

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 105 of 2022

Suva Santra @ Subha Sutradhar

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Sourav Ganguly.

For the State : Mr. Aditi Shankar Chakraborty,
Mr. Ujjwal Luksom.

Heard on : 12.04.2023

Judgment on : 13.04.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings in connection with New Jalpaiguri Police Station Case No.1357 dated November 18, 2020 under Sections 376/417 of the Indian Penal Code giving rise to GR Case No.5043 of 2020 wherein charge sheet has been submitted vide Charge Sheet No. 03 dated January 13, 2021 under Sections 376/417 of the Indian Penal Code now pending before the Court of the learned Chief Judicial Magistrate, Jalpaiguri.

2. The petitioner's case in short is that the defacto complainant filed the present case being New Jalpaiguri Police Station Case No.1357 dated November 18, 2020 under Section 376/417 of the Indian Penal Code, against the petitioner who is the husband of the complainant/opposite party no.2. They were married on December 1, 2014 according to Hindu Rights and Customs. It was alleged in the written complaint that about five years ago (that is in the year 2015) the petitioner and the defacto complainant built up a relationship of love and affection. It is further alleged that the petitioner tempted and promised the complainant to marry her. Since then, the petitioner on various occasions took the complainant to different places and they indulged in physical relationship. Subsequently, after four years, the complainant became pregnant and gave birth to a girl child. **The complainant requested the petitioner to marry her but he refused to introduce her and their daughter.** Moreover, after eight months of the said incident, the petitioner refused to keep any contact with the complainant and fled away. Subsequently, it came to knowledge of the complainant that

the petitioner was staying at Siliguri with an unknown lady. After that the complainant and her family went to the petitioner's residence, and the petitioner abused the complainant verbally as well as physically.

3. The petitioner states that out of the said marriage between him and the complainant/opposite party no.2, one female child was born who was named "Jui Santra" and presently she is aged about 5 years and 6 months.

4. The petitioner states that his name appears as the husband of the complainant/opposite party no.2 in the electoral list for the year 2022 under the Jangipara Legislative Constituency. The petitioner further draws attention of the Court to the following documents and testimonials wherefrom it would be crystal clear that the petitioner is the legally married husband of the complainant/opposite party no.2:-

- i) Photo copy of the Pan card of the complainant/opposite party no.2.
- ii) Photo copy of the Aadhar Card of the complainant/opposite party no.2.
- iii) Photo copy of the loan book of Bandhan FSPL standing in the name of the complainant/opposite party no.2.
- iv) Photo copy of the Antpur Gram Panchayat of the complainant/opposite party no.2.

5. Hence, the revision on the ground that the impugned proceeding is malicious and is thus, liable to be set aside.

6. **Mr. Sourav Ganguly, learned counsel for the petitioner** further submits that there is no material on record to make out a case as alleged by the complainant as there are sufficient documents on record to prove that

the complainant is the lawfully wedded/married wife of the petitioner. The statement in the written complaint that the petitioner is refusing to marry her after co-habiting with her is totally false in view of the documents filed in support of their marriage and also the birth certificate of their child. Copy of the marriage invitation card annexed to the petition shows that the date of marriage between the complainant and the petitioner was on 26th July, 2015. There is also a deed of declaration after marriage between the parties **wherein the complainant has also signed as the bride and the petitioner as the bridegroom.**

7. **Mr. Ujjwal Luksom, learned counsel for the State** has placed the case diary and also a report dated 91.1.2023 filed by S.I Kamal Sarkar of New Jalpaiguri Police Station, under Siliguri Commissionerate, wherein the Inspector met the complainant and collected the relevant documents being AADHAR card, Voter's List, Vaccination Card of the child, Birth certificate of the child Jui Santra and on proper verification has filed the documents before the court. The Voter's card and the Aadhar card also shows the complainant as the wife of the petitioner.

8. From the documents filed by the Police through the State, it is found that the Medical Superintendent-cum-Vice Principal of the North Bengal Medical College and Hospital has informed the Inspector-in-Charge of New Jalpaiguri Police Station by a letter dated 27.12.2022 that after verification of the **Birth Certificate of Jui Santra, it is seen that it has been mentioned as daughter of Suva Santra (Petitioner/Father) and Pratima Santra (Complainant/Mother).**

9. Now, it is for this court to examine the contents of the written complaint and consider the materials on record including the case diary as to whether the statements in the written complaint have prima facie been substantiated by the investigating agency.

10. In the present case the complainant's allegation is that in and around 2015 there was a love affair between the petitioner and the complainant. It is further stated that he had assured her that he will marry her and on that assurance physically abused her and in the year 2020 she has filed the complaint stating that the petitioner has refused to marry her. Accordingly, the present case was started under Section 376/417 of the Indian Penal Code against the petitioner.

11. The documents before this court prima facie show that a marriage between the parties took place on 26.07.2015. There is also a deed of declaration after marriage executed by both the petitioner and the complainant. The vaccination certificate (on record) of the child of the petitioner and the complainant shows the name of the petitioner as the father (the child was born on 12.09.2016). Copy of the voter's list shows that the petitioner has been shown as the husband of the complainant Pratima Santra. All these facts and documents on record clearly show that the petitioner's statement in the written complaint have not been substantiated even prima facie against the petitioner. The ingredients required to constitute the offence as alleged under Section 376/417 of the Indian Penal Code is clearly not present in the present case.

12. Accordingly, it is seen that the materials in the case record do not prima facie make out a case against the petitioner in respect of the offence as alleged.

13. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). 2060 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.**”*

14. In view of the discussion made above, the present proceeding is an abuse of process of law and is thus, liable to be quashed in the interest of justice.

15. **Revisional Application being CRR 105 of 2022 is accordingly allowed.**

16. The proceeding in connection with New Jalpaiguri Police Station Case No.1357 dated November 18, 2020 under Sections 376/417 of the Indian Penal Code giving rise to GR Case No.5043 of 2020 wherein charge sheet has been submitted vide Charge Sheet No. 03 dated January 13, 2021 under Sections 376/417 of the Indian Penal Code now pending before the court of the learned Chief Judicial Magistrate, Jalpaiguri, is quashed.

17. There will be no order as to costs.

18. All connected Applications stand disposed of.

19. Interim order if any stands vacated.

20. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

21. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)