

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1316 of 2020

Shib Prakash @ Shiv Prakash Singh

Vs

The State of West Bengal and Anr.

For the Petitioner : Mr. Sidhartha Luthra, Sr. Adv.
Mr. Nilanjan Bhattacharjee,
Mr. Vikash Singh,
Mr. R.N. Banerjee,
Mr. Ayush Koushik,
Mr. Piyush Kumar.

**For the O.P. No.2/
Defacto Complainant** : Mr. Bikash Ranjan Bhattacharjee, Sr. Adv.
Mr. S. Maji,
Mr. Subhayu Das.

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

Heard on : 16.03.2023

Judgment on : 29.03.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being G.R. No. 4231 of 2018 (arising out of Behala Women's Police Station Case No. 01/2018 dated 31.08.2018 under Sections 417/376/406/313/120B of the Indian Penal Code) pending before the learned Additional Chief Judicial Magistrate, 24 Parganas, South at Alipore.
2. The petitioner's case is that the petitioner is a reputed and law-abiding Socio Political Activist and associated with the party's functioning at the National and State level. That Behala Women's Police Station Case No. 1 of 2018 dated 31.08.2018 was registered for investigation on the basis of an information lodged by one Rajlakshmi Chowdhury with the Inspector in-charge of Behala Women's Police Station inter alia alleging commission of offences punishable under Sections 120B/417/376/313/406 of the Indian Penal Code against four accused persons including the petitioner.
3. The complainant's statement under Section 164 Cr.P.C. in respect of the allegations in the present case against all the accused persons including the petitioner is as follows:-

"The complainant used to live alone with her son after her husband died, and she worked very hard to earn a livelihood and raise her child. Her son became a doctor in the year 2016 after graduating with M.B.B.S. and in the year 2017, after completing his internship he joined the

Haryana Government Hospital where he worked for quite a few months. In the year 2013 the complainant joined the petitioner's political party and within a short span of time she received recognition in the party unit. In the year 2014 she was given the post of General Secretary in South Suburban (S.S) District. She was also made a State Committee Member, within a few months, as a result of which she had to often visit the State Headquarters located at 6, Murlidhar Sen Lane, Kolkata-700073. There she often had to interact with Amalendu Chattopadhyay (accused no. 1) who was the State General Secretary (Organization). The complainant gradually commenced coming into contact with Central leaders. Everyone used to like her a lot, some more than others, which was not to her liking. On complaining about this to Amalendu Chattopadhyay, then State General Secretary (Organization), she was assured by him that she didn't need to worry as he was there.

In the mean time the Joint General Secretary of All India (Organization) (the present petitioner) came down to Kolkata and the complainant was asked to meet him at the State party office. At the first meeting the petitioner had informed Amalendu Chatterjee that he desired to eat at her residence. She was irritated as she stayed alone. The petitioner was the National Joint Secretary and as an ordinary worker she could not refuse. Amalendu Chatterjee had given her to understand that all of them would come to her house for dinner and there was nothing to worry about. Amalendu Chatterjee, the petitioner, his PA and Subroto Chottopadhyay had come for dinner. Thereafter things had taken a different turn which took time for her to understand. Subroto Chattopadhyay and another party member had some other plans. The petitioner had tried to establish a different relationship with her. On various pretexts of attending meetings, he would call her to the hotel, but no such meetings had taken place.

In the month of June, 2016 the State President of the Organization along with Subrata Chatterjee had asked her to attend a meeting at 8

a.m. in Hotel Peerless Inn. As she entered in the hotel room she found no one there except the petitioner and Bidyut Mukherjee. When the complainant had attempted to leave the room Bidyut Mukherjee had obstructed her. Both the petitioner and Bidyut Mukherjee tried to commit rape upon her. At that time Amalendu Chattopadhyay had reached there and her ultimate dishonour had been prevented. She having desired to report the incident to the police, Amalendu Chattopadhyay asked her not to take such steps as that would hamper the reputation of the organization. He also instructed her not to go anywhere without informing him. She had informed Amalendu Chattopadhyay that she desired to leave the party. He asked the complainant to keep quiet and concentrate on the elections. After the said incident, Amalendu Chattopadhyay used to call her 10-12 times a day and tried to impress upon her that he was in love with her and also wanted to visit her house which she avoided as she used to reside alone. However, inspite of this he persisted. She had asked him several times whether he loved anyone else. In reply to which he had stated that he only loved her and none else. Amalendu Chattopadhyay came to her flat once and after having food he tried to touch her physically which the de-facto complainant tried to ignore but he had stated to her that he would never disown her. Thereafter he used to frequently visit her. She was not interested in an illicit relationship. Thereafter he had put vermillion on her forehead and stated to her that they were secretly married and they would marry later. Since then they became physically intimate which resulted her to be in the family way thrice and on each occasion to save his reputation she had undergone an abortion. However every time she brought up the subject of marriage, he would avoid the same. In spite of the privacy of their relationship, it became known to both, State and Central leaders and the entire organization. As a result Amalendu Chattopadhyay had been removed from the assignment of the State party and was posted as All India General Secretary of All India Gram

