

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 995 of 2019

Sri Palash Saha

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Sanjib Kumar Mukhopadhyay,
Ms. Aparupa Bhattacharya,
Ms. Nargish Parveen.

For the Opposite Party : Mr. Amitabha Ghosh.

For the State : Mr. Sudip Ghosh,
Mr. Bitasok Banerjee.

Hearing concluded on : 20.11.2023

Judgment on : 28.11.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the First Information Report being Barrackpore Police Station Case No. 145 dated December 14, 2018 under Sections 279/338/427/325/308/506 of the Indian Penal Code, 1860 corresponding to G.R. Case No. 7507 of 2018 of the Court of the learned Additional Chief Judicial Magistrate, Barrackpore, District-North 24 Parganas.
2. The petitioner's case is that he has purchased a flat from one (developer) Ranjit Patra as per agreement on assurance of getting a free parking for his two wheeler. But subsequently, he was not provided with the same. The said promoter/developer then converted the space into a flat without sanction and sold the same. The petitioner informed the municipality accordingly. The petitioner along with other flat-owners demanded parking space and completion certificate from the developer/promoter. The petitioner then filed an FIR being No. 91/17 under Sections 420/468/506 IPC against the developer Ranjit Patra, as he allegedly threatened suicide.
3. **Several complaints** were lodged by the petitioner subsequently against the promoter.
4. The petitioner and his wife were served a notice under Section 41A Cr.P.C. in Barrackpore Police Station Case No. 78 of 2018, filed by the said Ranjit Patra.

5. It is submitted that the accused person/petitioner also filed an application under Article 226 of the Constitution of India before this Hon'ble Court challenging the illegal constructions raised by the said Mr. Ranjit Patra at Barnali Apartment, Fishery Gate, Monirampur, Barrackpore and the same was registered as W.P. no. 16177(W) of 2018 (Shri Palash Saha vs the North Barrackpore Municipality and others). The said writ petition came up for hearing in the Court of His Lordship Hon'ble Justice Debangsu Basak on September 28, 2018 when His Lordship was pleased to dispose of the said writ petition by passing an order (the operative portion) of which is quoted hereinbelow:-

“.....The report speaks of a two wheeler garage room to be unauthorisedly converted and used as residential flat at the ground floor.

.....Since the Municipality found in its report dated September 20, 2018 states that, there are unauthorized conversion in respect of a property, it will proceed to ensure that, the building is used as sanctioned. In other words, the Municipality will take measures to ensure that, the place earmarked for two wheeler garage room is utilized for such purpose only. It will take appropriate steps in the matter.....”

6. It is further submitted that the petitioner then filed M.P. case no. 1576 of 2018 against the promoter, which was dismissed on the basis of a police report and the petitioner intends to challenge the said order.
7. Barrackpore Police Station Case No. 145/18 (present case) was then filed against the petitioner by the opposite party no. 2.
8. The petitioner denies the incident in the said case.
9. The petitioner submits that the mobile number used in the FIR is that of the developer/promoter Ranjit Patra. It has been alleged in the said FIR that on December 14, 2018 at 01.30 P.M. the accused person was rashly driving his motor cycle (AP31B2-2234) from Fishery Gate to SBI. More through S.N. Banerjee road. It was further claimed by Sri Amalendu Chakraborty, the defacto complainant that in front of M.V.A. Club the accused person met with an accident with one Sanju Das who was riding in a bicycle. As a result the said Sanju Das suffered serious injury and his cycle was broken. It was also alleged that the accused person/petitioner mercilessly beat the said Sanju Das who was rescued and admitted to hospital by the defacto complainant. It is stated that the number of the motor cycle of the accused person/petitioner is (AP31BB2238) and not (AP31B2-2234) as alleged in the said FIR.
10. The petitioner states that he was at Barrackpore Post Office at 1.31 p.m. on December 14, 2018 for the purpose of making a speed post. Hence his entanglement in the alleged accident dose not arise at all.

