

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 1774 of 2019

With

CRAN 1 of 2021

With

CRAN 2 of 2021

Falauddin Haider

-vs-

The State of West Bengal & Anr.

For the Petitioner	: Mr. Nauroj Rahber Ms. Anjana Mehebub Mr. Muhammad Jawwad
For the Opposite party no. 2	: Mr. Anjan Bhattacharya Mr. Sunny Nandy Mr. Subha Pathak
For the State	: Mr. P.K. Dutta, Ld. APP Md. Kutubuddin Mr. S.Deb Roy
Heard on	: 25.7.2022
Judgment on	: 02.08.2022

Ajoy Kumar Mukherjee, J.

1. Present application under Section 482 of the Code of Criminal Procedure has been preferred for quashing of the complaint case, being C-1999 of 2018, under Sections 199/200/211/499/500 of the Indian Penal Code, initiated by

the opposite party no. 2 against the present petitioner, which is pending before the learned Chief Judicial Magistrate, Alipore.

The respondent no. 2 herein in aforesaid C-1999 of 2018 alleged that:-

- i)** The respondent no. 2 is the legal advisor in respect of all legal affairs of Azimunnessa and Amina Bibi Wakf Estate, in favour of Moinuddin Nadir.
- ii)** The respondent no. 2 being the legal advisor have taken steps against the present petitioner being one of the beneficiary of the said wakf Estate for his alleged wrongful act as per the instruction of her client Moinuddin before the Central Wakf Council and also before the Wakf board of West Bengal and the petitioner out of zealous and personal grudge to stop her from giving proper legal support in favour of her client started harassing her in various ways.
- iii)** The petitioner herein with a view to malign the good reputation in the locality of the respondent no. 2 lodged a false criminal proceeding under Section 144 of the Code of Criminal Procedure being MP case no. 399 of 2018 before the court of Learned 1st Executive Magistrate, Alipore with several false allegations against the opposite party no. 2 herein.
- iv)** The opposite party no. 2 after going through the contents of the petition under Section 144 of the Code of Criminal Procedure found that various defamatory words addressing the opposite parties have been made in the said petition and as such she felt herself defamed by the act of the petitioner being supported by false declaration. The allegation made by

the petitioner in the said criminal proceeding initiated under Section 144 of the Code of Criminal Procedure has maligned the moral and intellectual character of the opposite party no. 2 as well as the reputation in the esteemed law profession and as such the petitioner herein committed offence under Section 199/200/211/499/500 of the Indian Penal Code.

2. Learned advocate for the petitioner Mr. Nauroj Rahber submits that the opposite party no.2 has initiated the aforesaid proceeding against the petitioner on some false, fabricated and concocted allegations only to create undue pressure upon him and to stop him from making agitation against the encroachment and illegal construction over the wakf Estate. He further submits that the allegation as alleged in the said complaint case being C-1999 of 2018 has no link with the ground reality and he filed the said complaint suppressing material fact in as much as the property in question at 7/H/3, MBG Lane have been leased out to the husband of opposite party no.2.

3. Mr. Rahber learned advocate for the petitioner further submits that the order of taking cognizance is bad in law in as much as accepting the totality of the allegations as contained in the complaint and other materials on record, the ingredients of Section 199/200/211/499/500 of the Indian Penal Code are not remotely satisfied and the said order of taking cognizance dated 7.6.2018 is cryptic and not sustainable and the said order is passed in routine and haste manner and without considering the circumstances of the matter and without appreciating materials on record. The said order of taking cognizance

lacks application of judicial mind. He further submits that a person should not undergo harassment of litigation for a number of years although no case has been made out against him.

4. He further submits that learned Magistrate ought to have postponed the issue of process against the petitioner and ought to have enquired into the case himself for the purpose of deciding whether or not there is sufficient ground for proceeding. The order passed by the learned Magistrate regarding issuance of process is an example of total non-application of judicial mind as also evident from the fact that without any document or evidence on record, learned Magistrate assumed the petitioner to be those who have caused defamation to the respondent no. 2. In the ultimate analysis, it cannot be said that any criminal case has at all been made out against the petitioner. Quoting from judgment passed by **Allahabad High Court in Sanjay Singh vs. State of U.P (MANU/UP/4621/2017)** wherein it was observed that:-

“The order of summoning an accused to stand trial, has serious consequences for the accused i.e. to say that the accused shall have to appear as accused and face accusations and criminal proceedings. So far as the accused is concerned, order of summoning substantially affects his rights. If remedy of revision is not available to the accused against an order of summoning, he would have to face the proceedings even though such order might be incorrect, illegal or improper. The accused would have to face criminal proceedings even if the inferior court had committed irregularity. After passing order of summoning the proceedings enter the next phase”.

Petitioner contended that learned Magistrate ought to have gone to the complete aspect of the complaint before issuing summons against accused persons.

5. Learned advocate for the petitioner also submits that taking of cognizance of the offence punishable under Section 199/200/211 of the Indian Penal Code on the basis of a complaint by the complainant is barred under Section 195 of the Code of Criminal Procedure and as such taking cognizance under the said sections is bad in law. Such complaint under Section 199/200/211 of the Indian Penal Code can only be entertained after the complaint is made in writing by the court or by such authorized officer of the court in connection with a judicial proceeding of which the offence is alleged to have committed. Actually, the opposite party no. 2 has initiated the aforesaid criminal case only to pressurize the petitioner and in complaint nowhere it has been mentioned that the husband of the opposite party no. 2 is a lessee in respect of that property. Section 340 of the Code of Criminal Procedure makes it clear that the prosecution under the aforesaid sections can be entertained only when complaint is made by the court, because the offence is stated to have committed in relation to the proceedings in that court. The object of section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced for giving any evidence in court during the trial, when the document or evidence was in *custodia legis* and whether it is also expedient in the interest of justice to take such action. The court shall not only consider the prima facie case but also to see whether it is against public interest to allow a criminal proceeding to be instituted.