Panchayat, an unit of the organization. But he continued his physical relationship with her and also forced her to abort immediately. Amalendu had thereafter asked her to leave the party and join another wing of the organization and accompany him to Delhi. She had asked Amalendu to get married. He had agreed. Amalendu had desired to return to the State party but could not. As she was more acceptable to the party than him, he had asked her to intercede on his behalf. She had visited Delhi and met many party bigwigs including ministers. She had made arrangements for Amalendu's return to state politics. She had stayed in a hotel in Karol Bag with Amalendu in the same room though two rooms had been booked. She returned from Delhi on 8th August in the afternoon. All his phones were switched off. On 12th August she called him which he didn't receive. And since thereafter his phone had remained switched off. It is the firm belief of the complainant that the said Amalendu Chattopadhyay had used her for the purpose of his political upliftment and on the promise to marry had maintained physical relations with her. He would not marry her but she would not accept the betrayal of the member of the organization.

She stayed alone. He had spent numerous nights with her both in her Calcutta and Bolpur flat. All knew of their relationship and she must be married to Amalendu Chattopadhyay. All these five party members that she had spoken about were frauds and tormentors."

4. After completion of investigation, the investigating officer submitted charge sheet in connection with the instant case vide Charge Sheet no. 05/19 dated 07.05.2019 under Section 417/376/406 of the Indian Penal Code against Amalendu Chattopadhyay and took leave from the Court that as investigation in respect of the other accused persons was not complete,

supplementary charge sheet if required would be submitted in terms of the provisions of Section 173(8) of the Code of Criminal Procedure.

5. The petitioner's case is that in course of investigation the investigating officer recorded the statement of the complainant/opposite party no. 2 under Section 164 of Cr.P.C. wherein no specific role has been attributed to the petitioner and if the same is taken at its entirety it will be clearly understood that the petitioner has been implicated out of political reasons.
6. It is submitted that in course of investigation the statement of Amalendu Chattopadhyay was also recorded under Section 164 of Cr.P.C. In the said statement no specific role has been attributed to the petitioner and if the same is taken at its entirety it will be clearly understood that the co-accused had ambition of returning back into active politics in the West Bengal unit of the party and as such he concocted the whole story so that he shall be accepted back to active politics within the party.
7. It is submitted that the petitioner is completely innocent and in no way connected with the commission of the offences as alleged or at all, but has been falsely tagged with the instant case. The letter of complaint is born out of political vendetta since the petitioner and the other co-accused are senior politicians, holding posts of importance in the organization.

8. It is further submitted that the impugned proceeding is a gross abuse of the process of law and as such the same is liable to be quashed in the interest of justice, as even if the allegations in the first information Report are taken at face value and accepted in their entirety they do not prima facie constitute any cognizable offences and as such the impugned proceeding is liable to be quashed.
9. It is also submitted that the instant case is lodged totally out of political vendetta and to blackmail the petitioner and fulfill political ambition of the opposite party no. 2 and Amalendu Chattopadhyay. And if the statements of the defacto complainant and the co-accused namely Amalendu Chattopadhyay made under Section 164 of Cr.P.C. is taken at its face value, it will reveal that there is some connivance between both of them in order to fulfill their political ambition.
10. The petitioner states that by no stretch of imagination he is connected with the alleged commission of offence as ventilated in the petition of complaint. The impugned proceeding is vexatious in nature and as such the same is liable to be quashed. And that it is expedient in the interest of justice and to prevent an abuse of the process of Court that the impugned proceeding be quashed.
11. **In the supplementary affidavit** the petitioner's further case is that during the pendency of the present proceedings, **a supplementary charge sheet was filed by the police on**

14.09.2021, wherein the petitioner has been charged under Section 354/34 IPC. No objection against the said supplementary charge sheet has been filed.

12. The petitioner further brings on record that there is an unexplained delay in registration of FIR as allegedly the incident took place in June of 2016, whereas the FIR has been registered on 21.08.2018. The delay of more than 2 years has not been explained by the complainant and it is settled law that delay in registration of FIR is a ground for quashing of a criminal case as held by the Supreme Court in **Kishan Singh vs. Gurpal Singh (2010) 8 SCC 775:-**

“21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant’s case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Vide Sahib Singh v. State of Haryana [(1997) 7 SCC 231 : 1997 SCC (Cri) 1049 : AIR 1997 SC 3247].”

