

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice AnanyaBandyopadhyay

C.R.R. 1195 of 2011

Idris Ali

-Vs-

The State of West Bengal

For the Petitioner : Mr. Milon Mukherjee,
Mr. Biswajit Manna

For the State : Mr.Swapan Banerjee,
Mr.Suman De

Heard on : 19.09.2023

Judgment on : 14.12.2023

AnanyaBandyopadhyay, J.:-

1. The instant revisional application is filed by the petitioner praying for quashing of the proceedings of B.G.R. Case No. 5929 of 2008, pending before the Court of the Learned Chief Judicial Magistrate, South 24-Parganas at Alipore arising out of Behala Police Station Case No. 524/2008 dated 13.12.2008 under Sections 143/341/186/188/353/506 of the Indian Penal Code and the order dated 6.5.2010 and all subsequent orders passed by the Learned Magistrate therein.
2. The Behala Police Station Case No. 524/2008 dated 13.12.2008 had been registered for investigation on the basis of a suomotu complaint lodged by Sri SudhaRanjan Sarkar, Officer-in-Charge of Behala Police Station, inter alia, alleging commission of offences by the petitioner and others

punishable under Sections 143/341/186/188/353/506 of the Indian Penal Code.

3. The petitioner along with other accused persons were subsequently released on P/R. Bond on 13.12.2008.
4. Officer in Charge Sri SudhanRanjan Sarkar of the Police Station of Behala lodged a complaint on 13.12.2008 at 16.55 hours stating to have received a phone call from an unidentified individual informing about the congregation of 40-50 people including ladies creating a road blockade at 16.55 hours with the help of guard rail used by traffic police under the banner of "Pragatishil Indira Congress" at No. 14 Bus Stand on D.H. Road which obstructed the normal traffic flow causing inconvenience to public. On receiving such information, the Officer in Charge noted the same vide Behala Police Station general Diary Entry No.1298 dated 13.12.2008 along with SI S.Chakraborty, SI B Sen Bazi, SI P.K. Dey, S.I B. Paul, ASI Arshed Ali Khan, ASI B.B. Dey, C/1742 Barun Sen, C/366 Prabir Mondal, C/1292 Ranjan Roy, C/1519 Susanta Dey, C/2940 Chinranjib Biswas, C/2424 Nirrantan Mondal, C/2136 Sujit Kr Sanka, C/2087 Dhukhram Ghosh left for 14 No. Bus Stop stand on D.H. Road and found that 50-60 people including females under the leadership of Idris Ali, Sathi Mukherjee, Badal, Bidyut Halder under the banner of "Pragatishil Indira Congress" and some allies parties hindered the road by putting guard rail on both flanks (up and down) on D.H. Road while agitating. As a result the Diamond Harbour and Calcutta bound vehicles got stranded on both flanks of D.H. Road and the entire traffic movement was impeded creating chaos and disruption. Subsequently Dy. S.P.

(industrial) and the Officer in Charge approached the leaders of the agitation and requested them to remove the road block immediately so that normal flow of traffic could be restored. The leaders of the agitation and the supporters turned a deaf ear to their request and started shouting “reporter pitanoraashamidhorun, naholeapnader oi obostakorbo”. The police officers tried to pacify them became unruly and uncontrollable. The Officer in Charge and his companion police accompanying officers apprehended the certain accused persons including the present petitioner.

5. During the course of arrest, there was resistance and scuffle with the police personnel. As a result of which S.I P.K. Dey, S.I. B. Sen, C/1519 SusantaDey and C/2940 Chiranjib Biswas received injuries on their bodies. While returning to the Police Station along with the apprehended accused persons at 17.45 hours, 15-20 persons continuously agitated in front of the Police Station and tried to block their entry into the police station. The police party cordoned the space with the help of the available officers to force their way into the police station. Certain agitators along with the media personnel entered into a brawl with police personnel and as a result SI Basudeb Paul, ASI Arshed Ali and C2424 NilratanMondal were injured. During the fracas, 2-3 agitators and media persons who tried to break the police cordon fell on the cemented stairs and got injured. However, the police personnel managed to enter the police station and lock up, while the female accused persons were kept in the duty officers’ room under the guard of LC. 1443 Shyamali Sarkar.

