

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.R. 1197 of 2013  
CRAN/5/2014(Old No: CRAN/2874/2014),  
CRAN/6/2014(Old No: CRAN/3618/2014)**

**Raja Chatterjee  
-Vs-  
State of West Bengal & Anr.**

**For the Petitioner** : Mr. Sanjay Banerjee

**For the State** : Mr. Arijit Ganguly  
Ms. Purnima Ghosh

**Heard on** : 20.09.2022

**Judgment on** : 15.11.2022

**Ananya Bandyopadhyay, J. :-**

This revisional application has been filed under Section 482 of the Code of Criminal Procedure for quashing the proceedings of GR case No. 2208 of 2011 pending before the Court of the learned Metropolitan Magistrate, 6<sup>th</sup> Court, Calcutta arising out of New Market Police Station Case No. 254/2011 dated 30.06.2011.

Facts stipulated in the petition relate to a complaint filed by opposite party No.2 namely Kazi Mohammad Ali on 30<sup>th</sup> June, 2011 *inter alia*, stating that the petitioner i.e. Raja Chatterjee resided on the third floor of a building situated at 26 J.L. Nehru Road, Kolkata-87 wherein the complainant/respondent No.2 resided with his wife and daughter in suit

No. 33 and 38 on the first floor. The complainant and his family suffered harassment and mental torture due to irregular water supply. He further stated that the petitioner had illegally obtained water supply connections for himself creating disturbance in the flow of water in the flats. One Mr. Rizwan was appointed to regulate the water supply who in turn had deputed an unauthorized and inexperienced person to perform his duty on his leave, causing inconvenience to them. The complainant apprehended of being harassed without receiving water continuously for three days. Therefore, sought help and cooperation of the police to prevent further disturbance and harassment.

On the basis of the complaint, a formal FIR being No. 254 dated 30.06.2011 was instituted in New Market police Station under Sections 120B/430 of the Indian Penal Code. S.I., S.K. Mukherjee was endorsed to conduct the investigation by the OC of New Market Police Station. The Investigating Officer on completion of the investigation submitted charge-sheet being CS No. 244 dated 19.07.2012 under Sections 120B/430 of the Indian Penal Code against the present petitioner.

Pursuant to the submission of charge-sheet, the learned Chief Metropolitan Magistrate, Calcutta transferred the case to the learned Metropolitan Magistrate, 6<sup>th</sup> Court, Calcutta. By order dated 19.11.2012 cognizance of the offences as disclosed in the charge-sheet was taken by the learned Metropolitan Magistrate, 6<sup>th</sup> Court, Calcutta and process was issued in the name of the petitioner fixing 08.01.2013 for service return of the summons. A further date of 12.04.2013 was fixed for appearance of the

petitioner. In the meantime, on 10.04.2013 the instant criminal revision was filed by the petitioner.

By an order dated 23.04.2013 passed by this Hon'ble court, the proceedings of GR case No. 2208 of 2011, pending before the Court of the learned Metropolitan Magistrate, 6<sup>th</sup> Court, Calcutta as aforesaid was stayed till 18<sup>th</sup> of June, 2013. Thereafter, on several dates the interim order of stay of the proceedings before the learned trial court as aforesaid got extended.

Learned advocate for the petitioner submitted that the complaint did not reveal the elements to constitute an offence under Section 120B/430 of the Indian Penal Code. The statement of the witnesses recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure did not directly implicate the petitioner in any deliberate act to harass or cause any kind of mental torture to the complainant/respondent No.2. The learned trial court erroneously took cognizance of the case to the detriment of the petitioner. Therefore, the impugned FIR and the charge-sheet being No. 254 dated 30.06.2011 registered as GR case No. 2208 of 2011 should be quashed and the revisional application should be allowed.

The learned advocate on behalf of the State submitted the presence of ample evidence to inculcate the petitioner. The trial is yet to begin and, therefore, the instant revisional application is too premature and should not be allowed.

At the outset the following questions of law require determination of the present petition:-

(1) Whether the petition preferred by the petitioner under Section 482 of the Code of Criminal Procedure for quashing of FIR and charge-sheet be entertained when the trial has not yet started and the evidence of the witnesses have not been recorded before the trial court.

(2) Whether any ground is available for quashing the FIR and charge-sheet in view of the facts and circumstances of the case.

The observation in the judgment of the Hon'ble Supreme Court in the matter of **Joseph Salvaraj Vs. State of Gujarat & Ors.**<sup>1</sup> states that ,

*“the inherent powers of the High Court under Section 482 of the Code of Criminal Procedure can be issued at any stage to prevent abuse of process of any Court in order to secure the ends of justice, disregarding the fact as to whether trial has been initiated or not and whether any evidence has been recorded before the trial court or not. Therefore, this question is answered affirmatively in favour of the petitioner.”*

**Section 482 of the Cr.P.C. provides:**

*“ 482. Saving of inherent powers of High Court – Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”*

Though the High Court under Section 482 of the Code of Criminal Procedure has inherent power to interfere with criminal proceedings, however, the same has to be exercised sparingly and in exceptional cases.

