

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1962 of 2019

Sri Tirthankar Sarkar

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Ujjwal Datta.

For the State : Mr. Madhusudan Sur,
Mr. Manoranjan Mahato.

For the Opposite Party No. 2 : Mr. Upendra Roy,
Mr. Faiyaz Ahmed Khan,
Mr. Sunny Nandy,
Mr. Tamal Singha Roy.

Heard on : 28.02.2023

Judgment on : 19.04.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing the proceeding being G.R. Case No. 1306 of 2017 arising out of Cyber Police Station, Kolkata Case no. 93 of 2017, dated 20.07.2017, under Section 67 of The Information Technology Act, 2000 read with Sections 354A(1)(iv)/354D(1)/506/509 of the Indian Penal Code, 1860 pending before the Court of Learned Chief Metropolitan Magistrate at Kolkata.
2. The petitioner's case is that the petitioner presently serves at the West Bengal State Electricity Board under the Government of West Bengal as Superintendent Engineer, West Bengal State Electricity Distribution Company Ltd. and is a public servant.
3. The de-facto complaint is the president of the West Bengal State Committee of leftist political students' wing namely the students' Federation of India which is affiliated to the erstwhile ruling party of the State of West Bengal namely the Communist Party of India (Marxist). The complainant has alleged that the petitioner has abused her by attacking her integrity and political ideology vide face book messenger.
4. It is the case of the petitioner that the offences that has been alleged against the petitioner suffers from lack of ingredients and does not come within the purview and ambit of the said Penal Sections and as such the instant proceeding grounded upon vague, preposterous and concocted complaint is liable to be quashed.

5. It is further submitted that the instant proceeding is liable to be quashed as it suffers from distorted, concocted facts which are possible outcome of political vendetta and politically and/or personally motivated vengeance and as the basic ingredient of Sec. 67 of Information Technology Act, 2000 is missing.
6. **Mr. Ujjwal Datta, Learned counsel for the petitioner** has submitted **that the certificate issued under Sec. 65B of the Indian Evidence Act, 1872 suffers from irregularities as it only certifies the KYC details of the petitioner as disclosed by the BSNL and the number was forcefully and/or wrongfully obtained even though such showing of KYC does not ever conclude that the alleged offences were committed by the petitioner** and no report regarding the veracity of conversations has been attached in the Charge Sheet which should have been obtained from facebook.inc by the police authorities and the said certificates also fails to comply with the other conditions as mentioned in section itself. Hence the proceeding is liable to be quashed in limine.
7. It is further submitted that only the certificate under Section 65B is not sufficient as it merely deals with admissibility and does not guarantee the truthfulness and/or genuineness of the content of the document.
8. Hence it is prayed that the instant proceeding should be quashed.
9. The following judgments have been relied upon by the petitioners:-
 - A. ***Arnesh Kumar vs State of Bihar and Anr., (2014) 8 SCC 273***,
relying upon which it is submitted:-

“That the instant impugned proceeding is liable to be quashed as it suffers from a grave irregularity because the police authorities have registered the F.I.R. being Cyber Police Station, Kolkata Case No. 93 of 2017 on 20.07.2017 and on the basis of that issued the Sec. 41A Cr.P.C. notice on 07.01.2019 after an inexplicable and inordinate delay of almost one and half years which itself shakes the credibility and authenticity of the investigation conducted by the Police Authorities on the pretext of a fictitious written complaint having a huge lacuna which is itself a flagrant violation of the directions of the Hon’ble Apex Court as laid down in the landmark case of Armesh Kumar vs. State of Bihar reported in (2014) 8/SCC 273 wherein it was directed that the notice under Section 41A Cr.P.C. shall be required to be served upon the accused person with 14 days from the institution of the case.”

B. *Lalita Kumari vs Government of Uttar Pradesh, (2014) 2 SCC*

1, relying upon which it is submitted:-

“That the instant impugned proceeding and/or F.I.R. is liable to be quashed as it hopelessly suffers from grave irregularities which is incurable and inexplicable and casts serious questions on the veracity and authenticity of the prosecution case which suffers from unreasonable factual delays because the written letter of complaint was lodged on 08.07.2017 but the impugned F.I.R. was registered and/or lodged on 20.07.2017 after a delay of twelve (12) long days which is utterly against the directions of the Hon’ble Apex Court as laid down in the case.”

