

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 717 of 2020

Prosenjit Chowdhury

Vs.

The State of West Bengal & Anr.

For the Petitioner : Ms. Chandrani Bhattacharya,
Mr. Ivan Roy.

For the State : Mr. Arijit Ganguly,
Mr. Bitasok Banerjee.

For the Opposite Party No. 2 : Mr. Chiranjit Chatterjee,
Mr. Deepanjan Chakraborty,
Mr. Sombit Das,
Mr. Rahul Kumar Singh.

Hearing concluded on : 07.08.2023

Judgment on : 01.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred for quashing of F.I.R. vide Alipore Police Station Case No. 09/2019 dated 08.01.2019 C.G.R. No. 109/2019 under Sections 341/323/506 of the Indian Penal Code, pending in the Court of Learned Chief Judicial Magistrate, Alipore, South 24 Parganas.
2. The petitioner's case is that the petitioner has been adduced as an accused in connection with Alipore Police Station Case No. 09/2019 dated 08.01.2019 under Sections 341/323/506 of the Indian Penal Code C.G.R. No. 109/19, on the basis of a written complainant dated 08.01.2019 lodged by the Opposite Party No. 2
3. The allegation in the said complaint is to the effect that:-

*One Sandip Chowdhury, son of Late Pradip Kumar Chowdhury, resident of 17, Bramha Samaj Road, Behala, Post Office Behala, Police Station Parnasree, Kolkata – 700034 and District South 24 Parganas lodged a written complaint with Parnasree Police Station on 08.01.2019 at about 21.05 hours to the effect that he is practicing as an Advocate at Alipore Judge's Court since last 10 years with good reputation and dignity and on 07.01.2019 at about 2.30 p.m. one Prosenjt Chowdhury, son of Late Ashis Kr. Chowdhury, resident of 17, Brahmo Samaj Road, Behala, Police Station Parnasree, Kolkata – 700034 suddenly came in front of the court office at Alipore Judges Court premises shouting his name with slang and abusive languages on the **sole issue of family disputes regarding family properties of which this de facto complainant and Prosenjit Chowdhury are the joint owners and the disputes are still pending before several Civil Courts***

in Alipore Judges Court for its adjudication, and when this de-facto complainant protested to his illegal activities with a request to not hamper his reputation at his work place, the said Prosenjit Chowdhury assaulted the de facto complainant in front of his colleagues and clients which resulted in irreparable loss to his prestige and profession.

4. The petitioner states that the de-facto complainant is a family member of the petitioner and one Partition Suit is pending between the parties in connection with the said property lying and situated at 17, Bramha Samaj Road, Behala, Post Office – Behala, Police Station - Parnasree, District - South 24 Parganas, Pin Code – 700034. The petitioner also states that the instant case is a counterblast to the case filed by petitioner against the outrageous attempt of this de facto complainant to harass the petitioner to place an equivocal impact over the Partition Suit.
5. On 07.01.2019 this petitioner went to the “sherestha” of the conducting advocate of the Partition Suit at Alipore Judges Court premises in order to enquire about the status of the suit, when this de-facto complainant along with his other companions approached this petitioner in a harsh manner and abused this petitioner with most filthy languages with an attempt to assault the petitioner on the sole issue of their property dispute against which this petitioner raised protest and the de-facto complainant created a chaos and lodged this instant case on the basis of some false and vague allegations with mala fide intention.
6. **Ms. Chandrani Bhattacharya, learned counsel for the petitioner** has submitted that the initiation and continuation of the Proceeding being

C.G.R. Case No. No. 109/2019 and all orders passed therein arising out of Alipore Police Station Case No. 09 of 2019 dated 08.01.2019 under Sections 341/323/506 of the Indian Penal Code, now pending before the Court of Learned Chief Judicial Magistrate, Alipore is bad in law and if permitted to continue will be a miscarriage of justice.

7. **Mr. Arijit Ganguly, learned counsel for the state** has placed the case diary.
8. **Mr. Chiranjit Chatterjee, learned counsel for the Opposite Party No. 2** has submitted that there is sufficient materials on record against the petitioner for him to face trial and so the revision is liable to be dismissed.
9.
 - i. **On perusal of the materials on record** it appears that the parties are related and have civil disputes relating to their family joint property. They have filed cases against each other, which are pending before Alipore Court.
 - ii. The incident allegedly occurred within the premises of Alipore Court, when they went to pursue their legal proceedings.
10. **There is absolutely no materials in the case diary to prima facie make out a case against the petitioner for the offences alleged or any other case.**
11. ***The parties are having problems regarding their joint family property and dispute in such cases lead to several other cases and***

counter cases, some only out of instant anger, some mala fide, some to harass.

- 12.** The Supreme court in ***Mahmood Ali & Ors. vs State of U.P. & Ors., Criminal Appeal No. 2341 of 2023, on August 08, 2023***, held:-

“12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs

assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

13. In *State of Andhra Pradesh v. Golconda Linga Swamy*, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:

*“5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. **When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.***

6. In ***R.P. Kapur v. State of Punjab***, AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....”

(Emphasis supplied)”

13. The facts in the present case fall under clause 5 and 7 of Para 102 in ***State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) SCC 335.***
14. **CRR 717 of 2020 is accordingly allowed.**
15. The proceeding being Alipore Police Station Case No. 09/2019 dated 08.01.2019 C.G.R. No. 109/2019 under Sections 341/323/506 of the Indian Penal Code, pending in the Court of Learned Chief Judicial Magistrate, Alipore, South 24 Parganas, **is hereby quashed.**

- 16.** All connected applications, if any, stands disposed of.
- 17.** Interim order, if any, stands vacated.
- 18.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 19.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)