

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 409 of 2020

Biswanath Basu & Ors.

Vs

Suprabhat Kundu

For the Petitioners : Mr. Rajdeep Mazumder,
Mr. Moyukh Mukherjee,
Mr. Abhijit Singh.

For the Opposite Party : None.

Heard on : 02.05.2023

Judgment on : 12.06.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings in connection with Complaint Case No. AC-2887 of 2019 under Sections 341/323/506/34 of the Indian Penal Code pending before the Court of the Learned Judicial Magistrate, 6th Court, Alipore, South 24 Parganas and all orders passed in connection therewith including order dated 24.04.2019 whereby the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas was pleased to taken cognizance against the accused persons/petitioners herein under Section 341/323/506/34 of the Indian Penal Code.
2. The petitioner's case is that the marriage of the daughter of the Petitioners No. 1 and 2, namely, Lipika Basu was solemnized with the Opposite Party 01.02.2009 as per the Hindu Rites and Custom. Said Lipika Kundu and the Opposite Party have 2 (two) daughters, the elder daughter is 9 years old and the younger daughter is 5 years old. The Petitioner No. 1, Petitioner No. 2, Petitioner No. 3 herein are the father – in-law, mother-in-law and brother-in-law of the Opposite party respectively.
3. It is alleged that Lipika Kundu, wife of the complainant soon after her marriage was subjected to immense torture and mental cruelty. The Opposite Party in an inebriated condition has committed such monstrous acts, and the incident reached its saturation point when the Opposite

Party as well as the other in laws of said Lipika Kundu, threw the said lady out from her matrimonial home, and segregated her from her young children.

4. Being compelled, said Lipika Kundu preferred an application under 125 of the Code of Criminal Procedure, and vide order dated 29.11.2019, maintenance was awarded by the Learned Court. As a retaliation, the Opposite Party/husband filed divorce proceedings.
5. The petitioners state that Suprobhat Kundu (herein after referred as the Opposite Party) filed a complaint case under Section 200 of the Code of Criminal Procedure, before the Additional Chief Judicial Magistrate, Alipore, South 24 Parganas on 24.04.2019 and which was subsequently registered as Complaint Case No. AC-2887 of 2019 under Sections 323/324/325/506/341/34 of the Indian Penal Code, 1860 is now pending before the Court of the Learned Judicial Magistrate, 6th Court, Alipore, South 24 Parganas.
6. The allegations as leveled in the said complaint, inter alia, are to the effect that the Opposite Party is the husband of Lipika Kundu. On 10.04.2019 at about 9 a.m. the Opposite Party went to the address i.e. C/o – Dilip Bag, Vill – Vasa 14 No. beside Swami Narayan Mandir, South 24 Parganas, Pin- 743503 and saw that his wife Lipika Kundu nee Basu taking breakfast along with the Petitioner No. 2 her father, Petitioner No. 3 her mother, Petitioner No. 4 her brother and also with the other 2 accused persons namely Joydeep Das and his mother. It is alleged that

after seeing this, the Opposite Party was shocked and astonished and told the Petitioner No. 1 that why his wife had finished his life. Then, all the petitioners herein along with the other 2 accused persons become angry and attacked the Opposite Party with fist and blow. It was also alleged that the another accused person namely Joydeep Das jumped on the Opposite Party and assaulted him with fist and blow on his face. When the Opposite Party tried to flee away from place of incident, he was brutally assaulted by the petitioner No. 4 namely Dipankar Basu and for that the Opposite Party suffered several injuries on his body and face.

7. It is stated that the Opposite party has filed a suit for dissolution of marriage by decree of divorce under Section 13 of the Hindu Marriage Act, 1955, registered as Mat Suit No. 3405 of 2018 before the District Judge, Alipore, South 24 Parganas which is now pending before the Court of the Learned Additional District and Sessions Judge, 6th Court at Alipore.
8. The Petitioners state that the impugned proceedings is a product of suppression of material facts, which has been purportedly suppressed by the Opposite Party.
9. The Petitioners submit that petitioners are innocent and are in no way connected with any offence far less the offences alleged in the complaint filed by the Opposite Party. The petitioners further submit that the petitioners have no antecedents and no record of past convictions.

10. That the allegations leveled in the impugned complaint are so absurd that, on the basis of which no man of ordinary prudence would ever reach a just conclusion that there is sufficient ground to proceed against the petitioners.
11. For that the impugned proceeding is otherwise bad in law and thus liable to be quashed.
12. **In spite of due service there is no representation on behalf of the opposite party.**
13. **From the materials on record it is evident that:-**
 - 1) The complaint has been filed against the complainant's wife, her alleged live in partner, his mother, her parents and her brother.
 - 2) **The accused no.1/wife, has left her husband and two children to live with accused No. 2, her alleged live in partner.**
 - 3) The present petitioners are the father-in-law, mother-in-law and brother-in-law of the Opposite Party/complainant.
14. From the materials on record, including the petition of complaint and evidence before the Magistrate of the complainant and a witness, it is seen that there is prima facie materials on record for the offences alleged against the petitioner No. 3 (Dipankar Basu) in this revision, who allegedly assaulted the complainant.
15. Accused No. 2, Joydeep Das also allegedly assaulted the complainant, but he has not come up in revision. There is no materials on record

prima facie against the petitioner no. 1 and 2 in respect of the offences alleged.

16. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s)..... of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power 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.

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :*

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent

powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

'102. (7) Where a criminal proceeding is manifestly attended with mala fides 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.'

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :*

“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.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.***

- 17. According CRR 409 of 2020 is allowed in respect of petitioner No. 1/accused Biswanath Basu and Petitioner no. 2/accused Sagota Basu and rejected in respect of Petitioner No. 3/accused Dipankar Basu.**

18. The proceedings in Complaint Case No. AC-2887 of 2019 under Sections 341/323/506/34 of the Indian Penal Code pending before the Court of the Learned Judicial Magistrate, 6th Court, Alipore, South 24 Parganas, is hereby quashed in respect of petitioner No. 1/accused Biswanath Basu and Petitioner no. 2/accused Sagota Basu and rejected in respect of Petitioner No. 3/accused Dipankar Basu.
19. **The trial in respect of petitioner no. 3/accused Dipankar Basu to proceed in accordance with law.**
20. **CRR 409 of 2020 is accordingly disposed of.**
21. No order as to costs.
22. All connected Applications stand disposed of.
23. Interim order if any stands vacated.
24. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
25. Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)