

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1401 of 2020

Indrajit Moulik and Anr.

Vs.

The State of West Bengal and Anr.

For the Petitioners : *Mr. Sankha Subhra Roy.*

For the O.P. : *Mr. Indradeep Pal,*
Mr. Saugata Pal.

Heard on : *26.09.2022*

Judgment on : *09.11.2022*

Shampa Dutt (Paul), J.:

The revisional application under Section 482 of the Code of Criminal Procedure, 1973, has been filed praying for setting aside of order dated 19th

June, 2019 passed by the Learned Judicial Magistrate, 2nd Court, Alipore in Complaint Case No. 2695 of 2017 under section 384/409/34 of the Indian Penal Code, 1860 and quashing of the said Case.

The petitioners' case in short is that the opposite party No.2 has filed an application under section 200 of the Code of Criminal Procedure before the Learned Chief Judicial Magistrate at Alipore being C Case no.2695 of 2017 under sections 384/409/34 of the Indian penal Code.

The complainant being the opposite party No. 2 herein has alleged that Indrajit Moullik, being the petitioner no. 1 herein came to the complainant's office to send cargo through his company, as his company has various trusted carriers in their panel, who work for them and he and his company personally guarantees the work of the carriers.

The complainant/opposite party No.2 has claimed in the said application that he has paid Rs.8,56,152/- (Rupees Eight Lakhs Fifty Six Thousands One Hundred and Fifty Two only) on the 16th day of May, 2017 to Matrix Freight System Pvt. Ltd. on account of shipping charges of the cargo to Dammam, Saudi Arabia through the said Balaji Shipping Lines. It has been further alleged that on the 14th day of June, 2017 at about 2.40 pm, the Complainant received a mail from one Joseph Antony, the complainant's cargo buyer who informed the complainant that the agent of the said Balaji Shipping Lines has asked him to pay an amount of US Dollar \$2775 as the complainant had not paid the **loading port charges**. The complainant informed the matter to

accused no.1 being the petitioner no.1 herein, asking him to clarify the matter. But, in reply, the petitioner no.1 stated that they have cleared all payment **except delivery order** and **destination terminal charges** (DO/DTHC) and asked the complainant to seek for the debit note from the clearing Agent.

The complainant further alleged that the accused persons defaulted in giving clarification on repeated occasions and as such the complainant was forced to ask his buyer to clear the cargo by accepting the unlawful demand of the opposite party no.2, in default of which both the complainant as well as his buyers would have been prejudiced. The complainant further contended that the buyer of the complainant has sent him invoice of other companies which indicate that they have not charged anything under the head "Additional piracy risk surcharge" or "equipment recovery charges".

Further contention is that the petitioners being the accused persons in furtherance of their common intention hatched up this policy to extort money since they were clearly aware of the fact that once the cargo reaches Dammam Port, then the complainant will have no other option but to meet the unlawful demand of the accused persons.

Mr. Sankha Subra Ray, Learned Counsel for the petitioners has further submitted that upon receipt of the said complaint, the learned Magistrate taking cognizance has issued summons to the accused persons, (vide order No.5 dated 08.03.2018 in C - 2695 of 2019). It is the case of the accused/petitioners that the complaint has been filed as per Provision of

Section 200 of the Code of Criminal Procedure against the petitioners. The cause title indicates that the petitioners have been implicated purportedly as the employees of their respective employer and the addresses mentioned therein indicates that the area is beyond the jurisdiction of the Learned Magistrate. In the aforesaid circumstances, the Learned Magistrate ought to have exercised his power under section 201 (a) of the Code of Criminal Procedure which specifically provides that *“If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall, - if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect”*.

The Learned Magistrate had an obligation to enquire into the matter before issuing the process but the Learned Magistrate straight away has taken the cognizance of the offences and issued summons to the petitioners and initiated the proceeding which is not in accordance with the provisions and scope of law.

The petitioners submit that they have been serving only as the employees discharging duties on behalf of their respective companies and all the communications and negotiations made by them with regard to the alleged dispute was absolutely within the scope of their job profile entrusted and assented by their respective authorities without any malafide intention for personal gain from the said transaction. They have been engaged in the said service for a long period without any complaints and/or dispute of such nature

from any business house whatsoever either against their service or in respect of their logistic support.