11. The petitioner states that he is 30% disabled, being injured in service in the Indian Navy and is thus not capable of assaulting anyone.
12. It is stated that this case has been initiated falsely by the promoter Ranjit Patra and is thus liable to be dismissed.
13. **Mr. Sanjib Kumar Mukhopadhyay, learned counsel for the petitioner** has relied upon the following rulings:-
 - i. **Nahalchand Laloo Chand Pvt. Ltd. vs Panchali Co-operative Housing Society Limited, IR 2010 SC 3607= 2010 (9) SCC 536.**
 - ii. **S.P. Chengalvaraya Naidu vs Jagannath, AIR 1994 SC 853 = 1994 (1) SCC 1.**
 - iii. **Hamza Hazi vs State of Kerala, AIR 2006 SC 028= 2006 (7) SCC 416.**
 - iv. **Dalip Singh vs State of Uttar Pradesh, 2010 (2) SCC 11.**
 - v. **Robert John D'Souza vs Stephan V. Gorge, 2015(9) SCC 96.**
 - vi. **Madhavrao Jiwajirao Scindhia vs Sambhajirao Chandrajirao Anglo, 1988(1) SCC 692.**
 - vii. **State of Haryana vs Bhajanlal, AIR 1992 SC 604= 1992 SCC Suppl (1) 335.**
 - viii. **Inder Mohan Goswami vs State of Uttaranchal, 2007 (12) SCC 1.**
 - ix. **West Bengal State Electricity Board vs Dilip Kumar Ray, AIR 2007 SC 976= 2006(3) CHN 309.**
14. **Mr. Amitabha Ghosh, learned counsel for the opposite party** has submitted that there is sufficient materials on record to make out a prima

facie case against the petitioner and as such the case before the Trial Court should be permitted to proceed towards trial.

15. Mr. Sudip Ghosh, learned counsel for the State has placed the case diary and submitted that there is sufficient materials **including injury reports** against the petitioner and if the trial in this case is not allowed to be continued it shall be against the interest of justice.

16. Learned counsel for the petitioner has submitted that the mobile numbers noted in the written complaint is same as that in the previous FIR being Barrackpore P.S. Case No. 78/18 filed by the promoter Ranjit Patra. It is thus submitted that this case has been initiated at the instance of the promoter Ranjit Patra and as such it is prayed that the present case being initiated by the promoter is malafide and is thus liable to be quashed.

17. From the materials on record the following facts are on record:-

- i. Admittedly the petitioner has a dispute with the promoter Ranjit Patra for not being provided with a free two wheeler parking space in the ground floor. From the sale deed (Annexure P-6) it appears that no such provision for free parking space has been provided in the said sale deed.
- ii. Admittedly the petitioner has filed several complaints before several authorities against the said Ranjit Patra.
- iii. The petitioner also filed a writ petition in the High Court and against the said Ranjit Patra.

- iv. The petitioner filed a formal FIR against Ranjit Patra as he was informed that Ranjit Patra had expressed that he would commit suicide.
- v. The petitioner submitted several complaints before the police and several representations continuously against the said Ranjit Patra.
- vi. From the case diary it appears that there are several statements recorded by the investigating authority to substantiate the case as made out by the complainant against the petitioner, in this case.
- vii. Page 3, 4, 25 and 26 are the **medical papers (injury reports)** in support of the complainant's case. The medical paper at page 25 shows that the petitioner has been named in the history of assault before the Doctor as the person who had beaten and assaulted the victim with bamboo stick.
- viii. The contention of the petitioner that he is 30% disabled against which he has filed a copy of the certificate issued by the appropriate authority, it appears that the petitioner had suffered a fracture in the year 2005 when he was posted at Port Blair. It has been specifically noted that the said injury occurred in peace area. There is no note prima facie of the disability as claimed by the petitioner (Page 217).
- ix. The contention of the petitioner that at the time of incident he was at the Barrackpore Post Office and as such he could not be present at the place of occurrence is subject to proof during trial, as the document being a track report (which has been annexed as P-30 at

Page 216) does not show as to who had booked the said article on the said date at that time.

18. Thus from the materials on record it appears that the petitioner has been continuously filing complaints against the promoter before several authorities due to his grievance of not being provided with a free two wheeler parking space.
19. The contention of the petitioner that the mobile numbers in both the FIRs are that of Ranjit Patra is to be considered by the Trial Court and that itself is not a ground for quashing in view of the fact that **the written complaint in the present case is supported by statements of witnesses and more so by several injury reports and medical papers.**
20. 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)***, 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.”

- 21.** In view of the discussion made above the present case does not come within any of the clauses under Section 102 of ***Bhajan Lal (Supra)*** and as such there being sufficient materials on record to prima facie support the case complainant, this is not a fit case where the inherent powers of this Court should be exercised.
- 22. CRR 995 of 2019 is thus dismissed.**
- 23.** All connected applications, if any, stand disposed of.
- 24.** Interim order, if any, stands vacated.
- 25.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 26.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)