

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 889 of 2019

Abhijit Das

Vs.

State of West Bengal & Anr.

For the Petitioner : Mr. Phiroz Edulji,
Mr. Kanakendu Chatterjee,
Mr. Roustavi Mukherjee.

For the State : Mr. Saswata Gopal Mukherjee, Id. PP
Ms. Faria Hossain,
Ms. Baisali Basu.

For the Opposite Party : None.
No. 2

Hearing concluded on : 08.08.2023

Judgment on : 04.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings in Bishnupur Police Station Case No. 43 of 2013 dated 03.02.2013 under Sections 376/323/313/120B/506 of the Indian Penal Code, 1860, pending before the Court of the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas and the Charge Sheet No.

98 dated 11.02.2018 under Sections 417/376/323/506 of the Indian Penal Code.

2. The petitioner's case is that the petitioner has also been a candidate of a certain political party consecutively in the 2009 and 2014 Lok Sabha elections from Diamond Harbour constituency.
3. The petitioner states that he has been arrayed as an accused person in Bishnupur Police Station Case No. 43 of 2013 being set in motion by one Lipika Mondal, being the de facto complainant, the opposite party no. 2 herein, thereby alleging inter alia, that petitioner has been in relationship with her since July 2012 with the commitment of effecting marriage with her. It is further alleged that due to such relationship, the opposite party no. 2 conceived but she was forced to abort and also alleged that on assurance of marriage by the petitioner with the opposite party no. 2, the petitioner took her to Court but instead of effecting marriage with him, the petitioner had caused registration of marriage of the opposite party no. 2 again with her erstwhile husband with whom she had been married since 2003 and subsequently divorced in 2008 and from such wedlock, she also has a child.
4. Upon receipt of such complaint the instant case vide Bishnupur Police Station Case No. 43 of 2013 dated 03-02-2013 had been initiated and investigation started.
5. That after investigation and a long lapse of 6 long years the investigating agency has submitted the Charge Sheet before the Court of the Learned Additional Chief Judicial Magistrate, Alipore vide Charge Sheet No. 98 dated 11-02-2018.

6. The petitioner states that from the materials on record it would be revealed that during investigation of the instant case, the petitioner has never been called by the investigating agency to join the investigation when the petitioner was always available in the locality or was evidently campaigning for being elected as a member of the Lok Sabha.
7. That the purported Charge Sheet has been submitted by the investigating agency under sections 417/376/323/506 of the Indian penal Code, without any supporting evidence, and without the medical report of the opposite party 2 as mandatorily required in offences of this nature which is considered to be a prime evidence in the matter of proof of rape. **The withdrawal petition/affidavit filed in Court by the opposite party no. 2/defacto complainant and a letter dated 27.03.2013 to that effect to the police authority was also not considered and suppressed while filling the purported charge sheet** and such purported charge sheet was filed mechanically upon the orders of senior officers as recorded in the purported charge sheet dated 11.02.2018 (after almost 5 years after filing of the letter dated 27.03.2013).
8. The petitioner states that it would be revealed from the materials on record that subsequent to lodging of the instant case and before submission of the purported Charge Sheet, **the opposite party no. 2 has affirmed an affidavit before the First Class Judicial Magistrate at Alipore stating that the instant case has been lodged mistakenly by the opposite party no. 2 which is enclosed with the petition filed by the opposite party no. 2, before the Court of the Learned Additional**

Chief Judicial Magistrate at Alipore stating that she does not want to proceed with the instant case and prayed that the case may be dropped as against the petitioner.

