

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 473 of 2019

Raj Kumar Jajodia

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Purnasish Gupta,
Mr. J. K. Mukhopadhyay.

For the State : Mr. Suman De.

For the Opposite Party No. 2 : None.

Heard on : 06.02.2023

Judgment on : 24.02.2023

Shampa Dutt (Paul), J.:

The present revisional application has been preferred for quashing of the proceedings being Sec. '01' Manicktala P.S. Case No. 37 of 2007 dated 06.03.2007 under Sections 3, 5 and 7 of the Immoral Traffic Act, and Section 120B of the Indian Penal Code pending in the 6th Court of Learned Judicial Magistrate at Sealdah and quashing of the charge Sheet being No. 225 of 2007 dated 13.11.2007.

The petitioner's case is that the instant case has been initiated on the basis of a complaint made by one Mintu De residing at Flat No. 58, Block No. 6, Bagmari Lane, Kolkata – 700056. The de facto complainant has alleged that in their locality there is a residential complex named Anandalok Housing Society, C.I.T. Road, Scheme 7M, Kolkata-54, where there is a flat belonging to Susmit Nandi on 2nd floor. In the said flat a brothel had been running regularly.

On the basis of the said complaint a proceeding was initiated against the petitioner and the other two accused persons under Section 3, 5, and 7 of the Immoral Traffic (Prevention) Act, 1956. It is stated that subsequently the prosecution prayed for adding Section 120B of the Indian Penal Code against the petitioner and the other accused persons which has been allowed. It is stated that Section 120B has

been added in order to implicate the petitioner with the commission of the alleged offence.

The prosecution has set up a false and fabricated story against the petitioner.

It is stated that the investigation was done in a perfunctory manner and accordingly the charge sheet filed by the investigating officer against the petitioner is liable to be quashed.

It is further stated by the petitioner that he was intending to purchase the said flat. The complainant being a broker, wanted the deal of the flat. Being aggrieved he has initiated this false case.

The alleged incident happened sometime in the year 06.03.2007 and the Charge Sheet has been filed in 13.11.2007 and thereafter there was no further progress of the proceeding during the last twelve years.

The petitioner states that neither in the F.I.R nor in the Charge Sheet there are any ingredients of offence under Section 3, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956 and Section 120B of the Indian Penal Code.

Mr. Purnasish Gupta learned counsel for the petitioner has submitted that none of the ingredients of the offence under Section 3, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956 and 120B of the Indian Penal Code is applicable in case of the petitioner.

It also appears from the statements made under Section 161 of the Criminal Procedure Code that those were prepared by the investigating officer in respect of some fictitious persons in a stereo type manner.

That no complaint has been filed by the residents of Anandalok whereas according to the investigating authority the statements under Section 161 of the Criminal Procedure Code has been recorded by the residents of Anandalok.

The petitioner submits that continuation of the Criminal Proceedings is nothing but to degenerate the Court proceedings into a weapon of harassment.

The petitioner on 19.06.2015 filed an application for discharging him from the case under the facts and circumstances stated therein.

By order dated 31.10.2018 the Learned Judicial Magistrate, 1st Class, 6th Court at Sealdah, 24 Parganas has been pleased to reject the application of the petitioner.

That the impugned criminal proceeding being Manicktala P.S. case No. 37 of 2007 under Section 3, 5, and 7 of the Immoral Traffic (Prevention) Act, 1956 and Section 120B of the Indian Penal Code is arbitrary, illegal, malafide and harassing.

That there is no ingredients of offence under Section 3, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956 and Section 120B of the Indian Penal Code against the petitioner.

There is gross suppression of material facts in the Complaint Petition for which the impugned proceeding is liable to be quashed.

That the complaint which was made a part of the First Information Report was written by the Investigating Officer and an outsider who is not residing in the said Anandalok Housing Estate was asked to put signature on the same.

The de facto complainant and his associates in collusion and in connivance with the police authorities have implicated the petitioner in a pre planned manner.

The continuation of the Criminal Proceeding will be an abuse of the process of the Court.

That the impugned criminal proceeding is otherwise bad in law and the same is liable to be quashed.

Mr. Suman De, learned counsel for the state has placed the case diary along with the memo of evidence and a report filed through the Addl. Officer-in-Charge, Manicktala Police Station along with a signed statement of the complainant, wherein it has been stated by the

complainant that ‘he would not like to proceed with the case any further’.

The allegation against the petitioner is that he was a client at a flat where allegedly a brothel was being run....

The owner of the flat is an old lady aged 85 years.

No incriminating materials have been seized by the police. Though the Complainant/Opposite party could not be served, the complainant has given his statement through the Police/State that he doesn’t wish to proceed with the case.

