

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.R.R. 740 of 2016
With
CRAN 4 of 2019 (CRAN 4852 of 2019)
Raja Paul & Ors.
Vs.
State of West Bengal & Anr.

For the Petitioners : Mr. Somopriyo Chowdhury, Adv.
Mr. Dipayan Dan, Adv.

For the State : Mr. Pravash Bhattacharya, Adv.
Mr. Mirza Firoj Ahmed Begg, Adv.

Heard on : July 27, 2023

Judgment on : August 01, 2023

Bibhas Ranjan De, J.

1. I have taken this record for disposal of an allegation of unleashing a terror and running of parallel administration of illegal mining within the Eastern Coalfield area under Salanpur Police Station, District Burdwan.
2. This revision application was filed with a prayer for quashing of proceeding in connection with GR Case no. 298 of 2016 pending before the Ld. Chief Judicial Magistrate at Asansole arising out of Salanpur Police Station Case No. 29 of 2016 dated 31.01.2016 under Section 448, 323, 354, 379, 427 & 34 of the Indian Penal Code (hereinafter referred to as IPC).

Brief Facts:-

3. The fact, in brief, is that on 31.01.2016 at about 1.30 hours on receiving a source information officials of Eastern Coalfield Ltd., Security Departments, along with CISF personnel and police authorities raided at Dabar Colliery where miscreants were found operating in the mines. During raid at Radhaballavpur colliery mine side huge amount of illegal coal were found in an abandoned unsafe building. After through search one Radheshyam Singh and his wife Nigam Devi being occupier of the said abandoned

building used the same for the purpose of stocking illegal excavated coal. The entire consignment of coal were seized. At that time, the raid party conducting its public duty were attacked with knives and other weapons by the said Nigam Devi (opposite party no. 2), her husband Radheshyam Sing and one Sabir Ali with his associates. They also resisted the petitioners from seizing the coal. Raid parties were also threatened to implicate them in false rape and molestation charges. Thereafter, raid party including the petitioners somehow manage to save themselves and a written complaint was lodged at Salanpur Police Station against the opposite party no. 2 her husband and others which was registered as Salanpur Police Station Case No. 28 of 2016 dated 31.01.2016 under Section 379, 411, 413, 414, 120B, 186, 353 of IPC read with Section 30(II) CMN Act.

4. As a counter blast opposite party no. 2 lodged a written complaint before the Salanpur Police Station alleging *inter alia*, that on 31.01.2016 at about 1 Hr the door of her house was being banged by some unknown persons who threatened to break open the same if the said door is not opened;

That her husband was not at home at that time and she opened the door out of fear and at that time the Security Officer of Eastern Coalfields Ltd. being the petitioner no.1 along with the rest of the petitioners entered the house armed with iron rod, lathi and other weapons;

That they started abusing her and assaulted her;

That they ransacked the room and took away Rs. 5000/- from below her bed;

That they threw her out of her house and ransacked her home;

That the neighbouring people gave her shelter.

- 5.** On receipt of that complaint Salanpur Police Station Case No. 29 of 2016 dated 31.01.2016 under Section 448, 323, 354, 379, 427 & 34 of the IPC was started.
- 6.** Petitioners have preferred this revision application to quash the proceeding arising out of Salanpur Police Station case no. 29 of 2016 dated 31.1.2016 under Section 448, 323, 354, 379, 427 & 34 of the IPC being a counter blast against the Salanpur Police Station Case No. 28 of 2016 dated 31.01.2016 under Section 379, 411, 413, 414, 120B, 186, 353 of IPC read with Section 30(II) CMN Act.