In **Monica Kumar (Dr.) V. State of U.P.**,<sup>2</sup> it was held that “*inherent jurisdiction under Section 482 of the Cr.P.C. has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.*”

The complaint dated 30.06.2011 stated that the petitioner i.e. Raja Chatterjee had illegally obtained water supply connections and he was disturbing the flow of water.

From the materials on record it transpired that the supply of water to the individual flats in the building where both the parties resided was regulated through a centralised pump. Interference with the working of the pump would cause mischief in the form of any kind of disturbance and harassment as alleged to all the residents of the building and not in exclusion of the complainant/respondent No.2 alone. Apart from the complainant/respondent No. 2, the other inmates of the building did not complain of any such mischief on the part of the petitioner. Moreover, one person namely Rizwan was entrusted to discharge his duty to regulate the supply of water who in turn delegated his duty to another person in his absence. The complaint mentioned that the petitioner had obtained illegal water supply connection in his individual capacity but did not categorically stipulate as to his role in committing the offence under Section 120B/430 of the Indian Penal Code in conspiracy with others. The absence of water, of course a basic amenity will indubitably cause difficulty to any person in

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<sup>1</sup> (2011) 7 SCC 59

<sup>2</sup> (2008)8 SCC 781

a household if the water is not available or its supply has been discontinued for three days. The complaint did not mention as to how the petitioner acted in preventing the supply of water to the complainant's flats or suits in conspiracy with the others. Apart from mere apprehension on the part of the complainant, any plausible ground of specific act and motive, to commit an offence of severity to cause inconvenience in diminution of water supply resulting in mischief has not been explained and/or described in the complaint. Obtaining illegal water connection if at all by the petitioner, is to be dealt by the appropriate authority which is beyond the authority/jurisdiction of the complainant.

In **Mrs. Dhanalakshmi v. R. Prasanna Kumar** <sup>3</sup> it has been observed by the Hon'ble Supreme Court that,

*“interference by the High Court in exercising its inherent powers under Section 482 of the Code of Criminal Procedure to quash the criminal proceedings would only be justified when complaint did not disclose any offence or was patently frivolous, vexatious or oppressive.”*

In **Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors.** , <sup>4</sup>a three-Judge of the the Hon'ble Supreme Court held that,

*“6. It may be noticed that Section 482 of the present Code is the ad verbatim copy of Section 561-A of the old Code. This provision confers a separate and independent power on the High Court alone to pass orders ex debito justitiae in cases where grave and substantial injustice has been done or where the process of the court has been seriously abused. It is not merely a revisional power meant to be exercised against the orders passed by subordinate courts. It was under this section that in the old Code, the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or subordinate courts. Thus, the scope, ambit and range*

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<sup>3</sup> AIR 1990 SC 494

<sup>4</sup> (1983)1 SCC 1

of Section 56-A (which is now Section 482) is quite different from the powers conferred by the present Code under the provisions of Section 397. It may be that in some cases there may be overlapping but such cases would be few and far between. It is well settled that the inherent powers under Section 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will be no inconsistency between Sections 482 and 397(2) of the present Code.

**7.** The limits of the power under Section 482 were clearly defined by this Court in *Raj Kapoor v. State* (1980) 1 SCC 43 : 1980 SCC (Cri) 72)

*“ Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code”.*

Another important consideration which is to be kept in mind is as to when the High Court acting under the provisions of Section 482 should exercise the inherent power insofar as quashing of criminal proceedings are concerned. This matter was gone into in greater detail in ***Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi***<sup>5</sup>; where the scope of Sections 202 and 204 of the present Code was considered and while laying down the guidelines and the grounds on which proceedings could be quashed this Court observed as follows: (SCC para 5, p. 741 : SCC (Cri) PP. 511-12).

*“ Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside.*

- (1) *where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.*

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<sup>5</sup> (1976) 3 SCC 736

- (2) *Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.*
- (3) *where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and*
- (4) *where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.*

*The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High court can quash proceedings.”*

**9.** *Same view was taken in a later decision of this Court in **Sharda Prasad Sinha v. State of Bihar (1977) 1 SCC 505: 1977 SCC (Cri) 132: (1977) 2 SCR 357: 1977 Cri LJ 1146) where Bhagwati J.** speaking for the Court observed as follows: (SCC para 2, p. 506: SCC (Cri) p. 133)*

*“ It is now settled law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to quash the order passed by the Magistrate taking cognizance of the offence.”*

**10.** *It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out*

*then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code.”*

In **Paramjeet Batra v. State of Uttrakhand**<sup>6</sup>, the Hon’ble Supreme Court held:

*“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High court...”*

In **Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre**,<sup>7</sup> a three-judge Bench of the Hon’ble Supreme Court summarized the law with regard to quashing of criminal proceedings under Section 482 of the Cr.P.C. The Apex Court held:

*“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the*

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<sup>6</sup> (2013)11 SCC 673

<sup>7</sup> (1988) 1 SCC 692

*special facts of a case also quash the proceeding even though it may be at a preliminary stage.”*

In **State of Haryana & Ors. v. Bhajan Lal & Ors.**,<sup>8</sup> the Hon’ble Supreme Court held:

*“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.”*

In view of the aforesaid observations and the settled principle of law that if the FIR does not disclose the commission of an offence in order to

prevent the abuse of process of law the court would be justified in quashing the proceedings.

