

31.03.2023

Court No.35
Item No. 42

D.Hira

CRR 41 of 2015

**Debjit Sahani
Vs.
The State of West Bengal**

Mr. Debjit Sahani.

... petitioner-in-person

Mr. Binoy Panda,
Ms. Puspita Saha.

... for the State

Petitioner is appearing in person in this case. He is the accused person in G.R. Case no. 2193 of 2011 under Section 323/506(II) of the Indian Penal Code, now pending in the Court of Additional Chief Judicial Magistrate, Kalyani.

Petitioner's principal ground in this revision is that the criminal proceeding against him, as above, is an outcome of mala fide, malice and vengeance against him. He says that the foundation of the proceeding against him being as above, the same may not be maintained any further and is liable to be quashed and set aside.

Petitioner has introduced the chequered history between the parties in this case by referring to his pleadings. It has transpired that the petitioner being a legal practitioner by profession has been defending an allegedly cheated person, due to the fraud committed by the present defacto complainant, regarding purchase of a flat.

It is submitted that the present defacto complainant is a promoter by profession.

Petitioner's strained face off with the defacto complainant/promoter started from the year 2005, when the petitioner

was defending his client in a case of cheating against the present defacto complainant. Thereafter, much water flowed through the river of Ganges and the parties thrashed against each other, several litigations including the cases under the Indian Penal Code. Allegedly during the period of pendency of those criminal cases in Court, several incidents of assault happened where the defacto complainant and his acquaintances took prominent and active part to victimize the petitioner with physical injuries and harm due to such assault.

It has further been submitted that previously at one point of time, daughter of the petitioner was kidnapped by the defacto complainant. For this, the petitioner has also lodged a separate criminal case, which is now pending for trial, after submission of charge-sheet by police.

So far as this case is concerned, according to the petitioner, the FIR is a documentation of the false and fabricated facts. There is no case made out against the petitioner by the same and as stated earlier, the same is an outcome of maliciousness of the defacto complainant against the petitioner.

In the present case, the Trial Court has framed charge under Section 323/506(II) of the Indian Penal Code, after dismissing the petitioner's prayer for discharge, under Section 227 of the Code of Criminal Procedure.

Petitioner says that the said order is also tainted with illegality as well as non-consideration of the facts of the case, hence not maintainable.

It appears that previously charges were framed against the petitioner by the Court under Section 323, 307, 506 of the Indian Penal Code. Thereafter, pursuant to an order of this Hon'ble Court, the petitioner prayed for his discharge in the case before the trial Court. The subsequent prayer for discharge by the petitioner was also rejected

by the trial Court and finally charge was framed as above, that is under Section 323/506(II) of the Indian Penal Code.

Petitioner states and submits that on the self-same material the Court could not have added graver grave section of law against the petitioner, which was not included in the charge sheet as well as at the time of framing of charges against him.

It is submitted that by doing so, the Trial Court has manifested absolute non-consideration of the material facts available on record. Finally, he submits that the present revision may be allowed by setting aside the order of the Court and by quashing the criminal proceeding against him.

During his argument the petitioner has relied on the judgment of ***State of Haryana & Ors. vs. Bhajanlal & Ors.*** reported in ***1992 Supp. (1) Supreme Court Cases 335.***

State is represented. Case diary is produced in Court. From the case diary particularly from medical document and the witnesses statement available therein, it appears that firstly the victim on the date of incident was examined to have suffered blunt trauma over face, oozing of blood from nostril and abrasion on the fore-head and secondly, that an incident of free fight and scuffling happened between the parties. Any specific role of the present petitioner in commission of the alleged crime, is however, not revealing from any of those materials.

Pursuant to the decision of the Hon'ble Apex Court, as relied on by the petitioner as above, it is now a law, very well-settled that a criminal case if be prompted by malicious and vindictive intentions, would not be enough cogent to be maintained in a Court of law as that would only amount to abuse of the process of Court.

In consideration of the facts of the present case, as narrated in detailed above, in my considered opinion, the present case squarely falls within the four corners of the law settled as above.

The highly inimical relationship between the petitioner and the defacto complainant from the year 2005 onwards relating into filing of repeated cases against each other, including the criminal cases, is suggesting enough eloquently that there is every possibility that the criminal case might have been filed against the petitioner with mala fide and malicious intention. Profitable would be to see through the documents available in case diary at this stage, though only to find that the incident of mutual scuffling, though having been suggested, the materials would not however, justify proceeding in a Court of law against the present petitioner, in absence of his specific role being pleaded in commission of the alleged offence.

This Court has gone through the FIR in details. It is also a settled law that the FIR is to borne in itself strong prima facie materials as to the alleged offence so as to come to the finding that materials are prima facie satisfactory regarding cognizable offence committed by the accused person and also that a case is made out therein. From the four corners of the FIR in this case the same criteria would not be seen to have been fulfilled.

Accordingly, in this case in my considered opinion to proceed against the petitioner any further in connection with Kalyani Police Station Case No.1198 of 2011 dated 23.10.2011 would be an abuse of the process of Court.

This leads the Court to find that the instant revision by the petitioner is legible to be allowed and the entire proceeding pursuant to the FIR no. 035/08 being registered as G.R. Case no. 2193 of 2011 under Section 323/506(II) of the Indian Penal Code, in the Court of Additional Chief Judicial Magistrate, Kalyani is quashed and set aside.

Case diary be returned.

All pending applications, if any, are consequently disposed of.

Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

---X---

RAI
CHATTOPADHYAY

Digitally signed by RAI
CHATTOPADHYAY
Date: 2023.03.31
16:13:51 +05'30'

(Rai Chattopadhyay, J.)