

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3145 of 2019

Sreeniwas Agarwal & Anr.

Vs.

The State of West Bengal & Anr.

For the petitioners : Mr. Phiroze Edulji,
Mr. Ajit Kumar Mishra,
Mr. Abhishek Dey,
Ms. Roustavi Mukherjee.

For the State : Mr. S. G. Mukerji, Ld. P.P
Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan.

Hearing concluded on : 10.08.2023

Judgment on : 06.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings being Girish Park Police Station Case No.95 of 2019 dated 20.07.2019 under Sections 448/427/379/406/506/34 of the Indian Penal Code, 1860, corresponding to G.R. Case No.846 of 2019 pending before the learned Additional Chief Metropolitan Magistrate at Calcutta.
2. The petitioner's case is that the allegation as leveled against the petitioners in the First Information Report is to the effect that in the

month of January, 2019 the defacto complainant came to know that the petitioners have broken the padlock of two rooms on the ground floor of the premises 9, Dwarka Nath Tagore Lane, P.S.-Girish Park, Kolkata-700007. The defacto complainant further accused the petitioners of having trespassed into the above mentioned portion of the premises no.9, Dwarka Nath Tagore Lane, P.S. Girish Park, Kolkata-700007 and taking away wooden furniture worth Rs.40,000/-.

3. The petitioners state that they at all material times are co-owners in the duly registered Co-ownership Firm constituted under the provisions of Section 26 of the Income Tax Act, 1961, having its office at premises No.9, Dwarka Nath Tagore Lane, Kolkata-700007.
4. The defacto complainant Jaikishan Agarwal represents himself to be the co-owner having undivided $1/3^{\text{rd}}$ share in respect of premises No.9, Dwarka Nath Tagore Lane, Kolkata-700 007.
5. That sometime in the later part of July, 2012, the defacto-complainant approached the petitioners for sale of his $1/3^{\text{rd}}$ share in respect of the said property and on being represented by him, the petitioners agreed to purchase the said property from the defacto complainant herein.
6. That pursuant to such arrangement, the defacto complainant by virtue of a registered Deed of Conveyance dated 10.08.2012 sold, conveyed and transferred his undivided $1/3^{\text{rd}}$ proportionate share in the said premises together with land and common part together with right to possession thereof. The said deed was duly registered with

the Registrar of Assurances, Calcutta and recorded in Book No.1, CD Volume No.39, Pages 594 to 616, being No.10104 for the year 2012.

7. It is stated that the petitioners are in possession of the entire 2nd floor, 3rd floor and are also in possession of a major portion on the ground floor of the premises at No.9, Dwarka Nath Tagore Lane, Kolkata-700 007 since the year 2010.
8. It is further stated that the defacto-complainant sometimes in the month of January, 2019 with the help of antisocial and outsiders, under the leadership of one Mr. Agarwal, threatened the petitioners to vacate the portion under their possession/occupation and after the petitioners refused to do the same, they threatened the petitioners of forcible dispossession from the portion under their occupation. Accordingly, the petitioners lodged a diary with Girish Park Police Station on 08.01.2019 against the defacto complainant and others for such illegal attempt to dispossess the petitioners, unlawfully.
9. Thereafter the petitioners filed an application before the learned 6th Metropolitan and Executive Magistrate, Calcutta under Section 144(2) of the Criminal Procedure Code, 1973 against the defacto complainant being case No.M/74/2019.
10. The said application under Section 144(2) of Criminal Procedure Code, 1973 was heard by the learned court on 31.01.2019 and upon hearing, the learned court directed the Officer-in-Charge, Girish Park Police Station to see that no breach of peace takes place at the premises and further directed to see that no illegal acts are committed

by the opposite party and also sought a police report from Girish Park Police Station.

11. The said report dated 30.03.2019, filed by the Girish Park Police Station inter alia, stated as under:-

“Beg to submit before your Honour that in pursuant to your Honour’s order dated 31.01.2019, an enquiry was done by visiting the schedule premises.

