

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 1177 of 2019

Sahidul Islam Mondal & Ors.

-vs-

The State of West Bengal and anr.

For the Petitioners : Mr. Milon Mukherjee, Sr. Adv.
Mr. Monojit Bhattacharjee
Mr. Safiqul Islam
Mr. Saikat Karmakar

For the State : Mr. Madhusudan Sur, Ld. APP
Mr. Arijit Ganguly
Mr. Dipankar Paramanick

Heard on : 13.07.2022

Judgment on : 06.09.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved by the impugned order dated 18.03.2019 passed by the learned Additional District and Sessions Judge, Diamond Harbour in connection with G.R. Case No. 1546 of 2013 under sections 448/427/354/323/506/34 of India Penal Code (IPC) pending before the learned ACJM, Diamond Harbour, by which the revisional court affirmed the order of trial court dated 18.08.2018, petitioners preferred this application under section 227 of the constitution of India, read with section 482 of the

code of Criminal Procedure (Cr.P.C.). Learned Trial Court vide its order dated 18.08.2018 was pleased to reject the petitioners' prayer for discharge filed under section 239 of Cr.P.C after considering the materials in the case diary, including contents of complaint and the statements recorded under section 161 Cr.P.C., during investigation.

2. The opposite party no. 2, Musaraf Hossain Mondal filed a petition of complain before the learned ACJM, Diamond Harbour against the present petitioners, alleging commission of cognizable offence with a prayer for directing Officer-in-charge, Usti P.S. to register a case and to start investigation in terms of section 156(3) of the Cr.P.C. Accordingly, as directed by learned Magistrate, Usti P.S. treating petition of complain as FIR started investigation being Usti P.S. Case No. 196 of 2013 under section 448/427/380/379/354/323/506/34 of IPC. The investigation consequently culminated into charge sheet being Usti P.S. charge sheet 305 of 2013 dated 11.09.2013 for the offence punishable under section 448/427/354/323/506/34 IPC.

3. The learned Magistrate after taking cognizance supplied copies to the present petitioners and was pleased to fix the case for framing of charge. On 17.04.2018, the accused petitioners filed petition under section 239 Cr.P.C, praying for their discharge from this case. Before the court below, it was urged on behalf of the petitioners that a long standing land dispute and other disputes are going on between the parties and out of grudge the opposite party no. 2 has initiated the present proceeding against the petitioners. Petitioners contended that the charge submitted against the accused persons /petitioners herein is groundless and has no basis, since the materials on record available

in the case diary, does not support the case of the prosecution and as such the petitioners are liable to be discharged. Petitioners have relied upon the following decision:-

SL. No.	Name	Citation
1	State of Haryana and Ors Vs. Bhajan Lal & Ors.	1992 SCC (Cri)426
2.	Hitendra Vishnu Thakur & Ors Vs State of Maharashtra & Ors	1994 SCC (Cri)1087
3.	C.N. Rudramurthy Vs. K. Barkathullaa Khan & Ors	(1998) 8 SCC 275
4.	Director of settlements, A.P. & Ors Vs Apparao & Anr	(2002)4 SCC 638
5.	Lalita Kumari Vs Government of Uttar Pradesh & Ors	(2014) 2 SCC 1
6.	Priyanka Srivastava & Anr Vs. State of UP & Ors.	(2015) 6 SCC 287
7.	Yakub Abdul Razak Memon Vs. State of Maharashtra	(2015) 9 SCC 552
8.	Mahendra Kumar Jalan & Ors Vs. State of West Bengal	(2017) 2CCrLR (Cal) 451
9.	Mukul Roy Vs. State of West Bengal	2019CrLJ 245
10.	Babu Venkatesh Vs State of Karnataka	2022 SCC OnLine SC200

4. State vehemently opposed the said prayer and State also supported the order impugned by which the prayer for discharge was rejected and State in support of their contention relied upon judgment reported in **AIR 1955 SC 196**.

