

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

CIRCUIT BENCH AT JALPAIGURI

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 162 of 2022

With

CRAN 2 of 2023

Siken Singha & Ors.

vs.

State of West Bengal & Anr.

For the Petitioners

: Mr. Sayan De (through VC),
Mr. Sayan Kanjilal,
Ms. Esha Acharya,
Mr. Kaustav Shome.

For the State

: Mr. Aditi Sankar Chakraborty,
Mr. Nilay Chakraborty.

Hearing concluded on

: 11.10.2023

Judgment on

: 19.10.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being G.R. Case No.2479 of 2022 arising out of Bagdogra Police Station Case No.250 of 2022 dated 29.05.2022 under Sections 447/406/420/506/34 of Indian Penal Code, 1860 presently pending before the Learned Additional Chief Judicial Magistrate, Siliguri and also the orders passed in connection with the said proceeding.

2. From the materials on record and petition of complaint including the case diary, it appears that the complainant purchased the disputed land from the accused nos.1 and 2 by way of a registered deed and also mutated his name through the BL&LRO. **The complainant also stated in the petition of complaint that at the time of registration of the said plot of land, the land was vacant and free from all encumbrances and charges.**

3. **The complainant subsequently found out** that the accused no.1, Sumit Roy had transferred possession and sold the same land to the accused nos.3, 4 and 5, as the complainant lived away from the said plot of land.

4. It thus appears that the dispute in the present case is clearly a civil property dispute.

5. 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).

6. 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.**”*

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

8. The petitioners herein are the accused nos.3, 4 & 5 and they are in possession of the land, which allegedly had been already sold by the accused nos.1 & 2 to the complainant prior to the sale in favour of the present petitions.

9. In view of the said status of the disputed land, the complainant has to move the civil court to recover possession from the petitioners (accused nos. 3, 4 & 5). Thus, the ingredients to constitute the offence alleged are clearly absent in respect of the petitioners, who are the bona fide purchasers in this case.

10. The revisional application being CRR 162 of 2022 is allowed.

11. The proceedings in G.R. Case No.2479 of 2022 arising out of Bagdogra Police Station Case No.250 of 2022 dated 29.05.2022 under Sections 447/406/420/506/34 of Indian Penal Code, 1860 presently pending before the Learned Additional Chief Judicial Magistrate, Siliguri in respect of the accuseds no. 1 & 2 namely Sumit Roy and Nima Lama **to proceed in accordance with law.**

12. The proceedings being G.R. Case No.2479 of 2022 arising out of Bagdogra Police Station Case No.250 of 2022 dated 29.05.2022 under Sections 447/406/420/506/34 of Indian Penal Code, 1860 presently pending before the Learned Additional Chief Judicial Magistrate, Siliguri and also the orders passed in connection with the said proceeding is hereby quashed in respect of the petitioners namely Siken Singha, Prahlad Singha and Chintey Barman.

- 13.** All connected Applications, if any, stand disposed of.
- 14.** Interim order, if any, stands vacated.
- 15.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 16.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)