C. *Anvar P.V. vs P.K. Basheer and Ors., AIR 2015 SC 180,*

relying upon which it is submitted:-

“That the impugned proceeding is liable to be quashed in limine because neither printouts of the messenger have been collected by the police authorities nor certificates certifying them under Section 65B of Evidence Act were issued; on the

contrary only CPRs of mobile no. was certified and it has no connection with the offences alleged and only if certificate under Section 65-B is issued, question arises as to the genuineness of the records and opinion of examiner of electronic evidence is necessary as laid down by the Hon'ble Apex Court."

- D. **Ram Narain vs Mool Chand, AIR 1960 ALL 296**, relying upon

which it is submitted:-

"That the instant proceeding grounded upon vague, preposterous and concocted complaint is liable to be quashed and seeks immediate interference of this Hon'ble Court because it fulfills the three cardinal principles and/or conditions to be taken into account while quashing a proceeding i.e. firstly the injustice that comes to light should be of grave character and not of trivial character; Secondly it should be clear and palpable and not doubtful and thirdly there exists no other provision of law by which the party aggrieved could have sought relief as rightly laid down by the Hon'ble Allahabad High Court."

- E. **Mohan Goswami vs State of Uttaranchal, AIR 2008 SC 251**,

relying upon which it is submitted:-

"That the instant proceeding is liable to be quashed as it is completely based on vague allegations and this instant criminal proceeding is used as an instrument of harassment or for seeking private and/or political vendetta with an ulterior motive to pressurize the accused person and refusal to quash such a proceeding is held to be improper as laid down by the Hon'ble Apex Court."

- F. **Babubhai vs State of Gujarat and Ors., (2011) 1 SCC (Cri)**

336, relying upon which it is submitted:-

"That the instant impugned and erroneous proceeding is liable to be quashed as the said

instant proceeding is already vitiated by an irregular and improper investigation of which the innocent petitioner has been a victim, whereas it is a settled proposition of law that right to get fair investigation is also a part of constitutional rights ensured under Article 20 and 21 of the Constitution of India as held by the Hon'ble Apex Court."

- G. ***Dilwar vs State of Haryana, 2018 (16) SCC Page 521***, relying upon which it is submitted:-

"That the instant proceeding is liable to be quashed at the threshold as it violates the mandatory provisions of Section 173(1) of Code of Criminal Procedure as the police authorities failed to submit the charge sheet within reasonable time and in this instant case the FIR was registered on 20.07.2017 whereas the charge sheet was filed on 10.05.2019 after an unexplained delay of two years and ten months approximately which itself suffices the factum of lackadaisical approach of the police authorities by which the investigation process gets deeply vitiated moreover when the instant proceeding lacks cogent evidence to substantiate the offences as alleged."

- H. ***Directorate General of Doordarshan & Ors. vs Anand Patwardhan and Ors., JT 2006(8)SC 255, and Regina vs Hicklins, 1868-3 QB 360***, relying upon which it is submitted:-

".....The case hopelessly fails to pass the test of obscenity, the conditions of which were laid down by the Hon'ble Apex Court in Directorate General of Doordarshan & Ors. vs Anand Patwardhan and Ors. reported in JT 2006(8) SC 255 and also relied upon the conditions laid down in Regina vs Hicklins 1868-3 QB 360 which was further enhanced by the Miller test's constitutional standard of obscenity."

- I. **M/s Jaimin Jewellery Pvt. Ltd. vs State of Maharashtra, Criminal Revision No. 432 of 2015**, relying upon which it is submitted:-

“That only the certificate under Section 65B is not sufficient as it merely deals with admissibility and does not guarantee the truthfulness and/or genuineness of the content of the document.....”

