

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 1946 of 2015

With

IA No. CRAN 16 of 2023

Kishore Kumar Singh

Vs.

The State of West Bengal & Ors.

For the Petitioners :Mr. Sandipan Ganguly, Sr. Adv.
Mr. A.K. Sil, Adv.
Mr. S.K. Dutt, Adv.
Ms. Manaswita Mukherjee

For the State :Mr. Saswata Gopal Mukherjee , Ld. P.P.
Mr. Narayan Prasad Agarwal, Adv.
Mr. Aniket Mitra, Adv.
Mr. Pratick Bose. Adv.

Opposite party no.2 Mr. Satadru Lahiri. Adv.
Mr. Sujoy Sarkar, Adv.
Mr. Rahul Chachar, Adv

Heard on :19.06.2023, 31.07.2023, 09.08.2023,
22.08.2023, 23.08.2023,12.09.2023
Judgment on : 21st September, 2023

Bibhas Ranjan De, J.

1. This revision application has been filed with a prayer for quashing of the proceeding of G.R. Case no. 1645 of 2014 under Sections 506 & 509 of the Indian Penal Code corresponding Hare Street Police Station Case No. 438/14 dated 25.07.2014.

Background facts:-

2. On 25.07.2014 opposite party no. 2 file one complaint before the officer in-charge, Hare Street Police Station, alleging *inter alia*, that she was an employee of Standard Chartered Bank, Church Lane, Kolkata and her service was terminated illegally for which she approached the Labour Court. She used to visit to her advocate at New Secretariat Building, on Kiran Shankar Roy Road, Kolkata accompanied by either of her parents. It was further alleged that her Branch Manger i.e. petitioner of this case threatened her by giving wrong signs and also threatened them to withdraw the case against Standard Chartered Bank, a big institution and can purchase

judgement. For that reason her father became hospitalized and mother became ill. On receipt of the written complaint Hare Street Police Station Case No. 438/14 dated 25.07.2014 was started and after investigation charge sheet was filed on 11.10.2014.

3. Ld. Senior Advocate, Mr. Sandipan Ganguly, appearing on behalf of the petitioner has submitted that the criminal proceeding was initiated at the instance of opposite party no. 2 as a counter blast of her termination of her employment at standard chartered bank where petitioner was a Branch Manager. In support of his contention Mr. Ganguly, referred to the copies of statement of the employees of the bank recorded under Section 161 of the Criminal Procedure Code and tried to make this court understand that none of the employees supported the case of the complainant / opposite party no. 2. Mr. Ganguly emphasized on the fact of initiation of criminal proceeding after termination of complainant giving rise to a presumption of counter blast.

4. In support of his submission he relied on cases of :-

Abhijeet J.K. Vs. State of Kerala reported in **2020 SCC OnLine Ker 703, *Salib alias Shalu alias Salim Vs. State***

of U.P. and others reported in ***2023 SCC OnLine SC 947*** and ***Mohammad Wajid and another Vs. State of U.P. and others*** reported in ***2023 SCC OnLine SC 951***.

5. In opposition to that Ld. Advocate, Mr. Satadru Lahiri, appearing on behalf of the opposite party no. 2 has contended that allegation of wrong sign and threat for withdrawing the case has been ratified by statement of complainant recorded under Section 164 of the Criminal Procedure Code (for short CrPC) as well as the statement of her parents. Mr. Lahiri has submitted that written complaint was prima facie corroborated by the subsequent statement recorded under Section 161/164 of the CrPC and at this stage credibility of the evidence cannot be looked into in exercising power under Article 482 of the CrPC.

6. Mr. Lahiri relied on the following cases:-

State of Karnataka Vs. M. Devendrappa and another reported in ***(2002) 3 Supreme Court Cases 89***

Ghanshyam Sharma Vs. Surendra Kumar Sharma and others reported in ***(2014) 13 Supreme Court Cases 401***

Rupan Deol Bajaj (Mrs) and another Vs. Kanwar Pal Singh Gill and another reported in ***(1995) 6 Supreme Court Cases 194***

Kaptan Singh Vs. State of Uttar Pradesh and others reported in ***(2021) 9 Supreme Court Cases 35***

Jaideep Chatterjee and other Vs. State of West Bengal and another reported in ***2023 SCC OnLine Cal 1790***

Central Bureau of Investigation Vs. Aryan Singh reported in ***2023 SCC OnLine SC 379***

Decision:-

7. What I have discussed in the aforementioned paragraphs reveal that opposite party no. 2 was an employee of standard chartered bank of Church Lane Branch and her service was terminated for which opposite party no. 2 approached before the Labour Court presumably challenging the order of termination.
8. Subsequently, when opposite party no. 2 visited the court as well as her advocates, petitioner used to treat her to withdraw the case and also displayed wrong signals. As a result, her parents became ill.

9. Complainant/ op no. 2 lodged written complaint before Hare Street police Station and specific case was registered. During investigation witness employees of the bank were examined by the investigating officer and ultimately charge sheet was submitted.

10. Now the question is whether allegation of threat of wrong sign can be adjudicated as false one or with ulterior motive for wreaking vengeance as opposite party no. 2 was terminated.

11. In ***Abhijeet J.K*** (supra) it was held as follows:-

“ 10. There is distinction between an act of merely insulting a woman and an act of insulting the modesty of a woman. In order to attract Section 509 I.P.C, merely insulting a woman is not sufficient. Insult to the modesty of a woman is an essential ingredient of an offence punishable under Section 509 I.P.C. The crux of the offence is the intention to insult the modesty of a woman.