Hence, implicating them in personal capacity is absolutely arbitrary, irrational and unjustifiable and as such the said complaint should have been dismissed in limine to secure the ends of justice and thus the proceeding in the complaint case should be quashed.

Mr. Indradeep Paul, Learned Lawyer for the opposite party has submitted that the accused persons being entrusted with property as agent of the complainant in furtherance of their common intention hatched up this ploy to extort money from the complainant since they knew fully well that once the cargo reaches Dammam port then the complainant will have no other option but to meet the unlawful demand of the accused persons to save themselves from injury and thereby clearly committed offences Under Section 384/409/34 of the Indian Penal Code.

It is further submitted that the order dated 19/6/2019 in C - 2695/2017 under revision was passed considering the materials on record and was a reasoned order in accordance with law.

Vide Order No. 5 dated 8/3/2018, the Learned Magistrate rightly issued process against the Petitioners on finding sufficient grounds to proceed against them. And as such the petitioners prayer and there by the revision is liable to be dismissed.

Heard the parties to the revision in full. Considered the material on record.

Admittedly the dispute between the parties is related to a Business transaction, and regarding payment of “Additional piracy Risk Surcharge”/ “equipment recovery charges”. Whether the charge is ‘Justified or not or is as per rules, is a matter to be adjudicated. The petitioner’s Company is a shipping and Logistic Pvt. Ltd, having its office at Park Street, P.S. - Maidan, Kolkata – 700012 within the Jurisdiction of Bankshall Court. The Opposite party no. 2 has its office at Mayfair Road, P.S. – Karaya, Kolkata – 700019, within the Jurisdiction of Alipore Court (as in this case). As such the contention of the petitioners that the Learned Magistrate was not competent/had no jurisdiction to take cognizance of the offence is not in accordance with law and thus cannot be accepted.

The opposite party no. 2 rightly opted to file the case at Alipore Court as its office is within its Jurisdiction.

Finally the petitioners have prayed for quashing of the said proceedings on the ground that they have been working in their official capacity and they cannot be implicated in their personal capacity.

The copy of petition of complaint annexed is clear that the petitioners have been charged in their official capacity.

It is now to be seen as to whether the allegations/facts in the complaint prima facie make out a cognizable offence against the accused / petitioners.

The offences under Section 384 and 409 of the Indian Penal Code, with which the accuseds/petitioners have been charged are cognizable offences.

The ingredients required to constitute an offence under section 384 of the Indian Penal Code is described in Section 383 of the Code as follows :-

“Extortion – Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, commits “extortion”

Ingredients of offence –

1. *The accused must put any person in fear of injury to that person or any other person.*
2. *The putting of a person in such fear must be intentional.*
3. *The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security ; and*
4. *Such inducement must be done dishonestly.”*

Section 409 Indian Penal Code of the Indian Penal Code lays down :-

“409. Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either

description for a term which may extend to ten years, and shall also be liable to fine.

Ingredients of offence.— *The essential ingredients of the offence under sec. 409 are as follows:*

- (1) Accused was a public servant, or a banker or merchant or agent factor or broker or an attorney;*
- (2) In such capacity accused was entrusted with certain property or he gained domain over such property which was not his own;*
- (3) Accused committed criminal breach of trust with respect to such property.”*

From the facts as stated in the written complaints, the ingredients required to constitute the offences alleged are prima facie present and the offences alleged are cognizable.

The Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others (2021) SCC online SC 315*** has laid down the guidelines to be followed by the High Courts while exercising its power under Section 482 of the Cr.P.C./or under Article 226 of the Constitution of India in para 80 of the said judgment as under:-

“i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) *The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*

v) *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

vi) *Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*

viii) *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*

ix) *The functions of the judiciary and the police are complementary, not overlapping;*

x) *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xi) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer*

finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;.....”

In *Ramveer Upadhyay & Anr. Vs. State of U.P. & Anr. (Special Leave Petition (Crl.) No. 2953 of 2022) 2022 live Law (SC) 396*, the Supreme Court on 20th April, 2022 held:-

“In exercise of power under Section 482 of the Cr.P.C. the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.”