- J. **Arjun Panditrao Khotkar vs Kailash Kushanrao Govantyal and Ors., (2020) 7 SCC 1**, relying upon which it is submitted:-

“That in the light of the recent judgment pronounced by the Hon’ble Apex Court on 14.07.2020 last in the case of Arjun Panditrao Khotkar vs Kailash Kushanrao Govantyal and Ors., reported in (2020) 7 SCC 1 the instant proceeding is untenable in as much as Section 65 differentiates between existence, condition and contents of a document. Section 65A speaks of “contents” of electronic records being proved in accordance with the provisions of Section 65B. This provision speaks of “admissibility” of electronic records which deals with “existence” and “contents” of electronic records being proved once admissible into evidence. Section 65B differentiates between the original information contained in the “computer” itself and copies made therefrom the former being primary evidence, and the latter being secondary evidence.”

10. **Mr. Upendra Roy, learned counsel for the Opposite party No. 2** has submitted that there is sufficient materials/evidence against the petitioner and as such the case should be allowed to proceed towards trial and the revision is thus liable to be dismissed.
11. **Mr. Madhusudan Sur, learned counsel for the State** has placed the case diary.

12. From the materials and the case diary in the present case it is seen that, in the charge sheet the following findings/prima facie evidence is on record:-

“.....During investigation a notice U/s 91 Cr.P.C. was sent to the Facebook Inc. Security for providing the creation and available log in details with date and time stamp against the questioned Facebook profile namely, “Tirthankar Sarkar” vide URL: <https://www.facebook.com/tirthankar.sarkar.90>. During investigation, from the IP addresses provided by Facebook Inc. Security it could be ascertained that the alleged profile has been accessed from Mobile No. 9433428896 which stands in the name of Tirthankar Sarkar S/O A. K. Sarkar of 24D, Regent Park, M. N. Sen Lane, Regent Lane, Kolkata. During this course, the same mobile number i.e. 9433428896 was found from the reply of Facebook Inc. Security as the cell verified phone number.

Accordingly, a notice u/s 41A Cr.P.C. was served upon the said Tirthankar Sarkar S/O A.K. Sarkar.....”

13. The complainant has given her statement under Section 164 Cr.P.C.
14. **Section 354A (1) (iv) of the Indian Penal Code, lays down:-**

“[354A. Sexual harassment and punishment for sexual harassment—

(1) Aman committing any of the following acts--

(i)

(ii)

(iii)

(iv) making sexually coloured remarks.

.....”

15. **Section 354D (1) (i) of the Indian Penal Code, lays down:-**

“[354D. Stalking.--(1) Any man who--

- (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

.....

Ingredients of the offence.-

(1) Accused followed a woman and contacted, or attempted to contact her to foster personal interaction repeatedly despite showing clear disinterest by the said woman, or

(2) Accused monitored the use by the woman of the internet, email or any other form of electronic communication.”

16. Section 506 of the Indian Penal Code, lays down:-

“506. Punishment for criminal intimidation.—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ingredients of offence.- The essential ingredients of the offence under Section 506 are as follows:-

- (1) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;
- (2) The accused did so with intent to cause alarm to the victim of offence;

(3) *The accused did so to cause the victim to perform any act which he was not legally bound to do.*"

17. **Section 509 of the Indian Penal Code, lays down:-**

***"509. Word, gesture or act intended to insult the modesty of a woman.—*Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.**

Ingredients of offence.- The essential ingredients of the offence under Section 509 are as follows:-

- (1) *The accused uttered some words, or made some sounds or gesture or exhibited any object or intruded upon the privacy of a woman;*
- (2) *The accused must have intended that the words so uttered or the sound or gesture so made or the object so exhibited should be heard or seen respectively by the woman;*
- (3) *The accused thereby intended to insult the modesty of the woman."*

18. The copies of messages on record and the contents there in show that the ingredients required to constitute the offence alleged are prima facie on record, sufficient to proceed towards trial.
19. Further the contentions of the petitioner relying upon the judgments of the Apex Court are matters to be considered on trial as prima facie, there has been compliance of the relevant provisions under the law during

investigation and there is sufficient materials to proceed against the petitioner for the offence alleged towards trial.

20. All these evidence collected by the investigating officer make out a prima facie case against the petitioner of the offences alleged and sufficient to proceed towards trial and this is not a fit case where the inherent powers of this court should exercised.
21. **CRR 1962 of 2019 is dismissed.**
22. There will be no order as to costs.
23. All connected Applications stand disposed of.
24. Interim order if any stands vacated.
25. Copy of this judgment be sent to the learned Trial Court forthwith 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.)