

IN THE HIGH COURT AT CALCUTTA
(Criminal Appellate Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

C.R.R. 794 of 2019

With

C.R.R. 611 of 2019

Sri Sukumar Ghosh & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioners : Mr. Prasanta Kumar Banerjee,
Ms. Indrani Nandi.

For the State : Mr. Swapan Banerjee,
Mr. Suman De.

For the Opposite Party no. 2 : Mr. Anirban Ghosh.

Heard on : 19.09.2022

Judgment on : **23.09.2022**

Shampa Dutt (Paul), J.:

The present revisional application under Section 482 of the Code of Criminal Procedure 1973 has been filed praying for quashing of the FIR in connection with Jangipara Police Station Case No. 93 of 2017 dated 24.04.2017 under Section 188/34 of the Indian Penal Code in G.R. Case No. 965 of 2017. The petitioners case herein is that the Opposite Party no. 2 lodged a false complaint before the Officer in-charge, Jangipara Police Station, Hooghly against the petitioners on 19.04.2017. The complaint of the Opposite Party no. 2 was to the effect that they are the legal heirs of Late Ghanteswar Ghosh and are residing in their joint property at Bhimpur and that the petitioners were constructing their house forcibly, inspite of an injunction order passed by the Hon'ble High Court, Calcutta in C.O. no. 2439 of 2016 and Title Suit No. 257 of 2016. The Opposite Party no. 2 further stated that on the basis of the said complaint construction was stopped but subsequently the petitioners again started constructing the building. Police came to the spot and stopped the illegal construction. But on departure of the police the petitioners again started the construction and on that night they completed the roof of the said construction. As such the said complaint was filed on 19.04.2017, on the basis of which Jangipara P.S. Case no. 88 of 2017 was started under Section 188/34 of Indian Penal Code against the petitioners.

Mr. Prasanta Kumar Banerjee, learned Advocate appearing on behalf of the petitioners, submits that Section 188/34 of the Indian Penal

Code is not applicable in the present case as the ingredients required to constitute the said offence is not found in the complaint before the police.

It is further submitted that the petitioners and the O.P. no. 2 are brothers and sons of Late Ghanteswar Ghosh and that the O.P. No. 2 Samir Kumar Ghosh filed a suit being Title Suit No.68 of 2015 against the petitioners who are the defendants in the said suit for injunction and the said matter ultimately came up before the Hon'ble High Court at Calcutta being C.O. No. 2439 of 2016 and the Hon'ble High Court by its order dated 28.03.2017 was pleased to direct the parties to maintain status quo as on the date of the suit in respect of the possession over plot no. 978 till disposal of the application.

It is the case of the petitioners that they have not violated any order of the Hon'ble Court and the police on the basis of a false FIR submitted charge-sheet under Section 188/34 of the Indian Penal Code, which is illegal, motivated and baseless and the police was wrong to initiate such proceeding. Accordingly, petitioners have prayed for quashing of the proceeding.

Mr. Swapan Banerjee, learned Advocate appearing for the State has placed the case diary and submitted that the investigation in this case has already ended in chargesheet and the matter is ready for trial. It is further submitted that the petitioners have only prayed for quashing of the FIR.

This Court, on perusal of the prayer in the revisional petition finds that the petitioners have further prayed for setting aside of the proceedings as well relating to Jangipara P.S. Case No. 88 of 2017.

Mr. Anirban Ghosh, learned lawyer for the opposite party no. 2/complainant has filed certified copies of evidence adduced before the Trial Court in G.R. Case No. 965 of 2017 relating to Jangipara P.S. Case No. 88 of 2017. It is submitted that trial has already commenced in the said case and as such the petitioners prayer is liable to be rejected.

Heard the submission made by all the parties to the case considered. In the present case the grievance of the O.P. no. 2 (complainant) is that the petitioners violating the Court orders have made illegal constructions in the joint property. On the basis of such allegation the police started the present case under Section 188 of the Indian Penal Code.

Admittedly the dispute between the parties is civil in nature. The matter is also pending before a Civil Court being Title Suit no. 257 of 2016. The order of injunction passed by the Hon'ble Court was also under its Civil Revisional Jurisdiction.

Section 188 of the Indian Penal Code lays down.

“188. Disobedience to order duly promulgated by public servant.—
Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction;

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.—An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

Ingredients of offence. — *The essential ingredients of the offence under Section 188 are as follows:*

- (1) There was promulgation of an order;*
- (2) Such promulgation was made by a public servant;*
- (3) Public Servant was legally empowered to make the promulgation;*
- (4) Promulgation directed not to do certain things or to take certain orders in connection with certain property in his possession or management;*
- (5) Accused knew of the promulgation;*
- (6) Accused disobeyed it;*
- (7) Such disobedience caused or tended to cause obstruction, annoyance, injury, or risk of the same to a person lawfully*

employed, or caused or tendered to cause danger to human life, health or safety or a riot or affray.”

