

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1199 of 2021

Mahesh Singhania

Vs

The State of West Bengal & Anr.

For the Petitioner

: Mr. Partha Chakraborty,
Mr. A. Chakraborty.

For the State

: Mr. M. Sur,
Mr. D. Pramanick

Heard on

: 30.11.2022

Judgment on

: 23.12.2022

Shampa Dutt (Paul), J.:

The Revisional application is praying for quashing of Baruipur Police Station Case No. 194 of 2015 dated February 9, 2015 under Section 380/457/419/411 of the Indian Penal Code, 1860 now pending before the Learned Additional Chief Judicial Magistrate, Baruipur, South 24 Parganas.

The petitioner's case is that he is a Director of the Company namely Unnati Holding Limited and apart from carrying on other business is also carrying on business of manufacturing and selling of readymade garments and clothes of different dealers and customers in the usual course of business.

The opposite party/complainant filed a complaint with Baruipur Police Station Case No. 194 of 2015 dated February 9, 2015 under Sections 380/457/419/411 of the Indian Penal Code, 1860 against the Petitioner and another accused person namely Dependu Karmakar @ Tapan Sayal, son of Late Somnath Karmakar @ Somnath Sayal of 12, KaliKrishna Lane, Police Station – Shyampukur, Kolkata – 700 005, stating therein that on February 9, 2015 at about 9.30 p.m., he noticed that some person entered into their office which is practically being used for the activities of a NGO, near Khas Mallick Club. The said premises belongs to one Abdul Hannan Sardar. That on the first and

ground floor of the said building, the office of the Manihar Cheat Fund was carrying on its business but due to some litigations the said office remained closed but inside the office machines and spares were lying. Some persons broke open the pad lock of the entrance of the said office and forcefully entered into the said office and removed the sewing machines and spares lying there. Some machines and spares were found inside one vehicle with registration no. WB-03-0824 and when being asked as to their identity one of the said persons who entered forcefully into the said office room represented that he belongs to police force but did not disclose his name. They informed Baruipur Police Station as to the state of affairs but in the meantime the driver of the vehicle drove away the said vehicle with the machines.

The Petitioner's case is that one Nandan Sarkar and one Abdul Hannan Sarkar introduced themselves to the Petitioner through other accused person named in the instant case namely Dependu Karmakar who frequently used to visit the Petitioner with proposal of land deals. The said Dependu Karmakar introduced Nandan Sarkar to the Petitioner as manufacturer and trader of readymade garments who suffered loss due to adverse market demand.

Nandan Sarkar and Dependu Karmakar allured the petitioner with the proposal to transfer the business of said Nandan Sarkar in favour of the Petitioner who was also looking for expansion of his

business. They also proposed to transfer the entire machines and spares which all were out dated and turned scrap for a sum of Rs. 2,75,000/- (Rupees two lakhs seventy five thousand only) out of which Rs. 1,75,000/- (Rupees one lakh seventy five thousand only) was required to be paid to clear the dues of the machine supplier and the balance was to be received by the said Nandan Sarkar as total consideration for all the articles lying at his workshop at Jadavpur. They also proposed to acquire a premises in the suburban area of Kolkata for expansion of his business and offered a plot of land with structure lying at Mouza – Hariharpur, J.L. no. 1, R.S. no. 185, Touzi no. 250, R.S./L.R. Dag no. 97 and 97/994 under L.R. Khatian No.3342 (now being demarcated and numbered as holding no. 1025) within the limits of Hariharpur Gram Panchayet under Baruipur Police Station, District South 24 Parganas which belongs to Abdul Hannan Sardar.

Nandan Sarkar and Dependu Karmakar accompanied the Petitioner and inspected the said premises and assured to get the deal to purchase the land in favour of the Petitioner and also intimated the Petitioner that Sri Abdul Hannan Sardar agreed to sell the entire property for Rs. 36,00,000/- (Rupees thirty six lakhs only) which is to be paid within a period of 6 (six) months and upon payment of a sum of Rs. 5,00,000/- (Rupees five lakhs only), the possession was to be transferred in favour of the Petitioner and the Deed of Conveyance would be executed after payment of the total consideration amount.

The Petitioner being tempted with the offer of the said persons paid a said sum of Rs. 2,75,000/- to Nandan Sarkar towards payment of total consideration for purchasing the machines and spares and further paid a sum of Rs. 5,00,000/- vide pay order in favour of the Abdul Hannan Sardar towards the payment of earnest money for purchasing the property and the said Nandan Sarkar and Dependu Karmakar shifted machines to the said premises from Jadavpur workshop. The said persons assured that the signed agreement would be handed over when their Advocate would come. But they started to avoid the petitioner. They also attempted to dispossess one of the group Company of the Petitioner from the tenanted space lying under the jurisdiction of Shyampukur Police Station and necessary legal steps were initiated against the said persons for their offence. The said Abdul Hannan Sardar was absconding for having committed other offences.

