

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 149 of 2021

Vivek Gupta

-vs.-

The State of West Bengal & Anr.

Mr. Milon Mukherjee, Sr. Adv.
Mr. Biswajit Manna.

...For the Petitioner

Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta.

... For the State

Mr. Bharat Bhushan,
Mr. Atindranath Misra.

...For the Opposite Party No.2

Reserved on : 13.12.2022

Judgment on : 22.12.2022

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the order dated 29.02.2020 passed by the Learned Additional Sessions Judge, 1st Court, Barasat in connection with Sessions Case no. 534 of 2015 which arose out of Barasat Women Police Station case no. 66/2014 dated 03.06.2014 under Section 376D/120B of the Indian Penal Code, thereby rejecting the prayer for discharge of the petitioner.

Barasat Women Police Station case no. 66/2014 dated 03.06.2014 was initiated on the basis of a complaint lodged by Anju Kansal who alleged that her husband Harish Kansal was falsely implicated in a criminal case of Barasat Police Station and was arrested by the Officer of the Barasat Police Station with the help of Peetampura Police Station Delhi on 25.12.2013 and was produced before the Learned Metropolitan Magistrate, Room No. 203 of Rohini Court, Delhi and thereafter sent to Barasat P.S. District-North 24 Parganas on 28.12.2013 and produced before the Learned C.J.M., Barasat on 29.12.2013. She alleged that at the relevant time the husband of her sister-in-law Vivek Gupta (petitioner) informed the family members of her matrimonial home that her husband has been arrested by the Barasat Police Station and for the said purpose he misappropriated huge amount of money by creating fear of torture by police authorities on her husband. The accused extorted more money from near relations and feeling humiliated such amount was paid. The complainant stated that she is a Professor and having reputation in the society and as such could not go to Barasat Police Station for any inquiry and was totally dependent upon Vivek Gupta. She also stated that she could not instantly suspect the accused and had to depend upon his information. On 10.01.2014 the accused Vivek Gupta informed her and her mother-in-law that on 15.01.2014 the police authorities will produce her husband before the learned CJM, Barasat and asked her to be physically present in Court. He also arranged and booked one room in Palash Hotel, Room no. 927, Barasat, North 24 Parganas and he was also physically present in the said Hotel six days

before arriving at the said destination. The complainant was surprised to find that the accused booked a single room for five members. The complainant alleges that the circumstance was created by the petitioner to stay in the single room in order to rape her with an intention of executing the conspiracy on 16.01.2014 at about 02.00 pm. The accused managed her daughter and minor son to accompany with husband of another sister-in-law namely, Ashok Kumar Gupta and managed to send them to Barasat Market for the purpose of purchasing goods and they went to market when the accused called another unknown person and tried to outrage her modesty and forcibly locked the door from inside. When the complainant resisted they threatened her of dire consequences that they would spoil the life of her younger daughter and murder the minor son and then the accused forcibly raped her against her will with the help of his friends. The complainant was threatened in case she discloses the story of rape to anybody else. The complainant and others stayed at the hotel for four days and the accused forcibly tormented her mentally on many occasions. The complainant thereafter returned to Sri Ganganagar with the accused and his wife Sarika Gupta who is her sister-in-law and was present in the in-law's house at 91-H Block, Sri Ganganagar for one month. At her residence the accused misbehaved with her several times and unidentified persons also visited her residence and all of them threatened and blackmailed her by demanding money from time to time and also threatened to spoil the life of her daughter. Her husband in the meantime was granted conditional bail by the Hon'ble High Court and the condition was that he could not leave the

jurisdiction of the local police station at Barasat. In the first week of May, 2014 the complainant disclosed the incident to her husband regarding the misconduct of Vivek Gupta and after reaching Barasat she came to know that Vivek Gupta filed a false application through his wife Sarika Gupta against her for the purpose of blackmailing her. The complainant therefore, requested the police authorities to initiate and register a case against Vivek Gupta and his two unknown associates for their misconduct at Barasat. The complainant further stated that there was a delay in lodging the complaint as she was staying at Rajasthan with her old parents-in-law, two daughter and minor son and the occurrence took place in the month of January, 2014 and the delay should be condoned as Barasat was an unknown place to her and her husband was in custody for a long time.

