

Form J(1)

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

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**IA No. CRAN/3/2022
in
CRR 701 of 2022**

**Seema Chatterjee & Ors.
Vs.
The State of West Bengal & Anr.**

**For the petitioners : Mr. Debajyoti Deb, Adv.,
Mr. Sanjoy Kumar Das, Adv.
Mr. Somdyuti Parekh, Adv.**

**For the State : Mr. Swapan Banerjee, Adv.,
Mr. Anindya Sundar Chatterjee, Adv.**

Judgement on : 10.11.2022.

Bibek Chaudhuri, J.

Affidavit-of-service filed in Court today be kept with the record.

Petitioners are charge-sheeted accused persons in connection with ACGR Case No. 4389/2019 arising out of Netaji Nagar Police Station Case No. 323/2019 dated 12th September, 2019 under Sections 341/323/509/427/114 of the Indian Penal Code. The aforesaid case is pending in the 1st Court of the Learned Judicial Magistrate at Alipore, South 24-Parganas. In the instant revision, the petitioners have prayed for quashing of the charge-sheet.

The *de facto* complainant/opposite party no. 2 is the daughter of one late Satish Ranjan Chatterjee. The petitioner no. 2 is the full

brother of the *de facto* complainant and others are near relatives of the *de facto* complainant. The *de facto* complainant filed a suit for partition and injunction against the petitioners in the 5th Court of the Learned Civil Judge (Senior Division) at Alipore which was registered as Title Suit No. 1071/2018. In the said suit an order of temporary injunction was passed in favour of the *de facto* complainant. The defendants challenged the said order of injunction before this Court by filing a miscellaneous appeal being FMAT 393/2019. The Division Bench of this Court vide order dated 4th September, 2019 allowed the appeal on contest and the order of injunction granted by the Trial Court was set aside. It was *prima facie* held that the *de facto* complainant could not produce any document in support of her claim of ownership over the property in question.

Immediately after the order of the Division Bench of this Court in the aforementioned appeal was passed, it is alleged on behalf of the petitioners that the *de facto* complainant/opposite party no. 2 filed a written complaint before the jurisdictional Police Station on some false allegation against the petitioners on the basis of which Netaji Nagar Police Station Case No. 323 dated 12th September, 2019 under Sections 341/323/509/427/114 of the Indian Penal Code was registered against the petitioners and finally charge-sheet was filed against them. It is contended by Mr. Deb, Learned Advocate on behalf of the petitioners that the *de facto* complainant has no right, title and possession over a piece of property originally owned by one Satish Ranjan Chatterjee, since deceased. The present co-sharers in respect of the said property executed a development agreement of the said property with a third party developer. The *de facto* complainant filed a false suit to stall the development of the said

property. When she failed to succeed, a false criminal complaint was filed against the petitioners.

It is also submitted by Mr. Deb that Police submitted charge-sheet only on the basis of the written complaint and statement of the daughter and a near relative of the *de facto* complainant. The Investigating Officer failed to examine any independent witness at the time of investigation to ascertain as to whether any such incident as alleged by the *de facto* complainant actually took place or not. It was the bounden duty of the Investigating Officer to examine independent witnesses of the locality to ascertain the truthfulness or veracity of the allegation made by the *de facto* complainant in the complaint especially when the accused persons/petitioners are close relatives of the *de facto* complainant and the relation between the parties is inimical. It is also submitted by Mr. Deb, Learned Advocate for the petitioners that the Investigating Officer failed to collect any material in support of the allegation under Section 323 of the Indian Penal Code. With regard to the allegation under Section 509 of the Indian Penal Code, nothing is found from the statement of the witnesses except a general and omnibus allegation that the petitioners insulted the *de facto* complainant with filthy language in course of a quarrel which took place on 12th September, 2022. The *de facto* complainant alleged in her written complaint that the petitioners caused damage of her spectacles. On the basis of such allegation charge-sheet has been submitted against the petitioners under Section 427 of the Indian Penal Code. Surprisingly enough, the Investigating Officer also did not seize the damaged spectacles which might be used as a material evidence during trial of the case. Therefore, it is submitted that charge-sheet may be quashed.

Learned Public Prosecutor-in-Charge, on the other hand, submits that when charge-sheet has been filed, the petitioners may get the opportunity to agitate all such facts at the time of consideration of charge/examination of the accused persons under Section 251 of the Code of Criminal Procedure.

It is true that time and again the Apex Court has cautioned the revisional Court from exercising its inherent power in quashing the charge-sheet and it is stated that such power should be used very sparingly in rarest of rare cases.

Section 482 of the Code of Criminal Procedure reserves the power unto the High Court to make such order as may be necessary (1) to give effect to any order under this Code, (2) to prevent abuse of the process of any Court. (3) otherwise to secure the ends of justice. Thus, Section 482 of the Code does not confer any new power on the High Court, but only saves the inherent power of the court. In relation to quashing of a criminal procedure applying its inherent power under Section 482, it is neither possible nor desirable to frame any set of rules which would govern the exercise of inherent jurisdiction. In **State of Haryana & Ors vs. Bhajan Lal & Ors** reported in **1992 SCC (Cri) 426**. The Hon'ble Supreme Court lays down the following broad guidelines where a criminal proceeding may be quashed under Section 482 of the Cr.P.C.

(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 concerned Act (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 concerned Act, 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.*

At the same time, the Apex Court worded a caution that the power of quashing a criminal proceeding should be exercised very sparingly

and with circumspection and that too in the rarest of rare cases. The court will embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

The principle laid down in Bhajan Lal's Case (supra) is consistently following in subsequent decisions by the Hon'ble Supreme Court. Amongst them we may profitably referred to the following decisions:

(1) Monica Kumar (Dr) vs. State of U.P : (2008) 8 SCC 781

(2) Mrs. Dhanalakshmi vs. R. Prasanna Kumar & Ors. : AIR 1990 SC 494

(3) Municipal Corporation of Delhi vs. Ram Kishan Rohtagi & Ors. : (1983) 1 SCC 1, and lastly

(4) Ramveer Upadhyay & Anr. vs. State of UP & Anr. : (Special Leave Petition (CRL.) No.2953 of 2022 decided on 20th April, 2022).

While examining the charge-sheet of this case in the light of the above mentioned precedents and guidelines formulated by the Hon'ble Supreme Court, it is ascertained that even if the statement made by the defacto complainant in her written complaint and/or the

statements of the witnesses recorded in support of the prosecution case are taken at their face value these also do not disclose the essential ingredients of offence under Section 498A of the IPC against the petitioners. Only material that has surfaced out against the petitioners is that they being the mother and sister induced and influenced the husband of the defacto complainant to treat the defacto complainant with cruelty. Even if such allegation is accepted at its face value this does not prime facie establish a charge under Section 498A of the IPC. The Investigating Officer failed to collect any material against the petitioners in support of the offence under Section 323/325 of the IPC.

Thus, this court finds that when a charge-sheet is filed without any material or prima facie evidence against the petitioners, the High Court can quash a criminal proceeding because the petitioners should not be allowed to face trial in a criminal proceeding unnecessarily in the absence of any material against them. On due appreciation of entire materials on record, this Court is of the view that the instant charge-sheet has been filed without collecting any material evidence against the petitioners and the same is liable to be quashed.

Accordingly, the instant revision is **allowed** on contest. Charge-sheet No. 62/2021 dated 28.02.2021 filed against the

petitioners under Sections 341/323/509/427/114 of the Indian Penal Code be quashed.

All connected applications are also **disposed of**.

(Bibek Chaudhuri, J.)