

29.06. 2022
item No.40
n.b.
ct. no. 35

CRR 1508 of 2021

**Sri Rebati Raman Kapas & Ors.
Vs.
State of West Bengal & Anr.**

Mr. Achyut Basu,
Ms. Punam Basu,
Ms. Sonam Basu,
.....for the Petitioners

Mr. Sudip Ghosh,
Ms. Bitasok Banerjee
.....for the State

Party/parties is/are represented in the order of their name/names appearing in the cause title. The revisional application is listed under the heading “Contested Application”.

Petitioners have filed affidavit of service, which indicate that service has been made upon the State through Learned Public Prosecutor, High Court Calcutta and upon Smt. Bandana Mondal. None appears for the opposite party no.2 namely, Bandana Mondal. The Revisional application is taken up for hearing.

Petitioners who are accused in Daspur Police Station Case No. 47 of 2021 dated 27.01.2021 have filed this application under Section 401 and 482 of the Code of Criminal Procedure, 1973, praying for quashing of the proceedings in G.R. Case No.96 of 2021 under Sections 341/323/345B/379/506/34 of the Indian Penal Code arising out of Daspur Police Station Case No.47 of 2021, pending before the Learned Additional Chief Judicial Magistrate, Ghata, Paschim Medinipur.

The facts relating to filing of this application is that opposite party no.2 lodged a written complaint before Daspur Police Station which give rise to Daspur Police Station case no.47 of 2021 dated 27.1.2021 under Sections 341/323/345B/379/506/34 of the Indian Penal Code.

A brief profile of the case is that on 21.1.2021 at about 9-30 a.m. to 10 a. m. when Bandana Mondal, the de facto complainant was cultivating the land in plot nos.2236 and 2237 under Mouza Rabidaspur, the accused persons who are petitioners herein, abused her in filthy language and when she protested, accused persons no. 1 to 4 surrounded her and starting pulling her clothes due to which she fell down. Accused no.1 outraged her modesty and assaulted her. Accused nos.3 to 5 committed theft of her gold ear wearings, the value of which was about Rs.25,000/-. At the relevant time on hearing hue and cry raised by complainant neighboring people rushed to the place of occurrence and the accused persons fled away. Police investigating into the case and submitted charge sheet Learned advocate for the State has produced the Case Diary.

It is argued on behalf of the petitioners that opposite party no.2 has repeatedly lodged complaints against the petitioner to harrash them. Learned advocate submitted that continuation of the proceedings on the basis of such a false complaint would result in abuse of the process of law, as such the proceedings in G. R. case No.96 of 2021 be quashed.

In support of his argument Learned Advocate for the petitioners relied upon the decision in the case of *State of Haryana*

Vs. Bhajan Lal report in *AIR 1992 SC 604*. It is submitted that in the said Judgment Hon'ble Supreme Court has laid down that 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 accused or where the allegations in the FIR do not constitute a cognizable offence and constitute a non-cognizable offence, no investigation is permitted by the concerned officer without an order of the Magistrate as contemplated under Section 155(2) of the Code, then court can exercise its inherent power under Section 482 of the Code of Criminal Procedure to prevent the abuse of process of any Court or otherwise to secure the ends of justice.

Learned Advocate for the petitioners further relied upon a decision in the case of *Dinesh Dutt Joshi Vs. The State of Rajasthan & Anr.* reported in 2002 SCC(Cri) 24, wherein paragraph 6 the Hon'ble Supreme Court observed as follows:

"6. Section 482 of the Code of Criminal Procedure confers upon the High Court inherent powers to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of the any Court or otherwise to secure the ends of justice. It is well established principle of law that every Court has inherent power to act ex debito justitiae – to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. The principle embodies in Section is based upon the maxim: Quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non potest i.e. when the law

gives anything to anyone, it gives also all those things without which the thing itself would be unavoidable. Section does not confer any new power, but only declares that the High Court processes inherent powers for the purposes specified in the Section. As Lacunae are sometimes found in procedural law, the Section has been embodied to cover such Lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this Section are however required to be reserved, as far as possible, for extraordinary cases.”

Fortified by the above decisions Learned advocate for the petitioners prayed for quashing of the proceedings on the ground that the FIR does not disclose any offence against the accused persons and the complaint has been lodged with a motive to harass the petitioners.

Mr. Sudip Ghosh, learned advocate for the State submits that the prayer for quashing has no merit as police after holding investigation has found prima facie material to proceed against the petitioners. It is submitted that though FIR has been lodged under Section 379 of the Indian Penal Code, no material under Section 379 of the Indian Penal Code has surfaced to constitute an offence under Section 379 of the Indian Penal Code. It is also submitted that though there is a case of assaulting, no injury report has been collected by the Investigating Officer.

Having considered the rival contention of the parties and the materials in the Case Diary, I find that the de facto complainant during her examination under Section 161 of Cr. P.C. has corroborated the statement so far as the alleged assault and the

offence of outraging of modesty are concerned. There is however no material to constitute the offence of theft. The case was started as a cognizable offence but subsequently charge sheet has been submitted only under Sections 341/323/345B/379/506/34 of the Indian Penal Code against four accused persons.

In view of the fact and circumstances, I am of the considered view that the disputes raised by the petitioners/accused persons are matters of fact which can be adjudged in course of trial only by way of demolishing the prosecution story through cross-examination. At this stage, while invoking the jurisdiction under Section 482 of the Code of Criminal Procedure this Court should refrain from anticipating the outcome of the trial. Under such circumstance I find no material in the revisional application and the same merits dismissal.

Interim order, if any stands vacated.

The Case Diary be returned to the Learned Advocate for the State.

Let a copy of this order be communicated to the Learned Additional Chief Judicial Magistrate, Ghatal, Pashim Medinipur.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Ananda Kumar Mukherjee, J.)