

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1119 of 2020

Amit Bhagat

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Mayukh Mukherjee,
Mr. Abhishek Dutta,
Ms. R. Singh.

For the O. P. No. 2 : Mr. S. Gangopadhyay,
Mr. Arpan Mukherjee.

For the State : Mr. Madhusudan Sur,
Mr. D. Pramanick.

Heard on : 31.10.2022

Judgment on : 11.11.2022

Shampa Dutt (Paul), J.:

The revisional application for quashing of proceedings in A.C.G.R Case no. 3525 of 2019 arising out of Garfa Police Station Case no. 316 of 2019 dated July 30, 2019 under sections 376/328 of the Indian Penal Code, presently pending before the learned additional Chief Judicial Magistrate, at Alipore, South 24 Parganas, is moved by the petitioner in presence of the opposite parties and State. The Petitioner's case is that the Opposite Party no. 2 (Complainant) has lodged a case being Garfa Police Station case no. 316 of 2019 dated July 30, 2019 under sections 376/328 of the Indian Penal Code (hereinafter referred to as the "said case") against the petitioner.

It is alleged that the petitioner met opposite party no. 2 on a social networking site and thereafter they went for a movie. On 22nd July, 2019 the petitioner allegedly took the opposite party no. 2 to his flat and drugged her drink and thereafter physically abused her. When the opposite party no. 2 regained consciousness the petitioner dropped her to her office and then her home. After a lot of deliberations the opposite party no. 2 lodged the complaint, albeit after a considerable delay of 8 days. Charge sheet in the said case being Garfa Police Station charge sheet no. 280 of 2019 dated 30th September, 2019 under Sections 376/328 of the Indian Penal Code has been submitted.

It is the defence of the petitioner /accused that the entire case has been concocted by the opposite party no. 2 to frame the petitioner. That from a bare perusal of the said charge sheet it is evident that the opposite party no. 2 has

failed to adduce any cogent evidence against the petitioner to substantiate her case.

The opposite party no. 2/complainant has refused to undergo medical examination, and was asked to submit documents relating to her treatment post the alleged incident before the investigating authority. However, she has failed to produce any such document to substantiate her claims. Even on the date of the alleged incident, the opposite party no. 2 spent the rest of the day with the petitioner and that the petitioner even dropped her home. The opposite party no. 2 was/is still in touch with the petitioner after the alleged incident. No prima facie case been made out under section 376/328 of the Indian Penal Code from the allegations contained in the first information report.

Mr. Mayukh Mukherjee, Ld. Counsel for the petitioner has submitted that the proceedings are bad in law and is thus not maintainable. No prima facie case is made out under Sections 376/328 of the Indian Penal Code against the petitioner. From the allegations contained in the first information report, it is clear that there has been 8 days delay in lodging of the said case. The opposite party no. 2 has refused to undergo medical examination to determine the commission of any offence under section 376 of the Indian Penal Code. The opposite party no. 2 has failed to substantiate her claim that any offence under section 328 of Indian Penal Code had at all been committed. The opposite party no. 2 has also failed to produce any document relating to any

treatment that she had undergone, post the alleged incident. There is no evidence on record that warrants a case under section 379/328 of the Indian Penal Code to be continued against the petitioner. The continuance of the said case will only bring undue hardship upon the petitioner and would be an abuse of process of law.

That it is expedient in the interest of justice and to uphold the dignity of law that an appropriate order be passed by this Court by exercising its jurisdiction under section s 401 and 482 of the Code of Criminal Procedure, 1973 quashing the proceedings in the said case along with all orders passed therein.

Mr. Mukherjee has relied upon the following judgments of the Supreme Court.

1) (2013) 10 Supreme Court Cases, 591 Umesh Kumar Vs State of Andhra Pradesh & Anr.

“20..... The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge.....”

21. In *Rajiv Thapar v. Madan Lal Kapoor* [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] this Court while dealing with the issue held as follows :

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1. Step one : Whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two : Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three : Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four : Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?”

**2) (2017) 13 Supreme Court cases 369 Vineet Kumar and Ors. Vs
State of Uttar Pradesh & Anr.**

“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.”

The Criminal proceedings in the said case was quashed exercising it's jurisdiction under sec 482 Cr.P.C. by the High Court and upheld by the Supreme Court.

Mr. Ashok Das the Learned Counsel for the opposite party no. 2 has argued that there is sufficient evidence in the charge sheet making out a prima facie case against the accused petitioner, who took advantage of the Opposite party no. 2's trust by making her helpless to resist such abuse.

The petitioner admittedly being married has taken advantage of the opposite party no. 2's innocence by striking a friendship on a social network

site and such heinous crime should not go unpunished in the interest of justice.

The counsel has thus prayed for dismissal of the revisional application by relying upon the following judgments of the Supreme Court.

- a) **M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021), Criminal Appeal No. 330 of 2021**, Where in the Court citing several precedents held :-

“ * * * * *

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;

* * * * *

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;

*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;

* * * * *

b) **Ramveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr.,**
Special Leave petition (CRL.) No. 2953 of 2022, where in the Court
 held :-

*“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under **Section 482** of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under **Section 482** of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.**”*

The Court while deciding the Case relied upon several precedents.

Mr. Sur, Learned Counsel for the State has produced the Case Diary submitting that the investigation in this has ended in a charge sheet as there is sufficient material collected making out a cognizable case against the petitioner/accused.

