

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. No.2471 of 2008

With

I.A. No. C.R.A.N. 2 of 2023

**SRI SAMIDH BANERJEE AND ANOTHER
-VERSUS-
THE STATE OF WEST BENGAL AND ANOTHER**

For the petitioners : Mr. Arunangshu Chakraborty, Adv.,
Ms. Zeba Rashid, Adv.,
Ms. Geniya Mukherjee, Adv.,
Mr. Arijit Bera, Adv.

For the State : Mr. Prasun Kr. Dutta, Adv.,
Md. Kutubuddin, Adv.,
Mr. Santanu Deb Roy, Adv.

Heard on :07.07.2022, 25.08.2022, 20.02.2023,
24.02.2023, 27.02.2023, 02.03.2023.

Judgment on : 02.03.2023

Kausik Chanda, J.:-

The petitioners seek to quash a charge sheet filed in connection with G.R. Case No.1498 of 2007 under Sections 341/323/506/34 of the Indian Penal Code, 1860, pending before the learned Judicial Magistrate, 1st Court, Basirhat, North 24-Parganas. The said case arises out of Basirhat P.S. Case No.517/07 dated September 12, 2007, under Sections 341/323/325/307/506/34 of the Indian Penal Code, 1860.

2. It appears that opposite party no.2 lodged a complaint before the Basirhat police station alleging, inter alia, that on September 12, 2007, in the morning he found that petitioner nos.1 and 2 along with some other persons encircled the headmaster of the school, Mr. Utpal Sarkar and asked him to go out of the school immediately. A ruckus started at that point of time, Mr. Shibnath Ghosh, another teacher of the school, came to the place. Seeing Shibnath, the accused persons started calling him a henchman of Utpal and threatened to kill both of them. Some guardians of the wards of the school also arrived at the spot. Petitioner nos.1 and 2 along with some other persons started beating Utpal. At that point of time, one Sukjan Bibi told the accused persons not to beat Utpal. Thereafter, Sukjan Bibi started beating Utpal herself. She pressed his private parts forcefully with the intention to kill him. Shibnath tried to rescue Utpal, but the accused persons started beating him with their fists and slapped him.

When the F.I.R. maker tried to resist, the accused persons pushed him to the ground. He fell on the ground and suffered an injury.

3. On the basis of the said complaint, the relevant police station registered a case under Sections 341/323/325/307/506/34 of the Indian Penal Code, 1860.

4. Following the registration of the case by the relevant police station, an investigation was carried out by an Investigating Officer and ultimately the Investigating Officer filed a charge sheet against the petitioners and some other persons under Sections 341/323/506/34 of the Indian Penal Code, 1860.

5. In support of this quashing application, it has been submitted by Mr. Arunangshu Chakraborty, learned advocate, that the dispute between the petitioners and the opposite party no.2 is entirely civil in nature. There is a long-standing dispute between petitioner no.1 and opposite party no.2 relating to the management of a school namely, Sishu Bhavan School. The former headmaster of the morning session of "Sishu Bhavan School" along with Shibnath Ghosh manufactured documents to open a bank account in the name of "Sishu Bhavan" for misappropriation of funds belonging to the actual school. Petitioner no.1 lodged a complaint against him before the Basirhat police station which was registered under Sections 447/448/406/403/384/344/468/120B of the Indian Penal Code, 1860. Utpal and Shibnath were dismissed from their service. They moved a writ

petition before this Court falsely claiming themselves to be the headmaster and the president of the managing committee of “Basirhat Sishu Bhavan School” though the address of the said school was also described as Kabi Bhujanga Dhar Road, P.S.- Basirhat, District-North 24-Parganas. They falsely claimed that “Sishu Bhavan” and “Basirhat Sishu Bhavan” are different schools. They also falsely claimed that they started their own school after purchasing the building from the erstwhile owner, Nilkanta Ghosh. Mr. Chakraborty has further submitted that Utpal Sarkar and Shibnath Ghosh along with other antisocial broke the lock of “Sishu Bhavan,” forcefully entered the school, and looted valuables. Another complaint was lodged by the petitioners and Basirhat P.S. Case No.515 of 2007 dated September 11, 2007, under Sections 453/380/34 of the Indian Penal Code, 1860 was registered against them.