During enquiry had been to 9, Dwarka Nath Tagore Lane, P.S. Girish Park, Kolkata-700 007 and contacted with the petitioner, who stated as per his petiton. Also tried contacted with the Ops but OP Sl. No.2 and 3 could not be contacted due to proper address and identification. Several messages were served to the OP Sl. No.1 Shri Jay Krishan Agarwal, S/O Lt. Chandrabhan Raniwala of 51A, South End Road, P.S. Lake, Kolkata-700 029, but he did not turn up.

During enquiry examined the PO i.e. 9, Dwarka Nath Tagore Lane, P.S. Girish Park, Kolkata-07 and found it is a three stored building. 3rd floor of the said building found as storage rooms/godown of the petitioner, 2nd floor of the said building used as the office and associate rooms by the petitioner. Ground floor is also used by the petitioner as working house of his garments business styled as “Kids Boy Company”.

It could be learnt that in the year 2010 the petitioner took his portion at 9, Dwarka Nath Tagore Lane, P.S. Girish Park, Kol-07 on rent from OP SI No.1 Shri Jai Krishan Agarwal, S/o Lt. Chandrabhan Raniwala of 51A, South End Road, PS-Lake, Kol-700 029 being one of the partner of ‘EXDONOLIMITED’. The petitioner and other tenants also stated that, later they came to know that there were three directors of the said company (‘EXDONOLIMITED’).

The petitioner further stated that on 10.08.2012 he purchased the portion of OP Sl. No.1 Jay Krishan Agarwal, S/o Lt. Chandrabhan Raniwala of 51A, South End Road, P.S.-Lake, Kolkata-700029. As he never ever seen the other partners, he unable to purchase other two portions from them, where he is already a tenant and running his business since 2010. The petitioner

submitted copy of some relevant documents including “deed of sale” dated 10.08.2012, which are attached herewith. In spite of several messages, the OP Sl. No.1 not co-operating with the enquiry. Other Ops could not be traced out. Hence, the order of the learned court could not be communicated.”

12. That the petitioners being aggrieved by the illegal acts and/or actions committed by the defacto-complainant and his men/agents filed a suit for declaration and permanent injunction in the City Civil Court at Calcutta being **Title Suit No.56 of 2019** and the said matter was heard in presence of both the parties, being the defacto-complainant and the petitioners herein. Upon hearing, the learned court by its order dated 26th June, 2019 allowed the application filed by the petitioners filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 dated 10.01.2019 and directed the parties, **the petitioners and defacto-complainant herein, to maintain status-quo in respect of the suit property till disposal of the suit.**

13. It is stated that the property being premises No.9, Dwarka Nath Tagore Lane, Kolkata-700 007, was originally owned by 1) Om Prakash Raniwala (2) Shyam Sundar Agarwal and (3) Jaikishan Agarwal, the defacto-complainant herein. Since, the defacto-complainant has sold, conveyed, transferred his share along with right, title, interest along with right of possession to the petitioners herein, he has no locus standi to take any recourse against the petitioners herein.

14. It is further stated that the defacto complainant has suppressed relevant material facts in the application filed under Section 156(3) of

the Criminal Procedure Code, 1973 to obtain favourable order, based on false representation and on suppression of fact, believing it to be true, the learned court allowed the application filed under Section 156(3) of Criminal Procedure Code, 1973 and subsequently the First Information Report was lodged.

15. That all the allegations made against the petitioners are false, frivolous and an afterthought, since, the defacto-complainant is well aware that a civil suit is long pending in respect of the said portions of the said premises and the defacto-complainant is well aware of the said suit as the petitioners and the defacto-complainant are contesting the said suit.
16. **Mr. Phiroze Edulji, learned counsel for the petitioners** has submitted that the impugned proceeding is a gross abuse of the process of Court and as such the same is liable to be quashed.
17. That the FIR was lodged by suppressing the material fact that civil suit is pending in respect of the said property and that the defacto complainant was well aware of the said suit and the petitioners as well as the opposite party no.2 had been contesting the said suit.
18. That the impugned proceedings and all orders passed therein are otherwise bad in law and are liable to be set aside and/or quashed.
19. **In spite of being represented earlier in this case, the opposite party no.2 has failed to appear at the time of final hearing.**

20. **Mr. Saswata Gopal Mukerji, learned Public Prosecutor** has placed the case diary and submitted that there is sufficient materials on record to prima facie show that the offences alleged against the petitioners have been made out and the case thus requires to go to trial.

