

30.06.2022

Item No.76
Ct.No.34
dc.

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

**C.R.R. 2070 of 2019
with
CRAN 1 of 2020**

**Dr. Prabal Pal
versus
The State of West Bengal & Anr.**

Mr. Dipanjan Dutt,
Mr. Bhaskar Seth ... For the Petitioner.

Mr. Sudip Ghosh,
Mr. Bitasok Banerjee ... For the State.

The present revisional application has been preferred for quashing of the proceeding being A.C.G.R. No. 1698 of 2017 arising out of Thakurpukur Police Station Case No. 102 of 2017 dated 07.04.2017 under Section 509 of the Indian Penal Code pending before learned Judicial Magistrate, 9th Court, Alipore.

The petitioner contended that he is a Professor and Head of Department of Dentistry in the Employees State Insurance Corporation Hospital and Medical College, Faridabad. The petitioner as being upright in his act and activities had been vigilant and objected to various illegal activities in the Medical College and as such, the petitioner was not allowed to officiate as Head of the Department. The petitioner stated that opposite Party No.2 herein, against whom the petitioner was constrained to lodge plethora of complaints from time to time, lodged a written complaint at Thakurpukur Police Station to the effect that the petitioner

has been using extremely filthy language in front of the de facto complainant on a daily basis since past three months in front of other departmental staff during official working hours and such act of the petitioner allegedly caused a lot of discomfort and uneasiness to her. She further alleged that use of such language results in intimidation and also outrages her modesty. Since the petitioner was not mending his ways, the de facto complaint had no option but to lodge the complaint against him.

On the basis of the said complaint, Thakurpukur Police Station Case No. 102/2017 dated 07.04.2017 under Section 509 of the Indian Penal Code was set in motion correspondence to A.C.G.R. No. 1698 of 2017. After making purported investigation by the investigating agency, the charge-sheet was submitted on 31.05.2017 under Section 509 of the Indian Penal Code and on submission of charge-sheet, learned Additional Chief Judicial Magistrate, Alipore took cognizance on 07.08.2017 and copies also served to the petitioner under Section 207 Cr.P.C.

Mr. Dipanjan Dutt, learned counsel for the petitioner submits that a group of persons had made a union to malice and malign the petitioner and the present criminal case is an outcome thereof. The purported charge-sheet says that there are five witnesses out of which only the de facto complainant, her husband and one technician gave statement under Section 161 Cr.P.C. and none of them has even stated what

actually the petitioner uttered that might have hurt anyone in the given situation.

Mr. Dutt further submits that said group of people is in the habit of disobedient in the work place and delinquent enough to lower the fame of the institution causing monetary loss to it and as the petitioner objected to their malpractices, the said group of people hatched up a conspiracy to implicate the petitioner. He further submits that the charge-sheet has been filed without verifying the truthfulness of the allegations levelled in the complaint and the Magistrate took cognizance in a stereotype manner and if this practice is allowed to go on, then anyone can be made an accused in any such cases resultant with final report in the form of charge-sheet.

Mr. Dutt further submits that from the complaint itself as well as from the recorded statements, it appears that the ingredients of the offence as mentioned in Section 509 of the Indian Penal Code has not been fulfilled. Even the statements recorded during investigation does not disclose any offence at all against the present petitioner. Accordingly, the petitioner prayed for quashing the impugned proceeding.

Mr. Sudip Ghosh, learned counsel on behalf of State submits that after completion of investigation, the investigating authority has submitted charge-sheet under Section 509 of the Indian Penal Code and court has already taken cognizance and as such, whether the petitioner can be held guilty under Section 509 of the Indian Penal Code or not shall be decided at the trial.

I have carefully gone through the complaint initiated by opposite party no. 2 dated 07.04.2017 in which subject matter is use of extremely filthy language by the petitioner. In the said complaint, it has been stated by the complainant/opposite party no.2 that the petitioner has been using extremely filthy language in front of her on a daily basis since past three months in front of other departmental staff during official working hours and this has been causing a lot of discomfort and uneasiness to her. She further alleged in the complaint that use of such language results in intimidation and also outrages her modesty. She concluded that since the petitioner is not mending his ways, she has no other option but to inform this matter to the police station and requested for taking strong and appropriate action at the earliest.