7. Ld. Advocate, Mr. Somopriyo Chowdhury, appearing on behalf of the petitioners referred to the FIR of both the cases and submitted that though opposite party no. 2 lodged complaint for an offence alleged to have been committed at 1 hour on 31.01.2016 but complaint was lodged 13.35 hours on 31.1.2016 while petitioners lodged complaint on 10.25 hours on 31.1.2016 i.e. after lodging of complaint by the petitioner of this application.
8. Mr. Chowdhury has further drew my attention to the successive order of the Hon'ble Division Bench of this Court in writ petition number 1253 of 2009 and submitted that Hon'ble Court passed an order for removal of illegal occupants in the coal field area and that of the illegal mining's.
9. Per contra, Ld. Advocate, Mr. Pravash Bhattacharya appearing on behalf of the State has submitted that F.I.R lodged by the opposite party no. 2 and proceeding thereon cannot be said to be counter blast only because of filing of the complaint after filing by the petitioners.
10. Mr. Chowdhury in support of his contention relied on a case of ***D.P. Gulati, Manager Accounts, Jetking Infotrain Limited Vs. State of Uttar Pradesh and another*** reported

in ***(2015) 11 Supreme Court Cases 730*** and a case of ***Vineet Kumar and others Vs. State of Uttar Pradesh and another*** reported in ***(2017) 13 Supreme Court Cases 369***.

- 11.** In writ petition no. 1253 Hon'ble Division Bench of this court passed following successive orders:-

“ Order dated 27th June, 2013:- Let State and its authorities take appropriate action so as to ensure that no unlawful and/or unauthorized mining is done and unauthorized and/or unlawful selling of the coal in Durgapur, Asansol and Raniganj Colliery belt is not made in any manner whatsoever. Let State Government constitute a special cell of the responsible officer to ensure the compliance of the order and appropriate action be taken to check illegal mining and selling of the coal within a period of four weeks from today. Action taken report be submitted before this court after six weeks.....

Order dated 8th July 2011:- The Learned Additional Solicitor General also informs the Court that this is one of the main reasons that rank trespassers/encroachers cannot be removed from the estate of ECL. We, therefore, direct the authorities to take

immediate steps to disconnect/withdraw electric and water supply to persons who have encroached / trespassed the properties of ECL by undertaking a massive exercise and further take preventive steps so that illegal electric and water connections are not accessible to such unauthorized occupants and trespassers. Needless to say that the authorities would follow due process while taking action in the matter against the unauthorized occupants and trespassers enjoying illegal electric and water connection....

Order dated 2nd September 2011:-The Learned Additional Govt. pleader assures the Court that the State Police would continue to extend cooperation and has tendered the report of the Superintendent of Police, Burdwan, wherein it is stated that the Police has rendered police assistance to Coal India Ltd. and its subsidiaries, particularly, Eastern Coalfields Ltd. and so also to the West Bengal State Electricity Distribution Company Limited to curb unauthorised water and electric supply and that the police personnel in the district are performing duties and as and when any assistance is sought, it has taken prompt action in the matter. We record our appreciation for the

steps taken by the Superintendent of Police to curb the illegal activities in the region.....

“Order dated 5th October, 2012:- we restrain all the persons concerned except officials of the coal mines, eastern coalfields limited, police authorities as well as government officials, from preventing and/or interfering with the lawful action so to be taken and might be taken by the officials of coal mines and the police authorities. If any obstruction is put forward by any person either directly or indirectly, police assistance shall be provided.....”

12. In ***Vineet Kumr*** (supra) Hon’ble apex Court in dealing with a dispute under the negotiable act laid down the following principle:-

“ 38. There was sufficient material on record to indicate that there were financial transactions between the accused and the complainant, her husband and son. On dishonour of cheques issued by the complainant's husband and son, proceedings under Section 138 of the Negotiable Instruments Act were already initiated by the accused. All family members of the complainant were living in the same house. The brother of the complainant's husband and his wife, in their statements before the IO have admitted monetary transactions of his brother with the accused. The statements before the IO of both Nikesh Kumar and Smt Bina Vishnoi have already been extracted above, which were part of the case diary and was material which ought to have been looked into which was submitted by the IO in the final report.