21. **From the materials on record, the following facts are before this Court:-**

- i) Vide Deed No.09476/2012 of AROA II, Kolkata dated 10.08.2012, the owner (the defacto complainant) of 1/3rd share in the disputed property, transferred his undivided proportionate share and/or interest in the land in the four storied building (ground plus three stories) to the petitioners.
- ii) The petitioners filed an application under Section 144 Cr.P.C. against the opposite parties on 25.03.2019.
- iii) **A Title Suit being No.56/2019** has been filed by the petitioners against the transferor (the defacto complainant herein) of the 1/3rd share in City Civil Court, Calcutta. **The petitioner has been granted an order of status quo in respect of the possession in the disputed prperty on 14.01.2019.**
- iv) **The present case has been initiated on 20.07.2019.**
- v) In spite of the dispute being subjudice before a competent Civil Court, the opposite party no. 2 has filed the present proceedings before a Criminal Court.

- vi) **Memo of evidence** dated 16.05.2022 submitted by the investigating officer through the learned Public Prosecutor is as follows:-

“During investigation witnesses were examined and recorded their statements in details. During inquiry the tenants residing in the first floor of the said premises No.9, Dwarka Nath Tagore Lane, Kolkata-07 namely Goverdhan Das Nathani, Lt. Nathani were also inquired and on inquiry reveals that Sri Ajay Kumar Agarwal in possession of ground floor, second floor and third floor of premises No.9, Dwarka Nath Tagore Lane, Kolkata-07 since 2010 and one Mr. Manoj Sonkar, S/O Sankar Lal Sonkar of 254, Rabindra Sarani, Kol-07, neighbor, also told the same fact.

During physical verification it appears that Sri Ajay Kumar Agarwal is in possession of ground floor, entire 2nd floor and six rooms as asbestos roofing on the 3rd floor in their holding No.9, D. N. Tagore Lane, PS-Girish Park, Kol-7.”

- vii) Thus, there is no materials in the case diary to make out even a prima facie case against the petitioners in respect of the offences alleged.

22. Mr. Edulji has relied upon the judgement of the Supreme Court in ***Mahmood Ali & Ors. vs State of U.P. & Ors., Criminal Appeal No. 2341 of 2023, on August 08, 2023***, held:-

“12. *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.

13. 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.....”

(Emphasis supplied)”

23. **From the materials on record** it is clear that the dispute between the parties is civil in nature and a suit with an order of status quo is also in force in respect of both the parties is also pending before a **Civil Court prior to filing of the present criminal case.**
24. **The Supreme Court in several precedents has discouraged such proceedings initiated by the complainant only to harass the other party.** Some of the rulings are as follows:-
 - a) **M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006 (Para 8, 9, 10).**
 - b) **Birla Corporation Ltd. vs Adventz Investments and holdings, (Criminal Appeal No. 877 of 2019) (Para 86).**
 - c) **Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021) (Para 37, 41, 42).**
 - d) **R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022 (Para 17).**
 - e) **Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023 (Para 21, 24).**

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

26. The present case falls under category 1 and 3 of **Para 102 of Bhajan Lal (Supra).**

27. **The revisional application being CRR 3145 of 2019 is allowed.**

28. The proceedings being Girish Park Police Station Case No.95 of 2019 dated 20.07.2019 under Sections 448/427/379/406/506/34 of the Indian Penal Code, 1860, corresponding to G.R Case No.846 of

2019 pending before the learned Additional Chief Metropolitan Magistrate at Calcutta, is quashed.

29. All connected applications, if any, stands disposed of.
30. Interim order, if any, stands vacated.
31. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
32. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)