The Court while deciding the case also observed:-

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.”

Even though, the inherent power of the High Court under Section 482 of the Cr.P.C., to interfere with criminal proceedings is wide, such power has to be exercised with circumspection, in exceptional cases. Jurisdiction under Section 482 of the Cr.P.C is not to be exercised for the asking.

In **Monica Kumar (Dr.) v. State of U.P.**², this Court 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.

In exceptional cases, to prevent abuse of the process of Court, the High Court might in exercise of its inherent powers under Section 482 quash criminal proceedings. However, interference would only be justified when complaint did not disclose any offence, or was patently frivolous, vexatious or oppressive, as held by this Court in **Mrs. Dhanalakshmi v. R. Prasanna Kumar**³.”

In Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors.

(1983) 1SCC 1. A three Judge Bench of this Court held:

“6. It may be noticed that Section 482 of the present Code is the ad verbatim copy of Section 561A 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 of Section 561A (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] where Krishna Iyer, J. observed as follows: [SCC para 10, p. 47: SCC (Cri) p. 76]*

“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.”

8. *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 [(1976) 3 SCC 736 : 1976 SCC (Cri) 507 : 1976 Supp SCR 123 : 1976 Cri LJ 1533] 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;

(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 chargesheet 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.”

“As held by this Court in **State of Andhra Pradesh v. Gourieshetty Mahesh, (2010) 6 SCC 588** the High Court, while exercising jurisdiction under Section 482 of the Cr.P.C, would not ordinarily embark upon an enquiry into whether the evidence is reliable or not or whether there is reasonable possibility that the accusation would not be sustained.”

In **Paramjeet Batra v. State of Uttrakhand, (2013) 11 SCC 673** this 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 Jiware v. Sambhajirao Chandojirao Angre (1988) 1 SCC 692**, a three Judge Bench of this Court summarized the law with

regard to quashing of criminal proceedings under Section 482 of the Cr.P.C.

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

In *Inder Mohan Goswami v. State of Uttaranchal*, (2007) 12 SCC 1, this

Court observed:

“46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.”

“In Kapil Agarwal & Ors. V. Sanjay Sharma & Others (2021) 5 SCC 524 this Court observed that Section 482 of the Cr.P.C. is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.”

In **State of Haryana and Ors. v. Bhajan Lal and Ors. 1992 Suppl (1) SCC**

335, this 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.”

Thus in view of the guidelines of the Supreme Court in the judgments referred, herein when the allegations in the complaint disclose commission of a

cognizable offence, the court is not required to consider/enter into the merits in the initial stage and has to permit the investigation /enquiry to proceed.

In the present Case the Complaint before the Magistrate's Court Under Section 384/409/348 of Indian Penal Code relates to commission of Cognizable offences and the facts and materials on record prima facie make out case of cognizable offences against the petitioners and as such this court would not thwart any investigation/Enquiry into the Cognizable offences (as in the words of the Supreme Court in ***M/s. Neeharika Infrastrure Pvt. Ltd. vs State of Maharashtra & Ors. (2021 SCC online SC 315) (Supra)***, criminal proceedings ought not to be scuttled at the initial stage. The power under Section 482 Cr.P.C. casts an onerous and more diligent duty on the court and quashing of a complaint/FIR should be an exception rather than an ordinary rule.

The complainants case clearly makes out a case of Cognizable offences and as such this Court – will not interfere in the said proceedings as it would be interfering in the proceedings, which have been initiated in accordance with law.

Considering the facts, circumstances and the materials on record in the present case, if the present proceedings are quashed, it would be sheer abuse of process of court and as such this is a fit case where, **the powers of this court under Section 482 Cr.P.C. should not be exercised.**

Accordingly the Criminal Revision being **CRR 1401/2020 stands dismissed.**

The proceeding in Complaint case no. 2695 of 2017 under Section 384/409/34 of the Indian Penal Code pending before the learned Judicial Magistrate, 2nd Court, Alipore is to proceed in accordance with law and the Learned Magistrate to make all endeavor to dispose of the case as expeditiously as possible. Interim order if any stands vacated.

All connected applications stand disposed of.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)