39. *The fact is that no medical examination was got done on the date of incident or even on the next day or on 7-11-2015, when the IO asked the complainant and her husband to get done the medical examination. Subsequently it was done on 20-11-2015, which was wholly irrelevant. Apart from bald assertions made by the complainant that all the accused have raped her, there was nothing which could have led the courts to form an opinion that the present case is a fit case of prosecution which ought to be launched. We are conscious that the statement given by the prosecutrix/complainant under Section 164 CrPC is not to be lightly brushed away but the statement was required to be considered along with antecedents, facts and circumstances as noted above.*

40. *Reference to the judgment of this Court in Prashant Bharti v. State (NCT of Delhi) [Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293 : (2013) 3 SCC (Cri) 920] is relevant for the present case. In the above case the complainant lady aged 21 years lodged an FIR under Sections 328 and 354 IPC with regard to the incident dated 15-2-2007. She sent a telephonic information on 16-2-2007 and on her statement FIR under Sections 328 and 354 IPC was registered against the appellant. After a lapse of five days on 21-2-2007 she gave a supplementary statement alleging rape by the appellant on 23-12-2006, 25-12-2006 and 1-1-2007. The statement under Section 164 CrPC of the prosecutrix was recorded. Police filed charge-sheet under Sections 328, 324 and 376 IPC. Charge-sheet although mentioned that no proof in support of crime under Sections 328/354 could be found. However, on the ground of statement made under Section 164 CrPC charge-sheet was submitted.*

40.1. *Para 10 of the judgment which notes the charge-sheet is as follows: (Prashant Bharti case [Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293 : (2013) 3 SCC (Cri) 920] , SCC p. 300)*

“10. On 28-6-2007, the police filed a charge-sheet under Sections 328, 354 and 376 of the Penal Code. In the charge-sheet, it was clearly mentioned that the police

investigation, from different angles, had not yielded any positive result. However, the charge-sheet was based on the statement made by the complainant/prosecutrix before the Metropolitan Magistrate, New Delhi under Section 164 of the Code of Criminal Procedure, which was found to be sufficient for the charges alleged against the appellant-accused. A relevant extract of the charge-sheet depicting the aforesaid factual position, is being reproduced below:

‘I, the Inspector, tried my best from all angles to recover the intoxicating substance/Pepsi/Pepsi glass and undergarments worn at the time of the rape. But nothing could be recovered and for this reason, the blood sample of the accused could not be sent to FSL. As from the investigation so far conducted, no proof could be found in support of the crime under Sections 328/354 IPC and even the position of accused Prashant Bharti is not available at Lodhi Colony at the date and time as his mobile phone ill (sic). However, prosecutrix Priya Porwal made statement on 21-2-2007 and on 27-2-2007 under Section 164 CrPC which is sufficient in support of his challan for the offence under Section 376 IPC.’”

(emphasis in original)

40.2. *The writ petition was filed by the accused for quashing the FIR which was dismissed by the High Court on 27-8-2007. Thereafter, charges were framed on 1-12-2008. Dissatisfied with the framing of charges criminal revision petition was filed which was dismissed by the Delhi High Court on 16-1-2009 [Prashant Bharti v. State, 2009 SCC OnLine Del 4204] . The order of the Additional Sessions Judge has been extracted by this Court in para 14 which is quoted below: (Prashant Bharti case [Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293 : (2013) 3 SCC (Cri) 920] , SCC p. 301)*

“14. Dissatisfied with the action of the trial court in framing charges against him, the appellant-accused filed Criminal Revision Petition No. 08 of 2009, whereby he assailed the order dated 1-12-2008 passed by the Additional Sessions Judge, New Delhi. The Delhi High Court dismissed the revision petition on 16-1-2009

[Prashant Bharti v. State, 2009 SCC OnLine Del 4204] , by inter alia observing as under: (Prashant Bharti case [Prashant Bharti v. State, 2009 SCC OnLine Del 4204] , SCC OnLine Del para 12)

‘12. Truthfulness or falsity of the allegations, essentially pertains to the realm of evidence and the same cannot be pre-judged at this initial stage. I do not find any illegality or infirmity in the impugned order. Consequently, this revision petition is dismissed in limine while making it clear that anything herein shall not be construed as an opinion on merits at trial.’”