The Immoral Traffics (Prevention) Act, 1956 (here in after referred to the Act of 1956 defines :-

*“2(a) **“brothel”** includes any house, room [conveyance], or place or any portion of any house, room [conveyance], or place, which is used for purposes [of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more prostitutes.*

*(f) **Prostitution** – Prior to 1986 amendment “prostitution” was defined to mean “the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise, and the expression “prostitute” shall be construed accordingly under the new definition “prostitution” means the sexual exploitation or abuse of persons for commercial purposes. Thus, the present definition is not confined to the act of a female offering her body for promiscuous sexual intercourse with her, but includes sexual exploitation or abuse of a male for commercial purposes. According to Black’s Law Dictionary “prostitution is performing an act of sexual intercourse for hire, or offering or agreeing to perform an act of sexual*

intercourse or any unlawful sexual act for hire. The act or practice of a female of prostituting or offering her body to an indiscriminate intercourse with men for money or its equivalent”

Section 3 of the Act of 1956 lays down:-

3. Punishment for keeping a brothel or allowing premises to be used as a brothel. -

(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who –

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

There being no statement/allegations in the written complaint showing that the ingredients in respect of the said Sections were present in respect of this petitioner, Section 3 of the Act of 1956 in prima facie not applicable.

Section 4 of the Act of 1956 lays down:-

4. Punishment for living on the earnings of prostitution-(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of [any other person] shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both [and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a terms of not less than seven years and not more than ten years].

None of the ingredient as required to constitute the said offence is prima facie alleged against the petitioner herein.

Section 5. Procuring, inducing or taking [person] for the sake of prostitution –

(1) Any person who –

(a) procures or attempts to procure a [person], whether with or without his consent, for the purpose of prostitution ; or

(b) induces a [person] to go from any place, with the intent that [he] may for the purpose of prostitution become the inmate of, or frequent, a brothel;

(c) takes, attempts to take a [person] or causes a [person] to be taken, from one place to another with a view to [his] carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a [person] to carry on prostitution; shall be punishable

Section – 6. Detaining a [person] in premises where prostitution is carried on. –

(1) Any person who detains [any other person, whether with or without his consent],

(a) In any brothel, or

(b) In or upon any premises with intent [that such person may have sexual intercourse with a person who is not the spouse of such person] shall be punishable [on conviction, with imprisonment of either description for a term which shall not be less than seven years but which

may be for life or for a term which may extend to ten years and shall also be liable to fine;

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.]

Finally Section 7. Prostitution in or in the vicinity of public places. – [(1) Any [person], who carries on prostitution and the person with whom such prostitution is carried on, in any premises –

- (a) Which are within the area or areas, notified under sub-section- (3), or,
- (b) Which are within a distance of two hundred meters of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months].”

The words used in Sections 5, 6 and 7 the Act of 1956

requires contemplation while considering an application under Section 482 Cr.P.C. praying for quashing of the FIR and thereby the investigation which normally follows:-

The said words, including the ingredients therein to make out an offence under the said Sections have not been alleged in the written complaint in this case.

The specific allegation against the petitioner is that he was found in an “immodest” condition at 8 p.m. on 06.03.2007 at the place of occurrence, which was allegedly being used as a ‘brothel’.

The allegations in the written complaint also prima facie do not make out any ingredients required to constitute offences as laid down under Sections 3/4/5/6/7 of the said Act of 1956.

In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). 2060 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.”

Keeping in mind the said guidelines and from the materials on record which includes the statement in the First information report/written complaint it is evident that the allegations against the present petitioner therein, clearly do not disclose the commission of any cognizable offence as alleged.

The Supreme Court's view is that, a quashing of a complaint/FIR should be an exception rather than an ordinary rule. The prosecution case before this Court is a case where it is clearly seen that no cognizable offence or offence of any kind is disclosed in the First Information Report and as such this Court cannot permit the said proceedings to continue and this is one of the said rare circumstances in which the prayer of quashing should be considered.

Having considered the aforesaid facts and circumstances of the case, if the present proceeding is allowed to continue, it would be sheer abuse of process of court and as such this is a fit case where, invoking the power under Section 482 of the Code of Criminal Procedure, the present proceeding is required to be quashed.

The complainant has given a written instruction to the Police that he does not wish to proceed in this case.

A Three Judge Bench of the Court in **(2012) 10 Supreme Court Cases, 303, Gian Singh vs State of Punjab** and another has cleared the position in respect of the power of the High Court in quashing a criminal proceedings in exercise of its inherent jurisdiction in para 61 of the judgment, which is reproduced here in:-

“The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or

such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

In the present case, the complainant does not wish to proceed with his complaint against the petitioner and there is also no materials on record to make out a prima facie against the accused/petitioner of the offences as alleged.

As such this court is of the view that it would be unfair and contrary to the interest of justice to continue with the criminal proceedings which would tantamount to abuse of process of law in view of the materials on record including the statement of the complaint that

he does not wish to proceed with the case and to secure the ends of justice it would be prudent to quash the proceedings in the case.

Accordingly the proceedings being Sec. "01" Manicktala P.S. Case No. 37 of 2007 dated 06.03.2007 under Section 3, 5 and 7 of the Immoral Traffic Act, and Section 120B of the Indian Penal Code pending before the learned Judicial Magistrate, 6th Court, Sealdah, North 24 Parganas, is hereby quashed.

CRR 473 of 2019 is thus allowed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)