13. It is further stated that the opposite party no. 2 in the past has filed multiple complaints before multiple police stations/forums against many leaders of the political party/organization alleging rape on her by all the leaders at different times. The falsity and absurdity of the allegations leveled against the petitioner is therefore evident from the inconsistent past conduct of the complainant wherein she

has been constantly changing her versions in the complaints and especially with respect to the time of the incident.

14. It is submitted that there are several WhatsApp chats between 2018 to 2019 shared between the complainant with the petitioner wherein she has offered to withdraw her complaints filed against the petitioner if the petitioner gets her married to a rich and powerful Member of Parliament. The said messages clearly show that the impugned proceedings registered against the petitioner is completely false and fabricated and made with the sole intention to harass the petitioner. The petitioner had informed the police about the existence of the chats but the police refused to accept the same. However, he has now been advised that it is a case of extortion and therefore it is imperative that these chats are brought before this Hon'ble Court for the sake of justice.

15. It is stated that the son of the complainant has sent an E-mail dated 17.08.2018 to the party head wherein he has alleged that accused no. 1 (Amalendu) promised to marry his mother (the complainant herein). Therefore, it is clear from this E-mail that the present case is one, of a breach of promise to marry between the complainant and Amalendu Chattopadhyay wherein the petitioner has been falsely implicated merely because he is from the same organization as Amalendu Chattopadhyay. The complainant has also sent an E-mail dated 01.07.2019 to the party head wherein she has

stated that Amalendu Chattopadhyay promised to marry her but later he refused to do so. But the complainant did not mention anything against the petitioner in her E-mail. Therefore, it is clear that the petitioner has been falsely implicated in a breach of promise to marry case between two individuals wherein the petitioner had no role to play nor any involvement.

16. **Mr. Sidhartha Luthra, learned senior counsel appearing for the petitioner** has submitted that the impugned proceeding is a gross abuse of the process of law and as such the same is liable to be quashed for the ends of justice.

17. **Mr. Luthra** has further submitted that even if the allegations in the first information Report are taken at their face value and accepted in their entirety the same do not prima facie constitute any cognizable offences and as such the impugned proceeding is liable to be quashed. The petitioner by no stretch of imagination is connected with the alleged commission of offence as ventilated in the petition of complaint. That the impugned proceeding is vexatious in nature and it is expedient in the interest of justice and to prevent an abuse of the process of Court that the impugned proceeding be quashed.

18. **Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel has argued on behalf of the opposite party no. 2** that the opposite party no. 2 is a single lady (widow) living alone. She has a son who is

a doctor. Taking advantage of her situation the accuseds in this case including the petitioner have taken advantage of her.

19. **Mr. Bhattacharya** has further submitted that the petitioner filed the revision even before the charge sheet was submitted against him. Against the said submission, **Mr. Luthra** has relied upon the judgment of the Apex Court in **Anand Kumar Mohatta vs state of (NCT of Delhi) (2019) 11 SCC 706**. The present revision has been preferred by the petitioner praying for quashing of the entire proceeding against him starting from the FIR.
20. It is further stated by **Mr. Bhattacharya**, that if a case of such nature is quashed, it will be an abuse of the process of law/court and would cause serious miscarriage of justice and as such the revision is liable to be dismissed.
21. **Mr. Swapan Banerjee, learned counsel for the State** has placed the case diary and submitted that there is sufficient materials in this case against the petitioner to proceed towards trial. The learned State Counsel has further submitted that the statements in the complaint have been duly corroborated by the evidence collected during investigation and the present case must be permitted to proceed towards trial, in the interest of justice. The following judgments have been relied upon by the State:-

- (a) (1995) 6 SCC 194, Rupen Deol Bjaj & Anr. Vs Kanwar Pal Singh Gill and Anr. The incident in the said case occurred within public gaze.

No such incident in such circumstances is present in this case.

- (b) AIR 2016 SC 4486 S.P.S. Rathore vs CBI & Anr.

The Court held:-

“Mere knowledge that modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such ‘outrage’ alone for its object.”

In the present case such ‘knowledge’ is not even prima facie present from the materials on record and the case diary.

22. From the materials on record including the case diary and on hearing the parties, the following facts are before this Court:-

- (i) The petitioner and the opposite party no. 2 belong to the same political party.
- (ii) Behala (women) P.S. Case No. 1/2018 was started against accused Amalendu Chattopadhyay, Bidyut Mukherjee, the petitioner and others under Section 417/376/406 IPC.

