

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1014 of 2019

Kalyan Kumar Das @ Kalyan Das

Vs

State of West Bengal & Anr.

For the Petitioner : Mr. Prantick Ghosh,
Mr. Siddhartha Sarkar,
Mr. P. Bhattacharyya.

For the State : Mr. Arijit Ganguly,
Mr. Avik Ghatak.

For the Opposite Party No. 2 : None.

Heard on : 17.04.2023

Judgment on : 10.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings in connection with G.R. No. 1300 of 2018 arising out of Bizpore Police Station Case No. 126 of 2018, dated 27th February, 2018 which ended in Charge Sheet No. 161 of 2018 dated 31st March, 2018 under Sections 341/323/420/406/506 of the Indian Penal Code, 1860, pending in the Court of the Learned Judicial Magistrate, 2nd Court at Barrackpore, District – North 24 Parganas.
2. The petitioner's case is that on 27th February, 2018, the Opposite Party No. 2 herein lodged a Written Complaint with the Officer-In-Charge, Bizpore Police Station, District – North 24 Parganas against the Petitioner, alleging therein that the negotiated marriage of her sister Tanuja Bar, Daughter of Haridas Bar, aged about 34 years, Resident of A/5/166, Kalyani Township, Post Office & Police Station – Kalyani, District – Nadia was fixed on 6th March, 2018 and accordingly the dowry was settled at Rs. 50,000/- in cash, gold ornaments, articles and utensils etc. On 26th February, 2018 she went to the house of the said Kalyan Das and gave the cash amount of Rs. 50,000/-. On 27th February, 2018 at about 8.30 A.M. said Kalyan Das informed her over phone that he will not be able to marry her sister as agreed earlier. On hearing the same she along with her relatives went to the house of the said Kalyan Das, where the said Kalyan Das and his relatives misbehaved with them. On enquiry she was told by the said Kalyan Das

that if they give an additional amount of Rs. 30,000/- and a golden chain then only he will marry Tanuja. When they expressed their inability to pay the same, they were thrown out from his house and told that he would not marry and would also not refund the sum of Rs. 50,000/-.

3. It is thus alleged that the said Kalyan Das has cheated her sister and her family and had also misappropriated the sum of Rs. 50,000/-.
4. On conclusion of investigation, the Investigating Authority submitted Charge Sheet in the Court of the Learned Additional Chief Judicial Magistrate, Barrackpore, District – North 24 Parganas being Charge Sheet No. 161 of 2018 dated 31st March, 2018 under Sections 341/323/420/406/506 of the Indian Penal Code, 1860 as against the Petitioner. On 4th March, 2019, the Learned Trial Court took cognizance and the said case was transferred to the court the Learned Judicial Magistrate, 2nd Court at Barrackpore, District – North 24 Parganas for trial and disposal.
5. **Mr. Prantick Ghosh, learned counsel for the petitioner** submits that the entire allegations leveled against the Petitioner in the Written Complaint, Charge Sheet and its supportive documents are totally false, frivolous, baseless, concocted and an afterthought and made with an ulterior motive and malafide intention of harassing him unnecessarily and thereby tarnishing his social image, prestige and reputation for which the same is denied and disputed in its entirety and this was totally overlooked by the Investigating Authority while submitting Charge Sheet against the

Petitioner under Sections 420/406 of the Indian Penal Code, 1860 and also by the Learned Trial Court while taking cognizance, which is ipso facto bad both in law and in fact and hence the instant proceeding is liable to be quashed, as also that the impugned proceeding is a gross abuse of the process of Court.

6. **Mr. Arijit Ganguly, learned counsel for the State** has placed the Case diary and Submits that there is sufficient materials/evidence on record and the case diary to proceed against the petitioner towards trial and as such the revision is liable to be dismissed.
7. From the written complaint it is evident that the dispute between parties **is related to refusal of marriage**. It is alleged that in spite of taking Rs. 50,000/-the petitioner refused to marry the sister of the defacto complainant. He allegedly demanded more dowry. As it was refused, he did not marry the sister of the defacto complainant. When the Complainant went to the petitioner's house to ask for return of the said amount of Rs. 50,000/-, she was allegedly assaulted (No medical paper of the complainant is on record).
8. The petitioner allegedly has misappropriated the said amount of Rs. 50,000/- and cheated her.
9. The present Case is under Sections 341/420/406/323/506 of the Indian Penal Code.

10. There is also no proof of payment of the amount as alleged (though in such cases there is no documents normally), but to substantiate such allegation there has to be at least a prima facie case made out.
11. 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.**”*

12. In the present case, the materials on record and in the Case Diary do not contain any evidence/ingredient to constitute the offences alleged and to permit the case to proceed will be an abuse of the process of law.
13. **CRR 1014 of 2019 is thus allowed.**

14. The proceedings in connection with G.R. No. 1300 of 2018 arising out of Bizpore Police Station Case No. 126 of 2018, dated 27th February, 2018 which ended in Charge Sheet No. 161 of 2018 dated 31st March, 2018 under Sections 341/323/420/406/506 of the Indian Penal Code, 1860, pending in the Court of the Learned Judicial Magistrate, 2nd Court at Barrackpore, District – North 24 Parganas, is hereby quashed.
15. There will be no order as to costs.
16. All connected Applications stand disposed of.
17. Interim order if any stands vacated.
18. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
19. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)