6. It was the submission of Mr. Chakraborty that the present complaint was lodged as a counterblast on the very next date by the opposite party no.2. It was argued that the police, instead of registering a case against Utpal Sarkar and others, registered the present case against the petitioners along with other staff of Sishu Bhavan School. Mr. Chakraborty contended that the charge sheet submitted in the instant case was fabricated and the investigation was conducted in a perfunctory manner. No material has been collected against the petitioners in the instant case to substantiate the alleged commission of offences. The charge sheet had been filed by the

investigating agency at the instance of Utpal Sarkar, since deceased, and Shibnath Ghosh. Mr. Chakraborty prayed for quashing of the present criminal case.

7. The principle relating to the quashing of an F.I.R. or a charge sheet has been laid down by the Supreme Court in a number of cases. In the case reported at **AIR 1992 SC 604 (*State of Haryana v. Bhajan Lal*)**, it was held:

“**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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in

embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

8. It has been held in the judgment reported at **(2018) 3 SCC 104** **(Dineshbhai Chandubhai Patel v. State of Gujarat)** that the High Court cannot act like an investigating agency or exercise the power like an appellate Court in order to examine whether the FIR discloses any cognizable offence or not. The High Court cannot appreciate evidence nor could draw its own inference on the contents of the FIR and, *prima facie*, materials if any requiring no proof.

9. It has been also held in the judgment reported at **(1999) 3 SCC 259** **(Rajesh Bajaj v. State NCT of Delhi)** that High Court cannot quash a proceeding when the facts of the case are hazy and it is not necessary that the complaint should verbatim reproduce all the ingredients of the alleged offence.

10. The High Court should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal are of a wide magnitude and cannot be seen in their true perspective without sufficient materials.

[See: **(2012) 10 SCC 155** **(State of Madhya Pradesh v. Surendra Kori)**]

11. In the present case, the investigating agency upon conclusion of the investigation has filed a charge sheet which discloses the commission of the cognizable offence. Though it has been submitted by Mr. Chakraborty that the present case is a counterblast for the complaint lodged by the petitioners against Utpal and Shibnath on the previous day, a countercase, *ipso facto*, is not a ground for quashing of a criminal proceeding. A long-standing civil dispute between them, by itself, also cannot be a ground for quashing a criminal case. For quashing of an F.I.R. or a charge sheet, it has to be seen whether the materials collected against the petitioners *prima facie*, disclose the commission of any cognizable offence. The veracity of the complaint or version of the prosecution in a charge sheet need not be gone into while an application for quashing an F.I.R. or charge sheet is being considered.

12. The civil disputes between the parties and the order of the High Court do not rule out or reject the allegations contained in the charge sheet filed against the petitioners. The material and documents relied upon by the petitioners do not dispel or reject the allegations contained in the charges filed against the petitioners without the necessity of recording any evidence.

13. In view of the discussion above, I am of the view that the present charge sheet should reach its logical conclusion by way of a trial to allow a full examination of evidence and fair determination of the issues at hand.

14. Accordingly, C.R.R. No.2471 of 2008 is dismissed.

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15. This application is utterly misconceived and has been filed with the ulterior motive of forum shopping.

16. The main revisional application was heard on August 25, 2022 and the judgment was reserved.

17. At the instance of this Court, the matter was placed under the heading "To Be Mentioned" in the cause list on February 20, 2023, when following orders were passed:

"Hearing of the case was concluded on August 25, 2022. Before delivery of the judgment, the case diary of the case needs to be looked into.

State submits that it can produce the case diary next Friday.

List this matter on February 24, 2023 under the same heading."

18. This application was filed immediately, three days thereafter i.e. on February 23, 2023.

19. When the matter again listed on February 24, 2023, this Court passed the following orders:

"The State seeks further time to produce the case diary of the case.

List this matter on February 27, 2023 under the same heading.”

20. The matter was again listed on February 27, 2023, when no one appeared on behalf of the petitioners.

21. When this application was taken up for hearing today, no one appeared on behalf of the petitioners to press this application.

22. When the matter was listed before the Court on February 20, 2023, the period of six months from the date of conclusion of the hearing was not over. The petitioners were conscious of the fact and therefore, filed this application “for withdraw the abovementioned case and to make it over to any other Bench for fresh argument” since “the judgment was reserved for almost six months.”

23. The judgment reported at **(2001) 7 SCC 318 (Anil Rai v. State of Bihar)** does not apply in this case. In the said judgment, it is mentioned that only after six months hiatus between reserving a judgment and delivering it, either party can move an application to the Chief Justice, who may then decide that the matter be heard afresh.

24. I have reason to believe that the petitioners may have perceived the mind set of this Court on February 20, 2023, and in a desperate bid to avoid a judgment from this Court filed the present application even before the said period of six months.

25. Accordingly, I.A. No. C.R.A.N. 2 of 2023 is dismissed.

26. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)