cannot travel beyond the police papers and the nature of the present case do not fall within the 'rarest of rare' case for invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure for quashing the same without a full fledged trial being conducted.

I have perused the allegations in the FIR, charge-sheet as also the documents relied upon by the prosecution under Section 207 of the Code of Criminal Procedure as also the FIR of Nabadwip PS case no. 646 of 2012 along with the complaint addressed to the West Bengal Pollution Control Board, as also the Inspection Report dated 09.01.2014.

In Vineet Kumar and Ors. –Vs. – State of Uttar Pradesh and Anr. reported in (2017) 13 SCC 369 wherein the Hon'ble Supreme Court in paragraph 41 was pleased to observe 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.”

Relying upon the earlier judgment the Hon'ble Apex Court in Ahmed Ali Quraishi and Anr. -Vs. - State of Uttar Pradesh and Anr. reported in

(2020) 13 SCC 435 was pleased to reiterate its earlier stand which is reflected in paragraph 23 is 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 while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure need not restrict itself only to the stage of the case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case, as well as the materials collected in course of investigation and it is in the background of such circumstances the previous litigations assume importance, thereby attracting the issue of wreaking vengeance due to private and personal grudge. On an appreciation of the judgment referred to above along with the circumstances presented before this Court so far as the instant case is concerned, I am of the view that the petitioner has been able to successfully bring its case within the ambit of Category-7 of Bhajan Lal’s case (supra).

Accordingly, the further continuance of the proceeding including the order dated 14.08.2012 is an abuse of the process of the Court and the further continuance of the same would result in miscarriage of justice.

As such the proceedings relating to S.C. No. 4(6) of 2014 arising out of Nabadwip Police Station case no. 280 of 2013 dated 23.05.2013 under Sections 448/376/511/323/506 of the Indian Penal Code, is quashed.

Hence, CRR 2917 of 2014 is allowed.

Pending applications, if any, are consequently disposed of.

Department is directed to communicate this order to the Ld. Trial Court and send the LCR (if any) forthwith to the Court below.

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

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)