Mr. Milon Mukherjee, learned Senior Advocate appearing on behalf of the accused/petitioner submitted that the background of the case is to be appreciated in the instant case. According to the learned Advocate on 25.12.2013 Harish Kansal (husband of the complainant) was arrested from Delhi in connection with the Barasat Women Police Station case no. 66/2014 dated 03.06.2014. On 04.01.2014, Rs.4 lakhs were withdrawn from account of Vivek Gupta and handed over to Anju Kansal (complainant). On 16.01.2014 it has been alleged that the children of opposite party no.2 and Ashok Gupta went to Barasat Market, the accused/petitioner along with another raped the complainant. On 15.03.2014 Harish Kansal was released on bail with condition of not to leave Kolkata but he travelled back to Rajasthan on the same day with

Ashok Gupta. On 24.03.2014, Rs. 3 lakhs were transferred to the bank account of Harish Kansal. On 17.04.2014 the wife of the petitioner namely, Sarika Gupta lodged a complaint at Jawahar Nagar Police Station against her elder brother Harish Kansal and wife Anju Kansal for threatening them of being implicated in false criminal cases. On 10.05.2014 a further complaint was lodged by Sarika Gupta against Harish Kansal and others for threatening them. On 20.05.2014 the complainant informed the incident that she was ravished by the petitioner on January, 2014. On 01.06.2014 cheque of Rs.5 lakhs was issued in discharge of his liability towards the petitioner. On 03.06.2014 Barasat Women Police Station case no 66/2014 dated 03.06.2014 was registered under Section 376/420/120B of the Indian Penal Code against the petitioner. On 10.06.2014 Sarika Gupta again lodged a complaint against her elder brother Harish Kansal and his wife (opposite party no.2). On 12.06.2014 the cheque of Rs.5 lakhs issued by Harish Kansal was dishonoured. On 03.06.2014 the complainant/opposite party no.2 was sent for medical examination in connection with Barasat P.S. case no. 66/2014 but she refused to undergo medical examination. On 25.07.2014 the petitioner filed a case under Section 138 of the Negotiable Instruments Act against Harish Kansal. On 09.09.2014 petitioner was granted anticipatory bail by the Hon'ble High Court, Calcutta in connection with Barasat Women P.S. case no. 66/2014 dated 03.06.2014 under Section 376/420/8120B of the Indian Penal Code. On 20.10.2014 Jawahar Nagar P.S. case no. 600/2014 dated 20.10.2014 was registered under Section 379/420/467/468/471/120B of the Indian Penal

Code by Harish Kansal against the petitioner and his wife Sarika Gupta. On 30.11.2014 final report no. 20140635 was submitted in connection with Jawahar Nagar P.S. case no. 600/2014. In the said report it was mentioned that there is dispute in between petitioner and Harish Kansal over money and the complainant has lodged false case of rape at Barasat.

It has been also argued by the learned Advocate on behalf of the petitioner that from the statement of Pradip Sarkhel a witness relied upon by the prosecution it would be found that the said witness was associated with Palash Hotel. He has stated that the complainant Anju Kansal used to stay at Room No. 928 while the accused/petitioner used to stay at Room No. 927. The witness also stated that the complainant left hotel on 16.01.2014 at 11.00 am. It has been argued that the petitioner spend huge sum of money at Kolkata while the complainant's husband was in jail and that subsequently the petitioner asked/demanded for reimbursement of the money which was spent by him. Dispute and differences thereafter arose and because of the dispute/threat by the complainant and her husband the petitioner's wife lodged the complaint with the S.P. Sri Ganganagar, further complaint was also lodged on 10.05.2014. The complainant and her husband continued to threat the petitioner and his wife and initiated a false case at Jawahar Nagar Police station. The cheque of Rs.5 lakhs is the subject matter of the dispute. There is a complaint case under Section 138 of the Negotiable Instruments Act being case no. 695 of 2014.