- (iii) The first charge sheet has been filed against accused Amalendu Chattopadhyay under Section 120B/417/376/313/406 IPC.
- (iv) Supplementary charge sheet has been filed against accused Bidyut Mukherjee, Subrata Chatterjee and the petitioner under Section 354/34 IPC.
- (v) Dr. Navanil Ghosh, son of the complainant on 04.10.2018 has recorded his three page statement before the police. He has stated only about the conduct of Amalendu Chattopadhyay towards his mother, even their relationship, her pregnancy, abortion etc. He has also stated about Amalendu Chattopadhyay taking their property papers, ornaments etc. All this led to the filing of the present case. But he has not stated anything about the petitioner.
- (vi) Both the security staff at the residential complex of the complainant have also stated only about Amalendu Chattopadhyay and nothing about the petitioner.
- (vii) Medical report dated 24.09.2018 of the complainant shows that she is 45 years old and habituated to sexual intercourse.
- (viii) Injury report dated 01.09.2018 names all the accused persons. The statement before the doctor against the

petitioner and others except Amalendu Chattopadhyay is of criminal conspiracy and gaining the trust of the complainant.

- (ix) Her statement before the doctor against Amalendu Chattopadhyay is that, on false promise of marriage, he committed multiple sexual intercourse with her at several places leading to pregnancy and its termination. Medical paper relating to termination of pregnancy is at page 65 of the case diary.
- (x) The complainant has recorded her statement under Section 164 Cr.P.C., stating about the allegations against all the accused persons including the petitioner.
- (xi) One of the statements made against the petitioner is that in June, 2016 the petitioner had been called by another senior leader to attend a meeting at 8 a.m. in Hotel Peerless Inn. When she entered the hotel room she allegedly found no one there except the petitioner and accused Bidyut Mukherjee. It is alleged that they both tried to commit rape upon her, but Amalendu Chattopadhyay came and saved her.
- (xii) Here, the report (page 49 of the case diary) of the General Manager of the hotel to the officer in-charge, of Behala women P.S. becomes relevant.

(xiii) Point No. 3 in the said report is:-

“(3) As per our management policy, we do not allow any visitor to enter the guest rooms if required the guest is informed about the visitor and the guest is called to our lobby and meet the visitor.”

It is categorically stated that no visitors are allowed in the guest rooms. Guests are allowed to meet visitors in the lobby.

(xiv) The High Court while considering the anticipatory bail application of the petitioner in this case held:-

“In the light of the complaint and **the limited extent of the petitioner(s) involvement in the said matter,** there may not be any ground to take them into custody for their interrogation.”

(xv) On interrogation of the petitioner and other accused persons and the statements under Section 164 Cr.P.C. of the complainant and accused Amalendu Chattopadhyay, the investigating agency found a prima facie case under Section 354/34 IPC against the petitioner and Subrata Chatterjee and Bidyut Mukherjee.

(xvi) The alleged incident took place in June, 2016. The FIR has been registered on 21.08.2018. Admittedly there is

a delay of more than two years. The Supreme Court in **Vijay Kumar Ghai & Ors. vs The State of West Bengal & Ors., in Criminal Appeal No. 463 of 2022, on 22.03.2022, in para 42** observed:-

“42. It is apparent that the complaint was lodged at a very belated stage (as the entire transaction took place from January 2008 to August 2009, yet the complaint has been filed in March 2013 i.e., after a delay of almost 4 years) with the objective of causing harassment to the petitioner and is bereft of any truth whatsoever.”

23. **Mr. Luthra** has relied upon the following judgments:-

(1) **Kishan Singh vs Gurpal Singh, (2010) 8 SCC 775, on August 12, 2010, (para 21).**

“21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Vide Sahib Singh v. State of Haryana [(1997) 7 SCC 231 : 1997 SCC (Cri) 1049 : AIR 1997 SC 3247].)”

(2) **Rajkumar Mondal vs State of W.B., 2021 SCC OnLine Cal 2069, on July 14, 2021, (para 11).**

“11. This Court while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure need not restrict itself only to the stage of the 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 course of investigation and it is in the background of such circumstances the previous litigations assume importance, thereby attracting the issue of wreaking vengeance due to private and personal grudge. On an appreciation of the judgment referred to above along with the circumstances presented before this Court so far as the instant case is concerned, I am of the view that the petitioner has been able to successfully bring its case within the ambit of Category-7 of Bhajan Lal's case (supra).”