The Petitioner then lodged a complaint with Baruipur Police Station but the said concerned Police Station asked the Petitioner to obtain an order from the Learned Chief Judicial Magistrate, Baruipur, District South 24 Parganas under Section 156(3) of the Code of Criminal Procedure, 1973)

The petitioner then filed an Application under Section 156(3) of the Code of Criminal Procedure, 1973 before the Learned Chief Judicial Magistrate, Baruipur, District South 24 Parganas vide Complaint Case

no. 432 of 2015 which was duly accepted by the said Learned court and the Learned Court was pleased to pass necessary order for proper investigation and enquiry into the offences committed by the aforesaid persons.

The Written Complaint lodged by the Opposite party no. 2 in the instant case also reveals the fact that the said Nandan Sarkar and Dependu Karmakar were trying to remove the machines and spares from the office in which the Petitioner was inducted upon payment of consideration money, which was agreed to be sold to the Petitioner upon payment of the total consideration money. It is for that reason the name of the Petitioner has been tagged with the instant case although it appears from the factual aspect of the case, that the Petitioner had no role to play in removing the machines and spares from the said office which were absolutely and exclusively conducted by the said persons named above, but the name of the Petitioner has been implicated in the instant case unnecessarily and with malafide intentions.

The Petitioner further states that the police officials of Baruiipur Police Station conducted investigation into the case and submitted charge sheet against the Petitioner and the said Dependu Karmakar wherein a prima facie case of cognizable offence has been made out by the investigating officer against the Petitioner and the said person although during investigation, the Petitioner disclosed the entire factual

aspect before the Investigation Officer and also submitted necessary papers and documents showing payment of substantial amount by the Petitioner in favour of the said persons for purchasing of the machines, spares and the amount paid for purchasing the land for official purpose but the Investigating Officers during investigation did not consider the said factual aspect narrated by the Petitioner and submitted the charge sheet against the petitioner which is absolutely on non-application of mind and without considering the actual aspect involved in the case and as such the said criminal case initiated by the Baruipur Police Station and the submission of charge sheet at a subsequent stage deserves to be **quashed for the ends of justice.**

The petitioner's further case is that the purported letter of complaint as well as the formal First Information Report as well as the submission of subsequent charge sheet do not disclose commission of any cognizable offence by the petitioner, and any further proceeding of the instant case would be an abuse of the process of court and is thus liable to be quashed invoking the inherent jurisdiction of this Hon'ble Court.

The petitioner further submits that any further continuation of the instant criminal proceeding so far the petitioner is concerned would be an abuse of process of Court for which the valuable time of the Learned Trial Court would be wasted and ought to be restricted to

prevent the abuse of the process of the Court for sub-serving full justice in favour of the Petitioner.

Mr. Partha Chakraborty, Learned Counsel for the petitioner

has submitted that the Written Complaint lodged by the Opposite Party no. 2 in the instant case also reveals the fact that the said Nandan Sarkar and Dependu Karmakar were trying to remove the machines and spares from the office in which the Petitioner was inducted, upon the payment of consideration money and which was agreed to be sold to the Petitioner upon payment of the total consideration money and for that reason the name of the Petitioner had been tagged with the instant case although it appears from the factual aspect of the case that the Petitioner had no role to play in removing the machines and spares from the said office but the name of the Petitioner has been implicated in the instant case unnecessarily and without any just cause or proper reasons.

The police officials of Baruipur Police Station conducted investigation into the case and submitted charge sheet against the Petitioner and the said Dependu Karmakar wherein a prima facie case of cognizable offence has been made out by the Investigating Officer against the Petitioner and the said Dependu Karmakar although during investigation, the Petitioner disclosed the entire factual aspect before the Investigating Officer and also submitted necessary papers and

documents showing payment of substantial amount by the Petitioner in favour of the said persons for purchase of the machines, spares and also the amount paid for purchasing the land for official purposes but the Investigating Officers during investigation did not consider the said factual aspect narrated by the Petitioner.

The charge sheet against the Petitioner is on absolutely non-application of mind and without considering the factual aspect involved in the case and as such the said criminal case initiated by the Baruipur Police Station and the submission of charge sheet at a subsequent state deserves to be quashed for the ends of justice.

That no commission of offences are made out against the petitioner from the plain reading of the letter of complaint and as such further involvement of the Petitioner on the basis of the purported FIR and subsequent charge sheet would amount to denial of justice.

