

CRR 2426 of 2015

**Lakshmi Kanta Ghosh & Anr.
Vs.
The State of West Bengal & Anr.**

Mr. Sourabh Sundar Shee

... .. for the petitioners

Mr. Joydeep Roy

Ms. Sujata Das

... .. for the State

Petitioners who are the teachers of the school namely, Susunia Ranibala Vidyamandir are aggrieved with the complaint filed and proceedings initiated against them vide complaint dated 23rd December, 2014, in the Court of ACJM, Kalna, Burdwan. They are aggrieved with initiation of the said complaint being CR Case No.145 of 2014 under Sections 323/504/506/34 of the IPC. Hence, this revision is filed with the prayer to quash the same.

Crux of the complaint may be narrated as hereinbelow:

The daughter of the de facto complainant being student of class twelve of the said school named above was prevented to participate in a cultural function of the school and also has been assaulted, subjected to abusive languages by the petitioners and suffered injuries.

On these allegations the above stated complaint case was lodged by the de facto complainant/opposite party no.2 when the Trial Court has taken cognizance of offence under Sections 323/504/506/34 of the IPC having examined the de facto complainant and also the victim, i.e. the daughter of the de facto complainant, under Section 200 of the Cr.P.C.

Learned advocate appearing for the petitioners has firstly submitted as to the very maintainability of the complaint insofar as the same is not accompanied with any affidavit sworn by the de facto complainant. It is submitted that the de facto complainant's complaint is not maintainable in the eye of law being devoid of any affidavit duly sworn by him. Thus, the criminal proceedings started against the petitioners should have no foundation, as such. The other points argued on behalf of the petitioners is of no ingredients of offence to be available against the petitioners, to find the cognizable offence made out in the said complaint. Precisely, he has submitted that there are severe discrepancies in the examination of the de facto complainant and his daughter as recorded by the Magistrate under Section 200 of the Cr.P.C.

He has further pointed out to lack of medical evidence available to show and substantiate the allegations of assault. He has further pointed out that managing committee of the school has resolved on the basis of knowledge of members thereof regarding truthfulness of the complaint narrated incident.

It has further been pointed out that in a case of this nature, the Magistrate should have called for a police report under Section 202 Cr.P.C. to be sanguine about the genuineness of the alleged occurrence, before issuance of process against the person and he has submitted that no cognizable offence has been made out against his clients and as such the present proceeding should not continue against them.

In spite of due service of notice no one has appeared on behalf of the parties. The affidavit of service is kept with the record and the matter is taken up in absence of the opposite party no.2.

State is, however, represented. On the basis of the materials Mr. Joydeep Roy and Ms. Sujata Das appearing for the State have submitted that witnesses i.e. de facto complainant and his daughter have sufficiently stated during their examination under Section 200 Cr.P.C. about existence of necessary ingredients of offence against the present petitioners. Hence, there is no scope before this Court, at this stage, to interfere with the same in exercise of its power under Section 482 Cr.P.C.

Under Section 482 Cr.P.C. this Court is empowered to exercise an inherent power to prevent any abuse of the Court's process and also to secure ends of justice.

Accordingly, in this case it is imperative for this Court to assess if at all any cognizable case is made out against the petitioners to proceed in a criminal proceeding against them or not. The case has originated back in the year 2014 on the allegation of assault etc. of the daughter of the de facto complainant who happened to be a student of the school where the present petitioners were engaged as teachers. The complaint is eloquent regarding sufferance of assault and abusive language by the victim. However, as pointed out on behalf of the petitioners, the statement recorded by the Magistrate under Section 200 Cr.P.C. of the de facto complainant and his daughter, suffer from glaring discrepancies as regards the manner the occurrence is said to have taken place. More importantly, there is no medical evidence available on record to substantiate the allegation leveled against the present petitioners by the de facto complainant.

Under such circumstances, it can well be found that at that point of time there has not been any sufficient material before the

Magistrate to come to a finding that process in this case can be issued. The Magistrate had to form the opinion on the basis of materials available to him at the time of issuance of process, about existence of ingredient of any cognizable offence, against the petitioners.

To prove an offence under Section 323 IPC the de facto complainant should have at the very outset and prima facie show satisfaction of the ingredients under Section 321 IPC. That is to say that the de facto complaint through written complaint must show that an act of causing harm has been done by the accused persons. Such act has been done with the intention and knowledge, as to the result of such act, to cause harm to the subject person. Fulfillment of these two ingredients would be obvious in this case and should entail petitioners' mens rea in order to find if any case has been made against them. The allegations in the complaint would not, however, disclose any ingredient as above, against the petitioners.

That being so, taking cognizance of offence as alleged against the petitioners and issuance of process by the Magistrate is found to be done not in accordance with law.

In this matter, as mentioned above, the complaint being devoid of a duly sworn in affidavit, which would have been an integral part of the complaint to be duly submitted in a Court of Law, I concur with the submission made on behalf of the petitioners that in absence of the same the complaint was not maintainable ab initio in the eye of law. The judgements referred to on this point by the petitioners are as follows:

Reported in (1) 1955 Cr.L.J., 1359, Shivnarain Vs. State, (2) AIR 1970 SC 1153, Bhimappa Bassappa Bhu Sannavar Vs. Laxman Shivarayappa Samagouda & others and (3) unreported judgement of the Hon'ble Supreme Court in the matter of Ramesh Chandra Gupta Vs. State of U.P. & Ors. dated 28th November, 2022.

The ratio of the decisions mentioned above comes to aid the petitioners in this case, so far as the point of maintainability of the complaint is concerned.

Accordingly, on the discussion as above neither the complaint is found to be maintainable in law in this case being devoid of a duly sworn in affidavit by the de facto complaint nor the same is found to have made out any cognizable offence against the accused persons/petitioners as stated above, to proceed in a trial.

Hence, this revision case succeeds.

CRR 2426 of 2015 is allowed. CR Case No.145 of 2014 pending in the Court of ACJM, Kalna is quashed and rescinded.

Connected application, if any, is also disposed of.

Urgent certified copy of this order, if applied for, be given to the parties upon compliance of all legal formalities.

(Rai Chattopadhyay, J.)