**Section 430 of the Indian Penal Code** stated as follows:-

**“430. Mischief by injury to works of irrigation or by wrongfully diverting water.**—Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.”

The ingredients **of Section 430, IPC** can be summarized as follows:

- “1. That the act of accused must constitute mischief as defined in S. 425, IPC.
2. That the act of mischief causes or is likely to cause diminution of supply of water.
3. That the diminution of supply of water is in respect of water supply used for:
  - a. agricultural purposes or
  - b. food or drinking purposes or
  - c. cleanliness or
  - d. any manufacture.

That the accused committed the act knowingly.”

**Section 425 of the Indian Penal Code** stated as follows:

**“425. Mischief.**—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

In order to be mischief 'Change in the property or change, in the situation of the property' should result in destruction of the value or utility of the property or in diminishing the value or utility of the property, provided such changes are brought about with the intention or knowledge on the part of the doer to cause wrongful loss or damage to any person.

The complaint revealed that the complainant/respondent no. 2 was subjected to harassment due to irregular water supply, however, he did not state the reason for such irregular water supply. The complainant/respondent no. 2 stated that the petitioner "*had been disturbing the flow of water in the flats as usual.*" The actual disturbance created by the petitioner concerning the flow of water to his prejudice has not been mentioned. The elements to constitute an offence under Sections 425 and 430 as enumerated above are absent in the complaint in question. Inconvenience caused to the complainant/ respondent no. 2 by direct interference of the petitioner constituting an offence of mischief causing physical change in the property destroying or diminishing its value or utility directly affecting the complainant/ respondent no. 2 by wrongfully diverting water, intending to cause diminution of the supply water to deliberately cause damage to the complainant/ respondent no.2 did not transpire from the complaint. Moreover, the mens rea on the part of the petitioner is also absent in the complaint. The complainant/respondent no. 2 did not state any animosity to have existed between them, whereby the petitioner caused deliberate acts of inconvenience to the

complainant/respondent no. 2 on previous occasions repeatedly. Neither any incident of enmity or acrimony between the parties was revealed in the statements recorded under Section 161 Cr.P.C. Statements recorded under Section 161 Cr.P.C revealing the act that the petitioner had been to the roof top and was found to rotate the keys of the pump in order to find whether the flow of water was continuous or not would not fall within the ambit of the offence to cause mischief.

Section **120 B of the Indian Penal Code** stated that,

*“120B. Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 1 [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”*

In **Topandas vs. State of Bombay**, <sup>9</sup> the Hon’ble Supreme Court observed that, *“Criminal conspiracy has been defined in Section 120 A of the Indian Penal Code: When two or more persons agree to do or cause to be done (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. By the terms of the definition itself there ought to be two or more persons who must be parties to such an agreement and it is trite to say that one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself.”*

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<sup>9</sup> (1955) 2 SCR 881

The complaint did not disclose the act of an agreement between the petitioner and any other person to get into a criminal conspiracy to indulge in pernicious act to cause damage and distress to the complainant.

In the present case, apart from apprehension the complainant did not make any specific allegation against the petitioner to have committed the offence with ulterior motive. Moreover, the element of conspiracy is absent in the complaint and prima facie no evidence is made out against the petitioner. To allow to continue the trial of this case will adversely consume and affect Court hours involving manpower and other machineries which can be constructively utilized otherwise. Moreover, from the basis of the complaint the alleged guilt of the petitioner cannot be proved based on surmise and conjectures.

Accordingly, the impugned FIR No. 254 dated 30.06.2011 registered as GR case No. 2208 of 2011 is hereby quashed. The petitioner is discharged of all the charges leveled against him under Section 120B/430 of the Indian Penal Code and the subsequent criminal proceedings initiated in connection with GR case No. 2208 of 2011 pending before the Court of the Learned Metropolitan Magistrate, 6<sup>th</sup> Court, Calcutta are hereby quashed.

Accordingly, Criminal Revisional Application being CRR 1197 of 2013 stands allowed.

The case diary be returned to the Ld. Advocate for the State forthwith.

Connected applications, if any, also disposed of accordingly.

Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

**(Ananya Bandyopadhyay, J.)**