Learned Advocate relied upon the judgments of the Hon'ble Supreme Court in Vineet Kumar & Anr. -Vs. - State of U.P. reported in (2017) 13 SCC 369; Ahmad Ali Quraishi & Anr. -Vs. - State of U.P. reported in (2020) 13 SCC 435 and two judgments of this High Court in Rajkumar Mondal -Vs. - State of West Bengal (CRR No. 2917 of 2014) and Ramesh Chand Singh -Vs. - State of West Bengal (CRR No. 850 of 2015). Learned Advocate also submitted that the only issue which was considered by the learned trial Court at the time of consideration of the application under Section 227 of the Code of Criminal Procedure was that there was a delayed FIR and the written complaint which was lodged on 06.06.2014 in respect of an incident on 16.01.2014 was because of the reasons that her husband on 20.05.2014 suggested her to lodge the complaint to the local police station at Barasat. She is also a permanent resident of Rajasthan staying with her old parents-in-law and two daughters and minor son, as such she could not file the written complaint due to fear and apprehension.

The learned Court reasoned that the FIR and the complaint has satisfied the issue relating to delay and rest of the facts are to be proved at the time of trial. So far as the statement under Section 161 of the Code of Criminal Procedure is concerned relating to the statement of Pradip Sarkhel the learned Court opined that the fact relating to the complainant leaving the hotel is hazy and the statement under Section 164 Cr.P.C. of the victim appears to be in tune with the FIR. The learned Court there after relying on the broad probability was of the opinion that charge could be framed if there is grave

suspicion and accordingly dismissed the application under Section 227 of the Code of Criminal Procedure fixing 22.05.2020 as the date for framing of charge.

Mr. Ranabir Roy Chowdhury, learned Advocate appearing for the State submitted that admittedly the petitioner happened to be the husband of sister-in-law of the complainant/opposite party no.2. The date of occurrence is 16.01.2014 at about 02.00 pm at Palash Hotel Room No. 927 and the complainant/victim namely, Anju Kansal lodged the complaint on 03.06.2014. It was also submitted on behalf of the State that the victim reiterated her version in her statement under Section 164 of the Code of Criminal Procedure before the Learned Magistrate. The Medical report reflects that she refused to undergo medical examinations on her own accord on 03.06.2014. Learned Advocate for the State also submitted that the charge-sheeted witnesses who were examined are hearsay witness except Pradip Sarkhel who was the Manager of Palash Hotel and he also came to know regarding the incident as is reflected in the statement under Section 161 of the Code of Criminal Procedure for the first time when the Investigating Officer went in the Month of July, 2014 to examine the witness. State has submitted that after completion of investigation charge-sheet has been submitted before the jurisdictional Court under Section 376D/120B of the Indian Penal Code and prosecution has relied upon 8 witnesses including the complainant.

Mr. Bharat Bhushan, learned Advocate appearing for the opposite party no.2. submitted that the evidence has already been collected by the

Investigating Agency and the trial Court is convinced of the materials appearing in the records. So far the present petitioner is concerned he should be asked to face the trial as the allegations against him are serious. Learned Advocate insisted that the material placed by the petitioner cannot be considered at this stage and the delay which has occurred as in registration of the FIR has been sufficiently explained in this case.

Before proceeding further in dealing with the present case it would be proper in the circumstances to appreciate the judgments relied upon by the petitioner. In Vineet Kumar (supra), paragraphs 2, 3, 4, 7, 23, and 41 are relevant and are set out as follows:

“2. The accused have made several financial transactions with the complainant, Smt Rekha Rani, her husband, Akhilesh Kumar and her son, Ankur in the month of May 2015. Accused 3 gave Rs 9 lakhs to the husband and son of the complainant for business purposes. An amount of Rs 7 lakhs 50 thousand was given in cash to the complainant and her husband by Accused 1. Further, the husband of the complainant received Rs 3 lakhs 60 thousand in cash and Rs 2 lakhs 40 thousand by cheque dated 29-5-2015 from Accused 1.