Heard the submissions of all stakeholders. Considered the materials on record and case diary.

Several Statements have been recorded under section 161 Cr.P.C. by the investigating officer. There are eye witnesses who have seen the opposite party no. 2 with the petitioner in his office cum residence (place of incident).

In a friendship between adults, no physical overtures can be imposed without the consent of the other.

A friendship or a relationship is about safety, compassion, honesty and trust. All these ingredients are present in the written complaint. So the criminal proceedings herein prima facie is not malafide and maliciously instituted with ulterior motive. The antecedent of the case and the foundation is based on friendship and trust and thus not manifestly attended with mala fide and/or maliciously initiated with an ulterior motive for wreaking vengeance on the accused and/or with a view to spite him due to private and personal grudge, (as in the words of the Supreme Court in ***State of Haryana and Ors. Vs Bhajan Lal & Ors. (supra)***).

In **Umesh Kumar Vs State of Andhra Pradesh and Anr. (Supra)** the Supreme Court **also** held :-

“20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (Vide Pepsi Foods Ltd. v. Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] , Ashok Chaturvedi v. Shitul H. Chanchani [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704 : AIR 1998 SC 2796] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] .)

21. In Rajiv Thapar v. Madan Lal Kapoor [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] this Court while

dealing with the issue held as follows : (SCC p. 348, para 30)

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1. Step one : Whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two : Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three : Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four : Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?”

22. In State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] *this Court dealt with an issue of whether an application under Section 482 CrPC for quashing the charge-sheet should be entertained before cognizance is taken by a criminal court and held as under : (SCC pp. 269-70, para 68)*

“68. ... Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to ‘killing a stillborn child’. Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained. ... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report.”

(emphasis supplied)

23. *The issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82 : AIR 1987 SC 877] this Court held as under : (SCC p. 318, para 16)*

“16. ... It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant.”

24. In Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 : AIR 2007 SC 1274] *this Court held as under : (SCC p. 43, para 74)*

“74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a

political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained.”

25. In State of A.P. v. Golconda Linga Swamy [(2004) 6 SCC 522 : 2004 SCC (Cri) 1805 : AIR 2004 SC 3967] this Court held as under : (SCC p. 529, para 8)

“8. ... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”

(See also K. Karunakaran v. State of Kerala [(2007) 1 SCC 59 : (2007) 1 SCC (Cri) 251] .)

26. *Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.*

27. *The scheme for inquiry/trial provided under CrPC is quite clear. After investigation, report under Section 173(2) CrPC is to be submitted before the competent court i.e. the Magistrate having jurisdiction in the matter and the Magistrate may take cognizance under Section 190 CrPC. However, it is still open to the Magistrate to direct further investigation under the provisions of Section 173(8) CrPC. If the case is triable by the Court of Session, the Magistrate would commit the case to the said court under Section 209 CrPC. It is for the court to examine whether there is sufficient material collected during investigation and filed along with the charge-sheet that a prima facie view can be*

taken to proceed against the accused and in view thereof, frame charges under Section 228 CrPC. At this stage the remedy available to the accused is to ask for discharge under Section 227 CrPC. In case charges are framed the accused has to face the trial, charges can be added/alterd at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 CrPC. The only legal requirement is that a witness has to be recalled as provided under Section 217 CrPC when a charge is altered or added by the court.”

30. In State of Maharashtra v. Salman Salim Khan [(2004) 1 SCC 525 : 2004 SCC (Cri) 337 : AIR 2004 SC 1189] this Court deprecated the practice of entertaining the petition under Section 482 CrPC at a premature stage of the proceedings observing as under : (SCC pp. 527-29, paras 4 & 12)

“4. ... The arguments regarding the framing of a proper charge are best left to be decided by the trial court at an appropriate stage of the trial. Otherwise, as in this case, proceedings get protracted by the intervention of the superior courts.

In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. ...”

In the instant case, charge-sheet has been filed and cognizance has been taken by the Magistrate concerned; the committal proceedings have not yet taken place; and some of the offences attracted in this case are exclusively triable by the Sessions Court.

The Supreme Court in State of Maharashtra vs. Salman Salim Khan

(2004) 1 SCC-525, held:-

“12.....In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial.....”

At present the only material before this Court is the charge sheet included in the case diary and at this stage, it is premature to come to a clear finding. The materials in the case diary and the charge sheet there in makes out a cognizable offence against the accused/petitioner and there is sufficient materials for proceeding against the accused/petitioner towards trial and the inherent power of the court should not be exercised to stifle a legitimate prosecution (in the words of the Supreme Court).

The Charge Sheet and the evidence placed in support thereof, form the base to take or refuse to take cognizance by the competent court.

Applications against charge sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial, **amounts to pre trial of Criminal trial. (State of Bihar Vs P.P. Sharma, AIR 1991 SC 1260).**

The ultimate test therefore, is whether the allegations have any substance (**Prakash Singh Badal Vs State of Punjab, AIR 2007 SC 1274**).

In the Present case there is substance in the allegations and material exists to prima facie make out the complicity of the applicant in a cognizable offence, which is triable by a court of sessions and as such the proceedings in this case should not be quashed and this is a fit case where the inherent powers of the Court should not be exercised.

Accordingly, the criminal revisional application being **CRR 1119 of 2020 stands dismissed.**

No order as to costs.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)