40.3. *The appeal was filed against the aforesaid judgment of the High Court by the accused contending that there was sufficient material collected in the investigation which proved that allegations were unfounded and the prosecution of the appellant was an abuse of process of the court. In para 23 this Court noted several circumstances on the basis of which this Court held that judicial conscience of the High Court ought to have persuaded it to quash the criminal proceedings. This Court further noticed that the investigating officer has acknowledged that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 CrPC. In paras 24 and 25 of the judgment the following was stated: (Prashant Bharti case [Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293 : (2013) 3 SCC (Cri) 920] , SCC pp. 308-09)*

“24. Most importantly, as against the aforesaid allegations, no pleadings whatsoever have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted. As a matter of fact, the complainant/prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would therefore be legitimate to conclude, in the facts and circumstances of this case, that the material relied upon by the accused has not been refuted by the complainant/prosecutrix.

Even in the charge-sheet dated 28-6-2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 CrPC.

25. Based on the holistic consideration of the facts and circumstances summarised in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in Rajiv Thapar case [Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] stand satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the appellant-accused, in exercise of the inherent powers vested with it under Section 482 CrPC. Accordingly, based on the conclusions drawn hereinabove, we are satisfied, that the first information report registered under Sections 328, 354 and 376 of the Penal Code against the appellant-accused, and the consequential charge-sheet dated 28-6-2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1-12-2008, deserves to be quashed. The same are accordingly quashed.”

40.4. Thus, the above was the case where despite statement under Section 164 CrPC by the prosecutrix the Court referring to material collected during investigation had held that the case was fit where the High Court ought to have quashed the criminal proceedings.”

13. D.P. Gulati (supra) ruled as follows:-

“7. We have carefully considered the rival submissions made before us. From a bare perusal of Section 482 of the Code, it is clear that the object of exercise of power under the section is to prevent abuse of process of law, and to

secure ends of justice. In Rajiv Thapar v. Madan Lal Kapoor [Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] , this Court has enumerated the steps required to be followed before invoking inherent jurisdiction by the High Court under Section 482 of the Code as under: (SCC pp. 348-49, para 30)

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1.Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2.Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3.Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4.Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

14. Therefore, raid by the officials of Eastern Coalfield Ltd.

by virtue of repeated directions of this Hon’ble Court cannot

be said to be an illegal in any way. Both the FIR lodged by the parties to this revision application clearly support the raid conducted by the petitioners. On the other hand, there is no explanation in the F.I.R in connection with Salanpur Police Station Case No. 29 of 2016 regarding considerable delay that too after lodging FIR by area security officer of the eastern coalfield in connection with Salanpur Police Station case no. 28 of 2016 on the same date. Therefore, the allegation made in the F.I.R in connection with 29 of 2016, in my opinion, is absurd and cannot be believable that security officers of Eastern Coalfield committed the offence of theft and outrage of modesty. After careful perusal of the all documents produced before this court, I have no hesitation to exercise the jurisdiction under section 482 with the assistance of ratio of **Vineet Kumar** (supra) and **D.P. Gulati** (supra) as all steps suggested by the Hon'ble Apex Court in **Rajiv Thapar vs. Madanlal Kapoor (2013) 3 SCC 330** have been complied with and therefore, I find no difficulty in coming to conclusion that the proceeding with the trial in connection with Salanpur Police Station Case no. 29 of 2016 dated 31.01.2016 would result in an abuse of

process of the court, and would not serve the ends of justice.

15. For the reasons enumerated above, the proceeding in connection with GR Case 298 of 2016 arising out of Salanpur PS Case no. 29 of 2016 dated 31.01.2016 under Section 448, 323, 354, 379, 427 & 34 of the Indian Penal Code stands quashed.
16. Accordingly, revision application being no. CRR 740 of 2016 stands allowed.
17. Pending applications also stand disposed of.
18. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]