3. An agreement dated 29-5-2015 was signed by the husband of the complainant and Accused 1 acknowledging the payment of Rs 3 lakhs 60 thousand in cash and Rs 2 lakhs 40 thousand by cheque. A cheque of Rs 6 lakhs was handed over by the husband of the complainant to Accused 1 to ensure the repayment. Another agreement between the complainant and Accused 1 was entered into on 1-6-2015 wherein it was acknowledged that the complainant

and her husband had taken Rs 7 lakhs 50 thousand in cash from Accused 1. Earlier, the husband of the complainant took Rs 6 lakhs from Accused 1. The parties entered into an agreement agreeing with certain conditions. The third agreement was entered into between the son of the complainant and Accused 1 on 31-8-2015 wherein the son of the complainant acknowledged that his parents have taken an amount of Rs 14 lakhs 50 thousand. The complainant and her husband gave cheques of Rs 6 lakhs and Rs 8 lakhs 50 thousand to Accused 1 drawn on Prathama Bank, Kanth Branch, District Moradabad for recovery of the amount given by the accused. The agreement noticed that the amount was borrowed with promise to return the amount. The agreements were written on non-judicial stamp papers which were not registered but contained signatures of the parties mentioned therein.

4. *Accused 3 filed a complaint under Section 138 of the Negotiable Instruments Act being Complaint No. 1587/2015 against the husband and son of the complainant with the allegation that amount of Rs 9 lakhs was paid to the opposite parties who had issued a cheque of Rs 9 lakhs with the assurance that the amount will be repaid by 22-8-2016. It was stated by Accused 3 in the complaint that after lapse of time when the amount was not paid, the cheque was deposited which was returned back by the Bank with remark "No Sufficient Balance". When the opposite parties were contacted in this regard, the opposite parties told not to come to them. After giving a notice on 5-9-2016, complaint was filed on 21-9-2015. Accused 1 had also filed an application on 29-9-2015 under Section 156(3) CrPC against the complainant, her husband and son. Cheque given by son of the complainant of Rs 6 lakhs to Accused 2 was also dishonoured. Complaint filed by Accused 1 under Section 138 of the Negotiable Instruments Act was registered as Complaint No.*

3280/2015. Complaints against complainant, her husband and son were filed in the month of September 2015 alleging dishonour of cheque and complaint of non-payment of amount given to the complainant and her husband and son.

7. The complainant in her statement repeated her allegation. It was further stated that she went along with her husband to the police station but report was not lodged. On the next day, she went to Government Hospital, Moradabad with her husband for medical examination. Doctor conducted medical examination to external injuries but refused to her internal examination. The husband and father-in-law of the complainant also recorded statements. They stated that before they arrived at the house, the accused had already fled away. The IO asked the complainant “as to whether now she is ready to get done medical examination”, husband of the complainant answered “no, now there is no benefit out of medical examination. Now, I don't want to get my wife's medical examination done as much time has been elapsed”. When the husband was also asked some questions to get his wife medically examined, the following answers were given by the husband:

“Question.— Now get the medical examination of your wife done so that DNA, etc. proceeding could be done?

Ans.— This occurrence is of 22-10-2015 in the evening at 1930 hrs, and since then till now I have also had sexual intercourse with my wife several times. Thus, now there is no benefit out of medical examination and instead I myself will be positive.”

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* [State of

Karnataka v. L. Muniswamy, (1977) 2 SCC 699 : 1977 SCC (Cri) 404] held that 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. In para 7 of the judgment, the following has been stated: (SCC p. 703)

“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.”

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.”