9. It is thus submitted that the impugned criminal proceeding is an abuse of the process of criminal law and is liable to be quashed.
10. **Mr. Phiroz Edulji, learned counsel for the petitioner** has submitted that the impugned Charge Sheet No. 98 dated 11-02-2018 submitted by the investigating agency before the Learned Additional Chief Judicial Magistrate, at Alipore is bad in law and without adhering to the process of criminal law and without sufficient evidence against the petitioner herein and hence it is liable to be quashed.
11. The impugned Charge Sheet does not disclose the prime evidence being the report of medical examination of the opposite party no. 2 as mandatorily required under the Section 173(2)(h) of the Code of Criminal Procedure in offences of this nature which is considered to be a prime evidence in the matter of proof of rape and thus the impugned Charge Sheet suffers from want of evidence and submitted in violation of the provisions of law.
12. The impugned charge sheet has been filed after a long lapse of 6 years in violation of the provisions of Section 167 of the Code of Criminal Procedure, Article 21 of the Constitution of India and the law of the land.
13. The continuance of the proceedings is therefore the violation of principle of natural justice and is causing grave prejudice to the petitioner and his interests, causing unnecessary harassment and humiliation to the petitioner.

14. The continuation of the impugned proceeding is illegal and is liable to be quashed.
15. **As the complainant could not be served (service return shows 'left') the State being directed to attempt service has placed a report from the local P.S. stating that the whereabouts of the opposite party no. 2/alleged victim/defacto complainant is not known as she has left the address on record long back.**
16. **Mr. Saswata Gopal Mukherjee, learned Public Prosecutor** has also placed the case dairy and brought the notice of this Court to page 29 of the case diary. **The said document is a letter dated 27.03.2013, addressed to the investigating officer with copy to Superintendent of Police and others. In the said letter, the complainant has categorically stated that she informs that she has not been raped by the petitioner and that she is not willing to undergo medical examination. She has reiterated her said statement.**
17. **Senior Officers have given directions for necessary action. But in spite of that the investigating officer has submitted charge sheet on 11.02.2018 against the petitioner under Sections 417/376/323/506 of the Indian Penal Code.**
18. *Thus, in view of the said materials on record, it is very unfortunate that in spite of the complainant withdrawing her allegations against the petitioner and also refusing medical examination as she reiterated that she was not raped, charge sheet has been submitted for allegations which were withdrawn five years*

ago. The de facto complainant filed a petition on 12.12.2013 on affidavit before the learned Additional Chief Judicial Magistrate at Alipore, wherein she categorically states as follows:-

“1. That your petitioner is the Defacto Complainant in connection with the abovenoted case.

2. That due to involvement of some political persons of the locality and with collusion with some design persons I was practically forced to lodged a complaint against one Abhijit Das @ Bobby and the said case was filed on 03.02.13 before the Bishnupur Police Station vide Bishnupur P.S. Case No. 43, dated 03.02.2013 u/s. 376/323/120B/313/506 I.P.C.

3. That I am a poor helpless lady and I could relies subsequently that the persons who had instigated me to file this case against Abhijit Das @ Bobby tried to fulfil their desire by me.

4. That as such I could realize that I have made with by filing this case against said Abhijit Das @ Bobby, whom I used to respect very much and a popular in the locality and said Abhijit Das @ Bobby is totally innocent person.

5. That I do not want to proceed with the instant case any further and praying before your Honour to send a copy of this petition to the investigating officer of this case for further necessary action to stop the case....”

In spite of such repeated statements by the defacto complainant before the police and the Court, the charge sheet was filed.

19. In such facts and circumstances, it is clear that there was no materials on record against the petitioner to submit the charge sheet as filed (the de facto complainant herself not willing to proceed with the case).
20. As the de facto complainant herself does not wish to press the charges, the case being permitted to proceed towards trial will be a futile exercise.
21. Mr. Edulji has relied upon the judgment in ***Mahmood Ali & Ors. vs State of U.P. & Ors., Criminal Appeal No. 2341 of 2023, on August 08, 2023***, wherein it was held by the Supreme Court that:-

“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)"

22. In the present case there are no materials on record against the petitioner to make out the offences alleged nor was there any materials to even submit the charge sheet.

23. The revision application being CRR 889 of 2019 is accordingly allowed.

24. The proceeding in Bishnupur Police Station Case No. 43 of 2013 dated 03.02.2013 under Sections 376/323/313/120B/506 of the Indian Penal

Code, 1860, pending before the Court of the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas and the Charge Sheet No. 98 dated 11.02.2018 under Sections 417/376/323/506 of the Indian Penal Code including the charge sheet is quashed.

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

(Shampa Dutt (Paul), J.)