

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1057 of 2020

With

CRAN 2 of 2020

(Old No: CRAN 4637 of 2020)

With

CRAN 3 of 2020

(Old No: CRAN 4638 of 2020)

Sabyasachi Dutta

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Rajdeep Majumder,
Mr. Mayukh Mukherjee.

For the State : Mr. Swapan Banerjee,
Ms. Purnima Ghosh.

For the Opposite Party : None.
No. 2

Hearing concluded on : 29.08.2023

Judgment on : 25.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being Lake Town Police Station Case No. 80/2020 dated 08.06.2020 under Sections 323/354/326/506/34 of the Indian Penal Code now pending before the Court of the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas (corresponding to G.R. Case No. 353/2020).
2. The petitioner's case is that the petitioner herein is a supporter of the ideologies of a particular political party and is presently holding the post of Secretary of the aforesaid political party.
3. The petitioner states that the pristine image of the petitioner herein is being thoroughly tarnished and demolished at the behest of Police Administration in connivance with the ruling party of the State of West Bengal, ever since the petitioner has joined the rival political faction. The petitioner has been unnecessarily embroiled in connection with the instant false and malicious case, allegations of which are purely a figment of imagination of the opposite party no. 2.
4. On 08.06.2020 when the petitioner along with his two party workers and accompanying security personnel were going to meet, one Dhrubani Biswas at 181/34, Arihant Apartment, Dakshindari, they found that a mob had blocked the road and were raising slogans against him to go back from the locality. He tried to go ahead peacefully but the mob attacked and damaged his car and also manhandled his security personnel.

5. Being shocked and dismayed by the aforesaid acts of the unruly mob, the petitioner herein also lodged a written complaint dated 08.06.2020 with the Inspector-in-Charge of the Lake Town Police Station, inter alia stating the said events which unfolded on the said date. On the basis of the said complaint lodged by the petitioner herein, Lake Town Police Station Case No. 81/2020 dated 08.06.2020 under Sections 341/323/325/506/427/34 of the Indian Penal Code was registered for investigation.
6. The petitioner was absolutely mystified on obtaining the knowledge that prior to the complaint of the petitioner herein, the investigating agency had registered a case being Lake Town Police Station Case No. 80/2020 dated 08.06.2020 under Sections 323/354/326/506/34 of the Indian Penal Code (that is the instant case), on the basis of a complaint lodged by the opposite party no. 2. The allegations leveled in the said complaint are to the effect that:-

“It was alleged that the opposite party no. 2 along with other ladies were distributing masks opposite Rohit Apartment, Dakshindhari. When the petitioner along with one Piyush Kanoria and others allegedly started provoking them without any rhyme or reason and allegedly attacked them and outraged their modesty.”

7. **Mr. Rajdeep Majumder, learned counsel for the petitioner** has submitted that the impugned proceedings clearly smack of malice and has been instituted only to harass and humiliate the petitioner. The impugned proceeding is wholly vexatious and is a mala fide attempt on part of a malicious persecutor to abuse the process of law. Such malicious

proceedings should be quashed at the very thresh-hold as continuation of the same beyond the stage it has already reached would tantamount to severe prejudice for the petitioner.

8. That the allegations when taken in their entirety do not disclose the commission of any of the alleged offences by the petitioner at all. Mere bald allegations cannot constitute an offence and as such the proceedings against the petitioner is liable to be quashed.
9. **Mr. Swapan Banerjee, learned counsel for the State** has placed the case dairy and brought the attention of this Court to page 64 and 67 of the case diary being the statements of the complainant, Chhabi Dutta and an alleged victim, Maya Sarkar.
10. **From the said statements and other materials and the case diary, it appears that the allegations are against the persons, who had accompanied the petitioner and there is absolutely no allegations against the petitioner, other than being present at the place of occurrence.**
11. The present case is under Sections 323/354/326/506/34 of the Indian Penal Code.
12. The **Supreme Court** in the case of ***Tarkeshwar Sahu vs State of Bihar (Now Jharkhand), Appeal (Crl.) 1036 of 2005, on 29.09.2006,*** laid down the ingredients required to prove charge under Section 354 IPC. The **Bench of Justice S. B. Sinha and Justice Dalveer Bhandari**, held:-

“Section 354 IPC reads as under:-

"354. Assault or criminal force to woman with intent to outrage her modesty.- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

So far as the offence under Section 354 IPC is concerned, intention to outrage the modesty of the woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence.

The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex.

'Modesty' is given as "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

The ultimate test *for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman. A person slapping on the posterior of a woman in full public glare would amount to outraging her modesty for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady.*

The word 'modesty' is not to be interpreted with reference to the particular victim of the act, but as an attribute associated with female human beings as a class. It is a virtue which attaches to a female on account of her sex.

We deem it appropriate to reproduce the cases of various Courts indicating circumstances in which the Court convicted the accused under Section 354 IPC.

In State of Kerala v. Hamsa, it was stated as under:-

"What the legislature had in mind when it used the word modesty in Sections 354 and 509 of the Penal Code was protection of an attribute which is peculiar to woman, as a virtue which attaches to a female on account of her sex. Modesty is the attribute of female sex and she possesses it irrespective of her age. The two offences were created not only in the interest of the woman concerned, but in the interest of public morality as well. The question of infringing the modesty of a woman would of course depend upon the customs and habits of the people. Acts which are outrageous to morality would be outrageous to modesty of women. No particular yardstick of universal application can be made for measuring the amplitude of modesty of woman, as it may vary from country to country or society to society."

A well known author Kenny in his book "Outlines of Criminal Law" has dealt with the aspect of indecent assault upon a female. The relevant passage reads as under:-

"In England by the Sexual Offences Act, 1956, an indecent assault upon a female (of any age) is made a misdemeanour and on a charge for indecent assault upon a child or young person under the age of sixteen it is no defence that she (or he) consented to the act of indecency."