5. The court below while disposed of the Criminal Motion being No. 146 of 2018, was pleased to observe that the old property dispute between the parties may be there but mere existence of long standing property dispute does not give an escape route to the alleged wrong doers to get a favourable order at the budding stage of the proceeding. Court further held that the statement of the witnesses recorded under section 161 Cr.P.C and other materials, prima facie, directed to arrow of accusation against the present petitioners and learned Magistrate is not supposed to held a mini trial at the stage of framing of charge.

6. Referring Om Prokash case ***Om Prakash & another Vs. The State*** reported in **1983 Cr.L.J 1151 (Cal)** decided by this High Court, the learned court below held that in that case upholding the order of the learned Additional Sessions Judge in a proceeding under section 482 Cr.P.C, the High Court observed that the real test for determining whether the charge should be considered groundless under section 239 Cr.P.C is that where the materials are such that even if unrebutted, make out no case whatsoever, and in such case the accused should be discharged under section 239 Cr.P.C.

7. Before the court below the plea was taken by the petitioners that the name of Noorjahan Bibi, wife of defacto complainant has failed to find its place in the witness list in the charge sheet nor her statement is found to have been

recorded through she is one of the alleged victims of the case, who alleged about outraging her modesty.

8. In response the court below held if prosecution fails to bring that witnesses for examination then the prosecution will face its legal consequence but mere non-examination of one of the victims under section 161 Cr.P.C. during investigation cannot make the entire accusation against the petitioners groundless, particularly, when the other witnesses have made their statements recorded under section 161 Cr.P.C accusing the petitioners.

9. Therefore, after considering the entire materials on record as well as materials produced by the prosecution under section 173 Cr.P.C learned court below affirmed the order passed by the learned Magistrate, being order dated 18.08.2018.

10. Mr. Milon Mukerjee, learned senior advocate appearing on behalf of the petitioner attacked the observation of the courts below, mainly, on two grounds.

11. Firstly, while filing petition of complaint before learned Magistrate under section 156(3) Cr.P.C, the learned Magistrate was pleased to order directing investigation treating petition of complaint as FIR, but has clearly ignored that opposite party no. 2 has not complied section 154(1) and 154(3) of the Cr.P.C and furthermore the direction made by Apex Court in ***Lalita Kumari vs. Government of Uttar Pradesh and ors.***, reported in **(2014) 2 SCC 1** and also the directions made in ***Priyanka Srivastava & another Vs. State of U.P. & Ors.*** reported in **(2015) 6 SCC 287** were also not followed by the courts below. Secondly, that the complaint and the materials collected so far during investigation is not at all sufficient to proceed against the petitioners.

12. Mr. Madhusudan Sur appearing on behalf of the State submits that investigation has already been ended in Charge Sheet and trial will commence after framing of charge and sufficient prima facie materials have been disclosed during investigation, and as such, the question of discharge the accused persons without trial at this stage does not arise.

13. Mr. Sur in this context relied upon old Apex Court judgment in **H.N. Rishbud and Inder Singh Vs. State of Delhi** reported in **AIR 1955 SC 196**, in support of his contention that even if there is any minor defect or irregularity occurred during investigation that would not vitiate the entire proceeding on account of alleged irregularity or defect.

14. Considered the rival submissions. It is not in dispute that the application under section 156(3) Cr.P.C was filed by opposite party no. 2 by which the FIR was registered on 04.06.2013, when admittedly the observations made in **Priyanka Srivastava (Supra)** case did not come into being. Opposite party no. 2 accordingly, did not have any scope to comply with the directions made in the said case at the time of initiation of the proceeding. Subsequently, the opposite party no. 2 was also not asked by the Magistrate to file any affidavit to that extent.

15. However, for the sake of better understanding, let me quote the observation of the Apex Court made in **Priyanka Srivastava (Supra)** case in paragraph 30 and 31:-

***“30.** In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any*

responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.”

“31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

16. From the aforesaid observation it is quite clear that the direction of filing application under section 156(3) Cr.P.C supported by affidavit is only for the purpose of verification of the allegations. Such direction became necessary as Apex Court observed that such kind of applications are being filed in a routine manner without taking any responsibility whatsoever and only to harass certain persons. So to make the applicant conscious that in case of filing false affidavit, he may face the charge of perjury, this direction was made compulsory by the Apex Court in such complain.