6. Thereafter, the Officer in Charge started Behala P.S. Case No. 524 on 13.12.2008 under Section 143/341/186/188/353/506 of the IPC as suo moto against 19 accused persons and 30-40 other people for blocking the road on D.H. Road at No. 14 Bus Stop Stand, 117 National Highway which led to total disruption of normal traffic flow and causing severe inconvenience to the general public and domineering and intimidation assault as well as deterring public servants in discharging public duty.
7. After completion of a purported investigation, the Investigating Agency submitted its report in final form vide Charge-Sheet No. 196 dated 31.08.2009 under Sections 143/341/186/188/353/506 of the Indian Penal Code against the petitioner and 18 others. In the said charge-sheet the petitioner and others were shown as absconders from the process of law.
8. The Learned Chief Judicial Magistrate-in-charge, South 24-Parganas at Alipore upon receipt of the said charge-sheet, by his order dated 6.5.2010 took cognizance of the offences and issued warrant of arrest in their names.
9. Learned Advocate for the petitioner submitted that:-
 - i. The impugned proceeding is a gross abuse of the process of Court which if allowed to continue for a single day more beyond the stage it has already reached, will degenerate itself into a weapon of harassment and persecution and as such the same is liable to be quashed forthwith for the ends of justice.
 - ii. Section 142 of the Indian Penal Code defines the offence with regard to membership of an unlawful assembly which states as

follows :- “Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly”. From the above, it could be made out that the terms ‘unlawful assembly’ is the main ingredient of this offence which has been defined in Section 141 of the Indian Penal Code which says “Any assembly of five or more persons is designated an ‘unlawful assembly’, if the common object of the person composing the assembly is; First – To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or a Legislature of any State or Public Servant in the exercise of the lawful power of such public servant; or Second – To resist the execution of any law, or of any legal process; or Third – To commit any mistake or criminal trespass, or other offence; or Forth - or Fifth – By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do.” However, in the instant case on a bare perusal of the First Information Report it would reveal that the assembly of the person that has been alleged we could find no unlawful means or intention on the part of the petitioner and his associates nor the said allegation covers up the ambit and scope of the above Section because of the fact there is no evidence which would go to show that the petitioner and his associates assembled with an intention to cause disturbance in the locality nor there was any possession of weapons which would

cause mishap and disturbance as being defined as an offence by the above Section. In such circumstances, the impugned proceeding is liable to be quashed.

- iii. Section 339 of the Indian Penal Code defines the offence of 'Wrongful Restraint'. It describes as follows:- "Whoever voluntarily obstructs any person so as to prevent that person in proceeding in any direction in which that person has a right to proceed, is said to wrongfully restrain that person." However, in the instant case it is surprising to note that as alleged in the petition of complaint that the petitioner and his associates have caused wrongful restraint, it is very much absurd as because of the fact it for the sake of words it is accepted that the petitioner and his associates have caused wrongful restraint it would have prejudiced only the local people and the persons who were moving and availing the said route of transport and that point of time, not of the police personnel as alleged in the First Information Report. It is curious enough to note that no allegation was drawn on the part of any of the local people who should have been prejudiced if any, but no complaint or grievance have been shown on their part. In such circumstances, the act the police personnel which is inexplicable in nature calls for interference of this Court.
- iv. The allegation that has been drawn against the petitioner for the commission of offence under Section 353 of the Indian Penal Code which says about the offence with regard to assault or criminal force to deter public servant from discharge of his duty. From a

bare perusal of the petition of complaint it would be evident that the assembly that had gathered in the said place was peaceful in nature and there was no intention on the part of the petitioner and his associates to deter the police authorities from taking any evasive action against such assembly. In such circumstances, the ingredients of Section 353 of the Indian Penal Code cannot be attracted and as such, the impugned proceeding is liable to be quashed.

