

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 445 of 2020

Susmita Chakraborty

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Pinak Kumar Mitra,
Ms. Sayani Biswas.

For the State : Ms. Rita Dutta.

For the Opposite Party No. 2 : None.

Heard on : 20.03.2023

Judgment on : 03.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings in connection with Charge Sheet being Charge Sheet No. 39 dated 28/02/2014 under Sections 341/506/34 of the Indian Penal Code against the petitioner and arising out of Jagacha Police Station Case No. 470/2013 dated 30/12/2013 under Sections 323/341/354/506/34 of the Indian Penal Code, corresponding to G.R. Case No. 9672 of 2013, and all orders passed therein, now pending before the Learned 4th Judicial Magistrate, Howrah.
2. The petitioner's case is that the Opposite Party No. 2 and other members of her family picked up a quarrel with the family of the petitioner and over the said issue, there was a commotion between the two families on 02/08/2013 and the late grandmother of the petitioner namely Jyotiprabha Chakraborty lodged a First Information Report at Jagacha Police Station which was registered as Jagacha Police Station Case No. 269/2013 dated 03/08/2013 alleging therein "That the informant is the co-owner of the premises situated at B-4, Royal Jyoti Residency, 68, Subinoy Ghosh Sarani, Jagacha, Howrah and the co-owner of a lift situated in the aforesaid building. Since 23/04/2013 the lift facility of the said lift had stopped and due to that the informant and other flat owners were facing serious trouble, the informant being an octogenarian.

3. On 02/08/2013 in the morning at about 11.30 a.m. the representative of the Laser Elevator Pvt. Ltd. had come to the said flat for restoration/repair of the lift but at that time one of the flat owner namely Suman Kr. Ganguly resisted the representatives of the elevator company and he refused to hand over the key of the lift to the representatives of the elevator company. As a result the lift could not be repaired. The said accused person also abused the son of the informant and the representative of the elevator company and also assaulted the son of the informant by kicks and blows and the accused persons also snatched the mobile phone of the informant's son worth Rs. 5000/- and also money worth Rs. 5000/-".
4. It is the case of the petitioner that the investigating agency conducted the investigation in a biased manner and submitted a final report being final Report No. 247/2013 dated 23/09/2013.
5. On 20/02/2015 a prayer for further investigation of the case was made before the Learned Trial Court by the late grandmother of the present petitioner namely Jyotiprabha Chakraborty, who was the de-facto complainant, by way of filing a Narazi Petition. However for several reasons the said Narazi petition could not be taken up for hearing and the record of the case was also misplaced and could not be traced out.
6. The de-facto complainant of Jagacha Police Station Case No. 269/2013 dated 03/08/2013 namely Jyotiprabha Chakraborty succumbed to her prolonged illness and died on 08/10/2019 leaving behind her legal heirs.

7. Finally the record was traced out on 26/09/2019 and a fresh notice was issued upon the de-facto complainant for hearing of the Narazi petition on 16/12/2019.
8. The legal heirs being of the deceased de-facto complainant of the said Jagacha Police Station Case No. 269/2013 dated 03/08/2013 intend to file a substitution application for pressing the Narazi petition.
9. Almost four months after filing the aforesaid case, the Opposite Party No. 2 to wreck vengeance, filed a complaint at Jagacha Police Station on 30/12/2013 against the members of the family of the petitioner who was aged about 19 years at that time and a student, being Jagacha Police Station Case No. 470/2013 dated 30/12/2013 under Sections 323/341/354/506/34 of the Indian Penal Code, inter alia, alleging that:-

“One Shiba Prasad Chakraborty who is a co-resident, at around 12.30 in the afternoon attempted to assault the complainant’s elder son, Sagnik Ganguly. When the complainant protested against that, she was caught by her hair and pushed and she fell down. The said Shiba Prasad Chakraborty, his daughter Susmita Chakraborty and his wife abused the complainant in dirty language, Shiba Prasad Chakraborty has opened the clothing (Chador) which was on the body of the complainant. The said Shiba Prasad Chakraborty harassed the complainant’s husband in different manners in earlier occasions. For such aggressive behaviour, the complainant and her family are heavily frightened and panicking. The Complainant’s husband at times, for the purpose of his official job, goes outstation and for such behaviour, the complainant is feeling insecure about herself.”

10. After completion of investigation, the Investigating Officer submitted a Charge Sheet against the petitioner and her parents on 28/02/2014

being Charge Sheet No. 39 dated 28/02/2014 under Sections 341/354/506/34 of the Indian Penal Code. The Learned Chief Judicial Magistrate has taken cognizance on 29/01/2015.

11. **Mr. Pinak Kumar Mitra, learned counsel for the petitioner** has submitted that the complaint by itself does not make out any cognizable offence as alleged in the Charge Sheet.
12. That the continuation of the present proceeding will be an abuse of process of law and therefore, it should be quashed and set aside.
13. **In spite of due service there is no representation on behalf of the Opposite Party No. 2.**
14. **Ms. Rita Dutta, learned counsel for the State** has placed the Case Diary.
15. The Charge Sheet filed in respect of the petitioner is under Sections 341/506/34 IPC.
16. **The matter had been referred for mediation, but it was not successful due to the absence of the Opposite Party No. 2.**
17. Supplementary affidavit has been filed by the petitioner.
18. The incident in this case relates to the repair of the lift in which the parties are neighbours. The said incident led to a case and counter case filed by the parties.
19. The petitioner's grandmother filed a case on **02/08/2013**.

20. The Complaint in this case has been filed on **30/12/2013** regarding an alleged assault **(Four months after the complaint lodged by the petitioner's family).**
21. Admittedly the parties live in the same building.
22. **It is submitted by the counsel for the petitioner that the relationship between them is now good.**
23. 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.**”*

24. On careful perusal of the case diary and the materials on record, it is seen that the ingredients required to constitute the offence as alleged (323/341/354/506/34 IPC) are prima facie not present against the accused persons.

25. Guideline no. 1 and 7 at paragraph 102 in ***State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335*** is applicable in this case considering the facts and circumstances.
26. **CRR 445 of 2020 is allowed.**
27. The proceedings being Charge Sheet No. 39 dated 28/02/2014 under Sections 341/506/34 of the Indian Penal Code against the petitioner and arising out of Jagacha Police Station Case No. 470/2013 dated 30/12/2013 under Sections 323/341/354/506/34 of the Indian Penal Code, corresponding to G.R. Case No. 9672 of 2013, and all orders passed therein, now pending before the Learned 4th Judicial Magistrate, Howrah, is hereby quashed.
28. There will be no order as to costs.
29. All connected Applications stand disposed of.
30. Interim order if any stands vacated.
31. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
32. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)