In the case of State of Punjab v. Major Singh , a three-Judge Bench of this Court considered the question whether modesty of a female child of 7 months can also be outraged. The majority view was in affirmative. Bachawat, J., on behalf of majority, opined as under: "The offence punishable under section 354 is an assault on or use of criminal force to a woman the intention of outraging her modesty or with the knowledge of the likelihood of doing so. The Code does not define, "modesty". What then is a woman's modesty?

The essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty

commits an offence punishable under Section 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, nevertheless, the offender is punishable under the section.

A female of tender age stands on a somewhat different footing. Here body is immature, and her sexual powers are dormant. In this case, the victim is a baby seven and half months old. She has not yet developed a sense of shame and has no awareness of sex. Nevertheless from her very birth she possesses the modesty which is the attribute of her sex."

In Kanhu Charan Patra v. State , the Orissa High Court stated as under:-

"The accused entered the house and broke open the door which two girls of growing age had closed from inside and molested them but they could do nothing more as the girls made good their escape. On being prosecuted it was held that the act of accused was of grave nature and they had committed the same in a dare devil manner. As such, their conviction u/s 354/34 was held proper."

The High Court of Delhi in the case of Jai Chand v. State observed as under:-

"The accused in another case had forcibly laid the prosecutrix on the bed and broken her pyzama's string but made no attempt to undress himself and when prosecutrix pushed him away, he did make no efforts to grab her again. It was held that it was not attempt to rape but only outraging of the modesty of a woman and conviction u/s 354 was proper."

In Raja v. State of Rajasthan , it was stated as under:-

"The accused took the minor to solitary place but could not commit rape. The conviction of accused was altered from Section 376/511 to one u/s 354."

The Court in State of Karnataka v. Khaleel stated as follows:

"The parents reached the sugarcane field when accused was in process of attempting molestation and immediately he ran away from the place. There was no evidence in support of allegation of rape and accused was acquitted of charge u/s 376 but he was held liable for conviction under section 354/511 IPC."

The Court in Nuna v. Emperor stated as follows:-

"The accused took off a girl's clothes, threw her on the ground and then sat down beside her. He said nothing to her nor did he do anything more. It is held that the accused committed an offence under Section 354 IPC and was not guilty of an attempt to commit rape."

The Court in Bishewhwar Murmu v. State stated as under:-

"The evidence showed that accused caught hold hand of informant/victim and when one of the prosecution witnesses came there hearing alarm of victim, offence u/s 376/511 was not made out and conviction was converted into one u/s 354 for outraging modesty of victim."

The Court in Keshab Padhan v. State of Orissa stated as under:-

"The test of outrage of modesty is whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In the instant case, the girl was 15 years of age and in the midnight while she was coming back with her mother the sudden appearance of the petitioner from a lane and dragging her towards that side sufficiently established the ingredients of Section 354."

The Court in Ram Mehar v. State of Haryana stated as under:-

"The accused caught hold of the prosecutrix, lifted her and then took her to a bajra field where he felled her down and tried to open her salwar but could not do so as in order to make the accused powerless the prosecutrix had injured him by giving a blow of the sickle. The accused failed to give his blood sample with the result it could be presumed that his innocence was doubtful. Ocular

evidence of prosecutrix was also corroborated by other evidence. It was held that conviction of accused u/s 354, 376/511 was proper but taking the lenient view only two years RI and a fine of Rs.1000/- was imposed on him."

In the case of Rameshwar v. State of Haryana , the Court observed as follows:-

"Whether a certain act amounts to an attempt to commit a particular offence is a question of fact dependant on the nature of the offence and the steps necessary to take in order to commit it. The difference between mere preparation and actual attempt to commit an offence consists chiefly in the greater degree of determination. For an offence of an attempt to commit rape, the prosecution must establish that it has gone beyond the stage of preparation."

The Court in Shokut v. State of Rajasthan stated as follows:-

"The accused took the prosecutrix nurse for the purpose of attending a patient but on way he tried to molest her and beat her also. The accused was held guilty u/s 354/366 IPC as he by deceitful means had taken the prosecutrix from her house and had then outraged her modesty."

13. So the ultimate test to ascertain if the modesty of a woman has been outraged, is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman.

14. In the present case there is absolutely **no such action** on the part of the petitioner which could be perceived as one which is capable of shocking the sense of decency of a woman.

15. Thus considering all these facts and the materials on record, it is evident that none of the ingredients required to constitute the offences alleged against the petitioner is prima facie not present. The materials on record thus do not permit the case to proceed towards trial.

16. 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), on 28 November, 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.”

17. Thus considering the materials on record, guidelines 1, 5 and 7 of para 102 in ***State of Haryana vs Bhajan Lal and Ors. (Supra)*** become applicable in this case. Thus permitting this case to proceed against the petitioner in such facts and circumstances will be an abuse of the process of law/court and thus against the interest of justice.

18. Admittedly, there was a free fight between two rival political groups and the injuries allegedly sustained are not significant nor has the history of the injuries been stated before the doctor. More so, there is absolutely no materials on record against the petitioner herein and permitting the present case to proceed will clearly be an abuse of the process of law.

- 19. The revisional application being CRR 1057 of 2020 is accordingly allowed.**
- 20.** The proceeding being Lake Town Police Station Case No. 80/2020 dated 08.06.2020 under Sections 323/354/326/506/34 of the Indian Penal Code now pending before the Court of the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas (corresponding to G.R. Case No. 353/2020), is quashed.
- 21.** All connected applications, if any, stands disposed of.
- 22.** Interim order, if any, stands vacated.
- 23.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 24.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)