17. The present case has already crossed that stage of verification or to check veracity of the allegation, as after conclusion of investigation charge

sheet has been filed against the petitioners and both the courts below observed that there are grounds for proceeding for trial against the accused persons.

18. Mr. Mukherjee relied upon ***M.K. Jalan & Ors Vs. State of West Bengal*** and contended that direction made in ***Priyanka Srivastava (Supra)*** case will have retrospective operation being a procedural law as there is no mention in the judgment that it will be prospective in operation and accordingly, if opposite party no. 2 filed the application under section 156(3) Cr.P.C in the year 2013, even then this principle will apply. He further submits as because the said direction has not been followed so proceeding is liable to be vitiated and the accused persons should be discharged.

19. I am not agreeable with the aforesaid interpretation made by Mr. Mukherjee. Even the direction in respect of procedural law be taken at its retrospectivity, even then it does not have any impact upon the present proceeding as opposite party no. 2/complainant was not asked to file any affidavit and veracity of allegations *prima facie* verified and got tested with the submissions of charge sheet after conclusion of investigation.

20. Similarly, before lodging a complaint under section 156(3) Cr.P.C and before initiation of the investigation on the basis of an application under section 156(3) Cr.P.C, the applicant is required to comply the direction given in 154(3) Cr.P.C., has also become redundant herein in view of the fact that investigation has already been ended in charge sheet and even if there is any non-compliance of 154(3) Cr.P.C. by the opposite party no. 2, that may at best be treated as irregularity and for that ground alone the proceeding cannot be vitiated.

21. In the other limb of his argument Mr. Mukherjee argued that in the present case beside some statements recorded under section 161 Cr.P.C, nothing incriminating materials have been collected by I.O during investigation and for which if the trial is continued to be allowed that will be an abuse of the process of court in view of the fact that no corroborating material like injury report collected nor search, seizure has been conducted to substantiate the allegation leveled against the petitioners.

22. All these points were raised before the court below and learned court below discussed those issues in the impugned order.

23. In this context, it is to be mentioned that the scope of an application under section 482 Cr.P.C has been laid down in the judgment **State of Haryana & others Vs. Bhajan Lal & others** reported in **1992 Supp (1) SCC 335** and paragraph 102 and 103 may be quoted as followed:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.”*

“103. *We also give a note of caution to the effect 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; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”*

24. On perusal of written complaint, and the statement of witnesses recorded during investigation there is hardly any scope to say that there are no grounds to proceed with the case. In a prayer for quashing proceeding the High Court is not supposed to scan evidence, particularly when there is concurrent finding of facts by the two courts below unless there is apparent miscarriage of justice or it is required to prevent abuse of process of any court or to give effect to any order under the code.

25. In this context observation made by Apex Court in Para 12 of the judgment in ***Padal Venkata Rama Reddy Vs. Kovvuri Satyanarayana Reddy & Others***, reported in **(2011) 12 SCC 437** may be quoted:-

“12. *In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below.*

Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.”

26. In the present context on perusal of both the orders passed by courts below no inherent perversity is found nor there is anything about taking note of miscarriage of justice and as such, there is no scope to say that if the proceeding impugned is allowed to be continued, it would be an abuse of process of court.

27. Apex Court even held that High Court while exercise powers of a supervisory court under Article 227 of the constitution of India, cannot act as an appellate body to re-appreciate evidence. The High Court under Article 227 can interfere with the decisions of fact finding forum only when it's findings are perverse. Here judgments of both the court below does not suffer from perversity, rather both the orders are supported by reasons.

28. At this stage, when the complaint and also the materials available in the case diary including statements recorded under section 161 Cr.P.C., discloses prima facie cognizable offence against the petitioners and there is nothing to come to conclusion that the allegations are inherently improbable or being maliciously instituted, I find nothing to interfere with the rejection order passed by both the courts below, invoking power of this court, under section 482 Cr.P.C. or under Article 227 of the constitution of India.

29. In view of the above CRR 1177 of 2019 is dismissed.

However there shall be no order as to costs.

Urgent photostate certified copy of this order be given to the parties on usual undertaking.

(AJOY KUMAR MUKHERJEE, J.)