- v. As alleged in the First Information Report some of the police personnel received injuries on their persons. However, on perusal of the charge-sheet which has been submitted against the petitioner and his associates does not bear any resemblance to the above contention of the de-facto complainant/police authorities as because of the fact that on perusal of the said charge-sheet it reveals that the Investigating Agency have not seized any single document which would go to show about the injuries that had been allegedly described in the said complaint to substantiate such allegation. In such circumstances, the impugned proceeding, so far as it relates to the present petitioner, is liable to be quashed.
- vi. The impugned proceeding is a gross abuse of the process of law inasmuch as the reason behind the charge-sheet that has been submitted against the petitioner which reveals that the list of witnesses that has been named and has to be examined, are all police personnel save and except one doctor, but no local or independent person has been named to be examined as a witness

in the instant case. This goes to show the *mala fide* intent of the police authorities in falsely implicating the petitioner in the instant case.

- vii. The instant case is a glaring example of the abuse of process of law for the reason that the petitioner has been implicated in the instant case out of political indifference of mind and belief.
- viii. The issuance of warrants involves interference with personal liberty. Therefore, the Court has to be extremely careful before issuing such warrants. Just as liberty is precious for an individual so is the interest of societies in maintaining law and order. Both are extremely important for survival of a civilized society. In such circumstances the impugned proceeding and the orders passed therein are liable to be quashed and/or set aside.
- ix. The Court must ensure that criminal prosecution is not used as instrument of harassment or for seeking political vendetta or with an ulterior motive to pressurize the accused to bow down to the illegal demand on the part of a tyrannical machinery.
- x. The instant criminal proceeding is manifestly attended with *mala fide* and/or the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the petitioner and with a view to spite him due to political rivalry and grudge. In such circumstances the orders in question as well as the proceeding impugned are liable to be quashed and/or set aside.
- xi. It is expedient in the interest of justice, to uphold the dignity of law that the impugned proceeding is quashed and/or set aside.

- xii. The impugned proceeding is otherwise bad in law and as such the same is liable to be quashed.
10. The Ld. Advocate for the State submitted that that materials on case diary aptly justifies the presence and involvement of the present petitioner in the alleged offence and at such a nascent stage the instant revisional application should not be quashed.
11. In the case of **Vijay Kumar Ghai and Others Vs. State of West Bengal and Others**¹, the Hon'ble Supreme Court held as follows:

“19. This Court in the widely celebrated judgment of State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] considered in detail the scope of the High Court powers under Section 482CrPC and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed : (SCC pp. 378-79, para 102)

“102. ... (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

¹ (2022) 7 SCC 124

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 Act concerned (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 Act concerned, 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.”

20. *This Court in R.P. Kapur v. State of Punjab [R.P. Kapur v. State of Punjab, (1960) 3 SCR 388 : AIR 1960 SC 866] summarised categories of cases where inherent power can and should be exercised to quash the proceedings:*

20.1. *Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction.*

20.2. *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.*

20.3. *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.*

21. *This Court in Inder Mohan Goswami v. State of Uttaranchal [Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259] observed : (SCC p. 11, para 27)*

“27. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.”

22. *In Indian Oil Corpn. v. NEPC India Ltd. [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , a two-Judge Bench of this Court reviewed the precedents on the exercise of jurisdiction under Section 482 of the Criminal Procedure Code, 1973 and formulated guiding principles in the following terms : (SCC p. 748, para 12)*

“12. ... (i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in

the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

*(v)***”*

23. A two-Judge Bench of this Court in *State of M.P. v. Awadh Kishore Gupta* [State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691 : 2004 SCC (Cri) 353] made the following observation : (SCC p. 700, para 11)

“11. ... the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-

fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. ... In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code.”

12. The petitioner’s arrest from the place of occurrence on the date and time of the alleged incident cannot be denied as the petitioner released on P/R Bond on 13.12.2008. The injury reports appearing on the case diary denote the raiding police officers’ to have sustained injuries due to the scuffle amongst the parties. The alleged complicity of the petitioner in terms of direct involvement, intensity and gravity of the alleged offence has to be assessed through trial.
13. In view of the above discussions, the instant criminal revisional application being CRR 1195 of 2011 is dismissed.
14. There is no order as to cost.
15. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
16. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(AnanyaBandyopadhyay, J.)