11. Section 509 I.P.C. criminalises a ‘word, gesture or act intended to insult the modesty of a woman’ and in order to establish this offence it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act (See Khushboo v. Kanniammal : (2010) 5 SCC 600 : AIR 2010 SC 3196).

12. 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 modesty (See State of Punjab v. Major Singh : AIR 1967 SC 63). Modesty is a virtue which attaches to a female owing to her sex (See Raju Pandurang Mahale v. State of Maharashtra : (2004) 4 SCC 371 : AIR 2004 SC 1677).

13. If the word uttered or the gesture made could be perceived as one which is capable of shocking the sense of decency of a woman, then

it can be found that it is an act of insult to the modesty of the woman (See Rupan Deol Bajaj v. K.P.S. Gill : (1995) 6 SCC 194 : AIR 1996 SC 309)."

12. In **Abhijeet J.K.** (supra) prosecution was conducted on the allegation that petitioner/accused approached the complainant and invited her to accompany him on the motor cycle. Petitioner also made sexual gesture to her with his hand.

13. In our case, I am not dealing with any act on the part of the petitioner which did not cause any insult to the modesty of the complainant/ opposite party no. 2. In this case, I am also dealing with an allegation of threat.

14. In **Salib** (supra) Hon'ble Apex Court observed in paragraph 28 as quoted below:-

"28. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that

the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a 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 the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

- 15.** Facts and circumstances of the case in **Salib** (supra) is that the name of the accused was not mentioned in the FIR and his name appeared in subsequent statement of the informant recorded under Section 161 CrPC. In that case threat to witness was also an issue. But in the case on hand petitioner was not only named in the FIR but also appeared in

subsequent statement under Section 161 & 164 of the CrPC.

However, facts and circumstances of the case dealt with by the Hon'ble Apex Court is not identical with that of ours.

16. *Mohammad Wajid* (supra) laid down the following principle:-

“34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a 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 the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the

issue of wreaking vengeance out of private or personal grudge as alleged.

35. In *State of Andhra Pradesh v. Golconda Linga Swamy*, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:—

“5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. **When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.**

6. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) 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;
- (iii) **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.**

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal

evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....”

17. In ***Mohammad Wajid*** (supra) Hon’ble Apex Court dealt with an incident of land dispute between parties and also abnormal delay in lodging FIR containing neither any specific date or time of the alleged incident.

18. In catena of decisions Hon’ble Apex Court as well as various High Courts held that power under Section 482 CrPC must be exercised sparingly, with circumspection and in rarest of rare case. Exercise of inherent power under Section 482 of the CrPC is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the court. That grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be

harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal.

19. On the other hand, Hon'ble Apex Court in ***Jaideep Chatterjee*** (supra) held in paragraph 29 as quoted below:-

“ 29. This, does not, however mean that no incident took place on 28th July, 2022 that the petitioner No. 3 Asmaat Zaheer used to stare at the defacto complainant disgracefully and made remarks regarding her sitting posture etc. are undoubtedly an act of making sexually coloured remarks. The defacto complainant also stated that on 28th July, 2022 she was harassed by the petitioners when they abused her making sexually coloured statements. This allegation found place in her complaint made before the POSH Committee on the date of occurrence itself. She made the same complaint subsequently to the administrator of the company on 19th September, 2022. She also made the allegation of sexual harassment in her letter dated 13th October, 2022 to one Ms. Suparna Mukherjee, Adv, Ms. Leena Panja, Ms. Susmita Banerjee, Sr. Manager, SREI and Mr. Shayan Sachin Basu, Adv. Same allegation is depicted in the complaint dated 18th October, 2022. ”

20. ***Rupan Deol Bajaj*** (supra) deals with a detailed allegation of outrage of modesty unlike our case where allegation was threat to withdraw case and wrong sign.

21. In ***M. Devendrappan*** (supra) Hon'ble Apex Court laid down a principle in paragraph 9 as quoted below:-

“9. Having gone through the impugned common judgment and order passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under Section 482 Cr. P.C. and/or in exercise of the powers under Article 226 of the Constitution of India.”

22. In **Aryan Singh** (supra) Hon’ble Apex Court observed as paragraph 9 & 10 as follows:-

“9. Having gone through the impugned common judgment and order passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under Section 482 Cr. P.C. and/or in exercise of the powers under Article 226 of the Constitution of India.

10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider “whether any

sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

23. Kaptan Singh (supra) held in paragraph 9.1 as follows:-

9.1. *At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the*

matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.”

- 24.** Keeping an eye on all the aforementioned ratios and considering the allegation made in the written complaint as well as statement recorded under Section 161 & 164 of the

CrPC during investigation I am unable to come to a conclusion that the written complaint is so absurd and inherently improbable on the basis of which no prudent person can ever reach to a conclusion that there is sufficient ground for proceedings against the accused/petitioner.

25. Entire focus of Mr. Ganguly was on false implication on the ground of enmity between the parties arising out of transfer of opposite party no. 2 who was ultimately terminated from service.

26. But, inimical relation between the parties, in my opinion, is a double edged weapon which can be a motive for the crime as also the ground for false implication of the accused. In case of inimical witness, the Court is required to scrutinize their testimony with anxious care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity. It is also settled that testimony of eye witness, which is otherwise convincing and consistent cannot be discarded simply on the ground that the complainant was related to eye witness. Such exercise can be available in trial at the time of evaluation of evidence not at the threshold of the proceeding.

- 27.** Thus, the proceeding is not liable to be quashed.
- 28.** Criminal Revision being no. 1946 of 2015 stands dismissed.
- 29.** Interim order, if there be any, stands vacated and all interim application, if pending, stand disposed of.
- 30.** Case diary be returned.
- 31.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 32.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]