- (3) **Ramesh Chand Singh and Ors. vs State of W.B. and Anr., 2021 SCC OnLine Cal 2549, on September 23, 2021, (para 20).**

“20. This Court also in an un-reported judgment of Rajkumar Mondal (supra) followed the dictum laid down by the Hon'ble Supreme Court in Vineet Kumar (supra) and Ahmad Ali Quraishi (supra) case and in the factual backgrounds and circumstances of the said case quashed the proceedings. The present case involves three petitioners namely, Ramesh Chand Singh, Santosh Singh alias Vicky and Rohit Singh alias Ricky. The petitioner no. 1 happens to be the father and the petitioner nos. 2 and 3 happen to be the two sons of Petitioner no. 1. The factual matrix of the case reflects that the case was initiated when the husband of the complainant was taken into custody in connection Burrabazar P.S. case No. 792 dated 19.12.2014 under Section 307 of Penal Code, 1860 and Section 25/27 of the Arms

Act (details of which have been stated above). The letter of complaint which contained the allegations was in respect of an offence which was admitted at the same time when the offence was committed in Burrabazar P.S. Case no. 792 dated 19.12.2014. The complaint was filed after 3/4 days and the statement under Section 164 of the Code of Criminal Procedure do not reflect any material under Section 354 of the Penal Code, 1860. The initiation of the present case at the behest of the complainant on the face of it reflects that the same was initiated as a pressure tactics for creating circumstances which may compel the present petitioners to dilute their approach in Burrabazar P.S. case No. 792 of 2014 dated 19.12.2014. The facts of the present case as such can be said to fall within the category 7 of paragraph 102 of State of Haryana v. Bhajan Lal (supra), the circumstances reflect that the case was instituted maliciously with an ulterior motive for wreaking vengeance on the accused/petitioner and with the view to spite them because of private and personal grudge.”

24. In the present case the specific allegations against the petitioner are as follows:-

- (i) He allegedly got himself invited to the complainant's house for dinner, **though admittedly with others.**
- (ii) He allegedly **tried** to visit her and called her to the hotel, allegedly **through another senior leader.**
- (iii) In June 2016 he along with accused Bidyut Mukherjee allegedly tried to rape her in hotel peerless inn. The report of the General Manager of the hotel is otherwise. There is no

prima facie evidence to prove the presence of the complainant in the hotel room of the petitioner.

- (iv) The son of the complainant, who is a doctor and knows every detail of her life including her relationships and abortions has not made a single statement against the petitioner.
 - (v) The entire case revolves around the relationship between Amalendu Chattopadhyay and the complainant and the position the petitioner holds in the party organization.
 - (vi) The allegation of the complainant regarding criminal conspiracy by the petitioner and the other accuseds persons also has no evidence in support on record.
25. The complainant's main grievance is against accused Amalendu Chattopadhyay, and their sexual relationship with false promise to marry, termination of pregnancy, misappropriation etc.
26. The petitioner being a leader at the national level visits different states with (political) party related work, meets party workers and office bearers on regular basis.
27. 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."

28. **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.**

29. 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.

30. All are statements (no materials/evidence on record) of the complainant either her own or as allegedly told to her by the principal accused Amalendu Chattopadhyay. Even those statements do not constitute the ingredients required to constitute the offence against the petitioner as put down in the charge sheet.

31. Thus considering all these facts and the materials on record, it is evident that the ingredients required to constitute the offence alleged against the petitioner is prima facie not present. The

materials on record thus do not permit the case to proceed towards trial.

32. At this stage the guidelines of the Supreme Court in **State of Haryana vs Bhajan Lal and Ors., (1992 Supp (1) SCC 335) (para 102)** is relied upon by **Mr. Luthra**.

33. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). 2060 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.***

34. Thus considering the materials on record, guidelines 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.

35. **CRR 1316 of 2020 is allowed.**

36. The proceedings including the supplementary charge sheet under Sections 354/34 IPC relating to G.R. No. 4231 of 2018 (arising out of Behala Women’s Police Station Case No. 01/2018 dated 31.08.2018 under Sections 417/376/406/313/120B of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, 24 Parganas, South, Alipore, is quashed in respect of the petitioner Shib Prakash @ Shiv Prakash Singh and also in respect of accuseds Subrata Chatterjee and Bidyut Mukherjee, named in the supplementary charge sheet (though not before the court but on similar footing) in the interest of justice. The Trial Court to proceed with the case in accordance with law against accused Amalendu

Chattopadhyay and make all endeavour to dispose of the case expeditiously.

37. There will be no order as to costs.
38. All connected Application stand disposed of.
39. Interim order if any stands vacated.
40. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
41. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)