Thus, it is seen that none of the ingredients required to constitute an offence under Section 188 of the Indian Penal Code are found in the petition of the complaint.

The Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others (2021) SCC online SC 315*** has laid down the guidelines to be followed by the High Courts while exercising its power under Section 482 of the Cr.P.C./or under Article 226 of the Constitution of India in para 80 of the said judgment 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.

The court while deciding the said case also considered several other judgments of the said Court relating to the core issue therein, relied upon by the learned lawyer for the appellants, being:-

- (a) *State of Telangana vs. Habib Abdullah Jeelani*, (2017) 2 SCC 779.
- (b) *State of Haryana vs. Bhajan Lal*, 1992 Supp (1) SCC 335.
- (c) *Imtiyaz Ahmad Vs. State of Uttar Pradesh*, (2012) 2 SCC 688.
- (d) *Ravuri Krishna Murthy Vs. The State of Telangana (Criminal Appeal Nos. 274-275 of 2021, decided on 05.03.2021)*.
- (e) *Asian Resurfacing of Road Agency Private Limited Vs. Central Bureau of Investigation*, (2018) 16 SCC 299.

The respondents nos. 2 to 4 therein relied upon the ruling in:-

- i) *State of Karnataka Vs. L.Muniswamy*, (1977) 2 SCC 699.

Several other judgments of the Court were also placed before the Court while considering the said case. The Court took notice of the decisions in:-

- i) *R.P. Kapur vs. State of Punjab* 1960 AIR 862.
- ii) *State of Andhra Pradesh vs. Golconda Linga Swamy and Anr.* (Appeal (crl.) 1180 of 2003) dated 27.07.2004.
- iii) *Sanapareddy Maheedhar Seshagiri vs. State of Andhra Pradesh* Appeal (crl.) 1708 of 2007 dated 13.12.2007.

iv) State of Maharashtra & Ors. Vs. Arun Gulab Gawali & Ors.

Criminal Appeal no. 590 of 2007 dated 27.08.2010.

v) State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554.

vi) S.M. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653.

vii) Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195.

viii) Satvinder Kaur v. State (Govt. Of NCT of Delhi), (1999) 8 SCC 728.

ix) Supdt. Of Police, CBI v. Tapan Kumar Singh, (2003) 6 SCC 175.

x) P.Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24.

xi) Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh, 2020 SCC Online SC 958.

xii) Special Director v. Mohd. Ghulam Ghouse, (2004) 3 SCC 440.

xiii) Nitco Tiles Ltd. V. Gujarat Ceramic Floor Tiles Mfg. Association, (2005) 12 SCC 454.

xiv) Hindustan Times Limited v. Union of India, (1998) 2 SCC 242.

xv) Kranti Associates (P) Ltd. V. Masood Ahmed, (2010) 9 SCC 496.

Among others.

And finally the Court laid down the guidelines as noted above.

Thus in view of the guidelines of the Supreme Court, when there is a specific provision in the code or the concerned Act, providing efficacious redress (before an appropriate forum) for the grievance of the

aggrieved party, High Court should quash the proceeding, invoking power under section 482 of the code.

In the present case, the complaint before the police relates to violation of an injunction order passed in the civil jurisdiction, as such the grievance of the Opposite Party no. 2 has to be addressed before the appropriate forum.

It appears from the materials in the case diary that the materials collected by the Investigating Officer during investigation does not contain any of the ingredients as required to prima facie constitute an offence under Section 188/34 of the Indian Penal Code. The petition of complaint (FIR) clearly makes out a case of civil dispute and violation if any of an order of injunction, does not make out a prima facie case under Section 188/34 of the Indian Penal Code and as such does not disclose any cognizable offence.

The Supreme Court says that, a quashing of a complaint/FIR should be an exception rather than an ordinary rule.

The prosecution case before this Court is a case where it is clearly seen that no cognizable offence or offence of any kind is disclosed in the First Information Report and as such this Court cannot permit the said proceedings to continue and this is one of the said rare circumstances in which the prayer of quashing should be considered.

Having considered the aforesaid facts and circumstances of the case, if the present proceeding is allowed to continue, it would be sheer abuse of process of court and as such this is a fit case where, invoking

the power under Section 482 of the Code of Criminal Procedure, the present proceeding is required to be quashed.

Accordingly, **CRR 794 of 2019 with CRR 611 of 2019 is allowed**
The proceeding in Jangipara Police Station Case No. 93 of 2017 dated 24.04.2017 under Section 188/34 of the Indian Penal Code in G.R. Case No. 965 of 2017 is hereby quashed.

No order as to costs.

Urgent photostat certified copies of this Judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Shampa Dutt (Paul), J.)