During investigation, the investigating authority has examined three witnesses out of which Nitish Kalra i.e. father of the de facto complainant has stated that the petitioner is habitual of using extremely bad language in the department premises during official hours every now and then on a daily basis. The other witness i.e. Sandip Kumar Sahoo has stated that the petitioner is habitual of using extremely bad language in the department premises during official hours every now and then. In fact, there have been many instances of verbal spats between patients and petitioner due to petitioner's bad behaviour.

The de facto complainant/opposite party no. 2 has also made statements under Sections 161 and 164 Cr.P.C. during investigation and in her statement recorded under Section 161 Cr.P.C., she has stated that the petitioner uses unparliamentary languages in front of her and other female colleagues and this kind of words and foul languages are not acceptable. She further stated that using extremely filthy languages in front of her daily basis since past 3/4 months in front of other departmental staff during working hours and use of such languages results in intimidation and also outrages her modesty. The petitioner is not mending his ways and so she, has no other option but to inform the police authority.

The de facto complainant has also made statement under Section 164 Cr.P.C. and in her statement recorded under Section 164 Cr.P.C., she has stated that the petitioner is habitual in using unparliamentary language in front of colleagues, outside the campus and it happens daily and the abuse that he throws cannot be stated by her before the Magistrate as the same were too abusive and she further stated that the petitioner is verbally harassing all of them for which she went to the Women Commission also.

In view of the aforesaid materials as appearing from the complaint as well as statements recorded during investigation it clearly suggests that it does not disclose any offence. The complainant nowhere has stated as to what abusive language has been uttered by the petitioner nor she has stated how it

insulted her modesty. unless the words mentioned either before the police or before the Magistrate it can hardly be possible for a Court to come to a conclusion that the petitioner had any intention to insult the modesty of the de facto complainant by uttering any particular word or words. Mere mentioning of alleged “filthy language” or “bad language” “unparliamentary language” cannot per se amount to insult the modesty of complainant. In order to be an offence there must be criminality of action and secondly such action must be attributable to woman sex.

The question of infringing the modesty of a woman depends upon the customs and habits of the people. No particular yardstick of universal application can be made for measuring the amplitude of modesty of woman as it may vary from place to place or society to society and as such to judge the same, the utterings of actual words must have come before the court to ascertain whether it discloses offence or not.

Learned counsel on behalf of the petitioner, in this context has relied upon a judgement of the Hon'ble Apex Court in ***S. Khushboo Vs. Kanniammal and Another*** reported in **(2010) 5 Supreme Court Cases 600**.

Section 95 of the Indian Penal code says nothing is an offence by reason that it causes, or that it intended to cause or it is known to be likely to cause any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm. Accordingly unless the words

allegedly uttered by petitioner is known to court, it is not possible for court to adjudicate, whether alleged “bad language” and or “unparliamentary language” and /or “abusive language” is protected under section 95 of the code or not.

Then again what is a woman’s modesty. In ***state of Punjab Vs. Major Singh*** reported in ***AIR 1967 SC 63*** it was held that the essence of woman’s modesty is her sex. Accordingly unless the words allegedly uttered by the petitioner is expressed it is not possible for a court to come to a conclusion whether such utterings have outraged her modesty or not.

Having considered the facts and circumstances of the case and the materials available in the case diary, I find that the materials do not disclose any offence at all against the petitioner and if the present proceeding is allowed to continue, that will be an abuse of process of court as there being not even remote chance of conviction of the present petitioner on the basis of available materials at the end of the trial.

Accordingly, the proceeding being A.C.G.R. No. 1698 of 2017 arising out of Thakurpukur Police Station Case No. 102 of 2017 dated 07.04.2017 under Section 509 of the Indian Penal Code is hereby quashed.

In view of above, CRR 2070 of 2019 is allowed.

The application being CRAN 1 of 2020 is consequently disposed of.

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

(Ajoy Kumar Mukherjee, J.)