6. Learned advocate for the opposite party no. 2 Mr. Bhattacharya contended that at this stage, the court is *prima facie* to look into only, whether the contents of the written complaint *prima facie* discloses any offence or not. In the present context, the contents of the written complaint clearly discloses offence under Section 500 of the Indian Penal Code and as such taking cognizance by the Magistrate and also continuance of the proceeding by the Magistrate is absolutely legal and permissible in law.

7. Considered the rival submissions made by both the parties.

8. The order by which the learned Magistrate has taken cognizance vide order no. 1 dated 7.6.2018 and the order dated 29.9.2018 by which the learned Magistrate issued the summon may be reproduced below for better understanding:

*“Order no. 1 Date- 07.06.18
A Petition of Complaint is filed u/s 200 Cr. P.C.
Heard Ld. Advocate for the complainant. Perused the petition of complainant.
Considered Cognizance is taken
Let the case be taken to my ersonal file my personal file for disposal in accordance with law. To 26.07.18 for S/A.*

*Chief Judicial Magistrate
South 24 Pgs, Alipore*

*Order dated 29.9.2018
Today is fixed for solemn affirmation.
The complainant namely Nafisa Kalim as well as witness namely Md. Saluddin Ahmed are examined on solemn affirmation in full.
I have perused the statements of complainant as well as witness and documents annexed thereto. I find that a *prima-facie* case u/s. 199/200/211/500 IPC has been made out against the accused person.
Issue summonses accordingly by both ways. Requisites at once.
Fix 10/01/2019 for SR and appearance.
D/c*

CJM, Alipore”

9. From the aforesaid order of taking cognizance dated 7.6.2018, it is clear that learned Magistrate has not mentioned, in the printed order (which he has only filled up) under which offence he has taken cognizance. Needless to say that the learned Magistrate is to take cognizance not upon the accused persons but upon the offence.

10. By an order dated 29.9.2018, the learned Magistrate on the basis of initial deposition got prima facie satisfied that a case under Section 199/200/211/499/500 of the Indian Penal Code has been made out against the accused persons.

11. On perusal of the initial deposition dated 28.8.2018, it appears that no case under Section 199/200/211 of the Indian Penal Code has been made out in the said initial deposition given by complainant and her witness. Their only allegation in the initial deposition is that the accused/petitioner in his petition under Section 144 of the Code of Criminal Procedure lodged against the complainant it has been stated that opposite parties which includes present petitioner are antisocial element and hooligan which has defamed her and he has done so out of grudge and in order to malign her. Due to making such statement in the said proceeding her image as a lawyer has been tarnished and her prestige before the society at large has been lowered down due to such defamatory statement.

12. Moreover, learned advocate for the petitioner has rightly pointed out that under the provision of Section 195 of the Code of Criminal Procedure, any offence punishable under Section 199/200/211 of the Indian Penal Code,

when such offence is alleged to have been committed in or in relation to any proceeding in any court, learned Magistrate will not take cognizance except on the complaint in writing of that court or by such officer of the court as that court may authorize in writing in this behalf or of some other court to which that court is subordinate.

13. In fact section 195 bars the cognizance by any court of the offence mentioned except upon a proper “complaint”. Section 195 is a limitation on the unfettered power of a Magistrate to take cognizance under section 190 of the offences mentioned in section 195. At the stage when the Magistrate is taking cognizance he must examine the facts of the complaint before him. The provision of section 195(1) is mandatory and in the absence of a complaint by the public servant the trial is void *ab initio*.

14. Here, admittedly, the complaint has not been lodged under Section 199/200/211 of the Indian Penal Code in compliance with the provision laid down under Section 195 of the Code of Criminal Procedure and as such taking cognizance under those sections by the learned Magistrate and also issuing summon upon the petitioner under those provisions by the Magistrate and also the observation of the Magistrate that a prima facie case under Section 199/200/211 of the Indian Penal Code has been made out against the accused person, is perverse and bad in law. However, on perusal of the contents of the written complaint and also in view of the initial deposition, the issuance of process against the petitioner under Section 500 of the Indian Penal Code

cannot be said to be unjust at this stage as the complaint and the initial deposition *prima facie* discloses offence against the present petitioner.

15. Having considered the aforesaid facts and circumstances of the case, the CRR 1774 of 2019 is disposed of with the observation that taking cognizance by the learned Magistrate under Section 199/200/211 of the Indian Penal Code and/or issuance of summon under those provisions in complaint case being C-1999 of 2018 against the petitioner is set aside as barred by law. However, as the contents of complaint *prima facie* discloses offence of defamation, the learned Magistrate is justified in taking cognizance under Section 500 of the Indian Penal Code as such and the issuance of process against the accused persons under Section 500 of the Indian Penal Code is not interfered with by the present order.

16. Accordingly, CRR 1774 of 2019 is disposed of. The applications being CRAN 1 of 2021 and CRAN 2 of 2021 are also disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)