That is a fit and proper case where the interference of this Hon'ble Court is attracted for quashing of the FIR vide Baruipur Police Station being P.S. Case no. 194 of 2015 dated February 9, 2015 under Sections 380/457/419/411 of the Indian Penal Code, 1860 now pending before the Learned Additional Chief Judicial Magistrate, Baruipur, South 24 Parganas including the charge sheet filed subsequently vide charge sheet no. 1161 of 2015 dated July 27, 2015.

That the purported letter of complaint as well as the formal First Information Report as well as the submission of subsequent charge sheet do not disclose commission of any cognizable offence by the petitioner at all for further proceeding in the instant criminal case and any further proceeding of the instant case would be an abuse of process of court and is liable to be quashed invoking the inherent jurisdiction of this Hon'ble Court.

That the continuation of the unfounded Criminal proceeding against the petitioner is otherwise bad in law and is thus liable to be quashed.

Mr. Madhusudan Sur, Learned Counsel for the State has submitted an attested copy of the case diary and submitted that there is sufficient evidence in the case diary making out a prima facie case of cognizable offence against the petitioner which led to the submission of charge sheet in accordance with law and has thus prayed for dismissal of the revisional application. Heard Learned Counsel at length. Perused the materials on record, including case diary. Considered.

From the materials before this court which includes the charge sheet in Baruipur Police Station case no. 194 dated 09.02.2015 under Section 457/380/419/411 IPC, against the Petitioner, Mahesh Singhanian (Absconding) and one Dipendu Karmakar of 12 No. Kalikrishna Lane, P.S. Shyampukur, Kolkata (Arrested on 09.02.2015)

it appears that the complainant has a NGO office on the ground floor in the house of Abdul Hannan Sardar. There was also a chit fund office of Monihar Company which was under lock and key. The said Abdul Hannan Sardar later kept Tailoring machines there. The said machines were taken away in a vehicle No. WB-03C 0824. by breaking open lock and key. **Accused Dependu Karmakar was detained who gave his statement under Section 161 CrPC confessing his guilt and stating that he carried out the said act on the instruction of the Petitioner no. 1, Mahesh Singhania, whose other people took away the machines and that he has been trapped.** The said machines were recovered and seized as shown by accused Dependu Karmakar from Khas Mallick more.

Surprisingly the Investigating Officer did not get the details of the Vehicle involved (WB 03 C0824) which is an important piece of evidence in this case.

The other factor to be considered is the contention of the petitioner that the investigating agency did not collect any of the documents he produced in support of his contention.

The said statement is not supported by the contents in the case diary which includes all the papers which the petitioner has annexed to his revisional application in support of his case.

Some of the documents filed by the complainant includes a petition under section 156 (3) of the Cr.P.C. filed by the Petitioner, Mahesh Singhania, against Nandan Sarkar, Dependu Karmakar and Abdul Hannan Sardar, owner of the disputed premises and the tailoring machines, The letter of complaint is dated 9th February, 2015. The case against the petitioner is also dated 09.02.2015.

It is contention of the petitioner that he has paid a sum of Rupees one lakh in cash to Nandan Sarkar and a sum of Rupees five lakhs to Abdul Hannan Sardar by a cheque dated 01.01.2015 and a further sum of Rs. 1,75,000/- to Nandan Sarkar towards full payment of the machinery, at Baruipur and Santospur by a Cheque dated 03.01.2015.

A memorandum of understanding dated 26th day of December, 2014 which **includes an Arbitration clause** between the petitioner's company and Nandan Sarkar is part of the case diary.

From the terms there in it is clear from clause 4 that the space at Ajoynagar and Baruipur is on "TENANCY BASIS".

The contention of the petitioner that Abdul Hannan Sardar had agreed to hand over possession of the property on payment of Rs. 5,00,000/- only when allegedly the total consideration amount is Rs. 36,00,000/- appears to be an unbelievable (oral) proposition. Admittedly there is no agreement for sale. The petitioner filed his

complaint dated 9th February, 2015 naming others along with Dependu Karmakar, who along with the petitioner herein has been charge sheeted in this case.

The petitioner in his complainant has alleged that he has been cheated by the said Nandan, Dependu and Abdul Hannan Sardar. On the other hand the said Dependu has stated that the machines were removed by him on the instructions of the petitioner by breaking open the premises.

Surprisingly, the petitioner as well as his opponents have named 'Dependu Karmakar' as an accused in their respective cases. From the materials on records and facts and circumstances of this case, it is evident that an alleged business deal which may have included transfer of land and then turned into a dispute for possession by way of using unlawful force. Whether or what is the exact case is subject matter of trial.

Presently the material in the case diary clearly make out a prima facie case of cognizable offence against the petitioner.

The Supreme Court in **M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021), Criminal Appeal No. 330 of 2021**, 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;*

* * * * *

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.

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 prima facie make out a case of 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 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 1199 of 2021 stands dismissed.**

No order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Case diary be returned.

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

(Shampa Dutt (Paul), J.)