In Ahmad Ali Quraishi (supra) paragraphs 2.9, 3, 19, 20 and 23 which have bearing on the issue relating to the present case are set out below:

“2.9. *The learned Sessions Judge by order dated 19-12-2017 summoned the appellants under Sections 323, 353, 504, 506 IPC and Sections 7/8 Pocso Act. The appellant filed an application under Section 482 CrPC in the High Court praying for quashing the entire proceeding of Complaint Case No. 1 of 2017 as well as the summoning order. The application has been dismissed by the High Court by the impugned judgment dated 21-2-2018 [Ahmad Ali Quraishi v. State of U.P., 2018 SCC OnLine All 5929] aggrieved against which judgment this appeal has been filed.*

3. *The learned counsel for the appellant in support of his case submits that dispute regarding property between the father of the appellant and the complainant is going on with regard to which Civil Suit No. 744 of 2015, Anwarul Haq v. Sajjad Ali is pending in the Court of Civil Judge (Junior Division). To put pressure on the appellant and to settle the property dispute pending in the Court of Civil Judge, the complainants have filed frivolous complaints against the appellants and other family members before the Human Rights Commission, police authorities as well as in the Court of Session Judge.*

19. *In the criminal revision filed against the said order of the Sessions Judge, this Court did not interfere with the rejection of an application under Section 156(3) CrPC, however, observed that the complainant has remedy to file appropriate application. The complainant thereafter had filed Complaint No. 1 of 2017. It is true that rejection of an application under Section 156(3) CrPC in no manner preclude a complainant to file a complaint under Section 200 CrPC.*

20. *From the sequence of the events as noticed above, it is clear that dispute regarding property between complainant and father of the appellant was pending much before the alleged incident dated 19-7-2016. The fact that on the same date of the incident Police visited the spot and had drawn proceedings under Sections 151, 107, 116 CrPC against both the parties and both the parties were required to maintain peace is a clear pointer to the nature of quarrel between the parties. It was more than six weeks thereafter that for the first time an application under Section 156(3) CrPC was filed by the complainant against the accused in the Court of Session Judge.*

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.”*

I have considered the submissions advanced by the learned Advocates for the petitioner, State and the complainant/opposite party no.2, the following issues emerged:

- The complainant's husband was arrested in connection with Barasat Women Police Station case no. 66/2014 dated 03.06.2014.
- The petitioner came down to Kolkata to assist the complainant's husband so that he can be released from the case.
- The complainant and other family members thereafter followed.
- The complainant and the accused boarded at Palash Hotel. While the complainant's version is that only a single room being Room no. 927 was booked. The manager of the Hotel has been examined as a witness whose version reflects that two rooms were booked i.e. Room no. 927 and 928 and the complainant stayed at Room no. 928.
- The Public Prosecutor has also submitted that from the Case Diary it would reflect that the complainant refused to undergo medical examination on 03.06.2014.
- There has been a delay of five months in informing the incident to the police authorities.
- The complainant has introduced herself as a Professor.
- The family of the complainant and the accused are at loggerhead involving monetary issues and both the families have complained to police stations relating to their disputes. Further the cheque issued by the husband of the complainant to the accused was dishonoured and to that effect complaint has been filed before the jurisdictional Court.

Considering the cases and counter cases in which both the families are involved, it would be difficult to believe the explanation offered for the delayed FIR, as both the parties were regularly filing complaints with police stations over issues relating to transactions, threats and of dire consequences. Furthermore in this case the complainant refused to undergo medical examination, which is in addition to the mis-statement made by her in the FIR (complaint) that only a single room has been booked at Hotel Palash, revealing her mala fide intention to rope in the petitioner in a proceeding under Section 376 of the Indian Penal Code.

Taking into account the factual framework, the background and the broader context in which the case was initiated, I am of the considered view that the authorities relied upon by the petitioner viz, Vineet Kumar (supra) and Ahmad Ali Quraishi (supra) do apply squarely in the facts of the present case.

Thus, the proceedings arising out of Barasat Women P.S. case no.66/2014 dated 03.06.2014 including the charge-sheet filed therein as also the order dated 29.02.2020 are hereby quashed.

Petitioner is discharged from the proceedings relating to the aforesaid case.

Accordingly CRR 149 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby made absolute.

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

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

(Tirthankar Ghosh, J.)