

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 3 of 2023

Dev Jyoti Chatterjee & Ors.

-vs.-

The State of West Bengal & Anr.

Mr. Kaushik Chatterjee,
Mr. Tirthankar Dey.

...For the Petitioners.

Mr. Pratim Priya Dasgupta,
Mr. Nishant Shukla,
Mr. Abhishek Jhunjhunwala.

...For the Opposite Party no.2.

Mr. Arijit Ganguly,
Mr. Mainak Gupta.

...For the State.

Reserved on : 15.05.2024.

Judgment on : 02.08.2024.

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the proceedings including the charge-sheet being no. 799 of 2021 dated 19.08.2021 under Sections 384/420/120B of the Indian Penal Code submitted in connection with Dum Dum Police Station case no. 420 of 2019 dated 28.05.2019 (corresponding to G.R. No. 2492 of 2019) pending before the learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas.

The present case was initiated on the basis of a complaint submitted to the SHO, Dum Dum Police Station by Abhijit Paul alleging offences of cheating, blackmailing, extortion and defamation by his partner Dev Jyoti, M/s Jai Mata Dei Incorporation Pvt. Ltd. in connivance with Shukla Chatterjee and Priya Chatterjee who threatened him that if Rs.1.40 crore was not paid to them they would kill his family. It was alleged that the complainant is the Managing Director of Dr. Paul's Multispecialty Clinic Pvt. Ltd. and has branch of his clinics all over India. On 18.05.2019 at about 05.00 pm three unidentified persons asked for Rs.1.40 crore in the name of Mr. Dev Jyoti, M/s Jai Mata Dei Incorporation Pvt. Ltd, one of them called Mr. Dev Jyoti over phone when the speaker was switched on and it was clearly heard that Mr. Dev Jyoti, his mother and wife have send them, who threatened that if the said amount was not handed over, they should kill the complainant and his family. One of them thrashed the complainant's secretary Anup Kumar Bose and one of them was about to shoot him on his head and when he raised alarm then the accused persons fled away threatening them that if the incident was reported to the police they would come and the complainant would face dire consequences. It was further stated that Dev Jyoti was acquainted with the complainant and he offered to invest in his business to flourish in other states. The complainant did not have any idea regarding the person and he was a cheater who in the name of his company has cheated many persons by misrepresenting of fetching more profits. In the month of April-May, 2019 many people contacted the complainant that Dev Jyoti took huge amount from them in the name of his

company and brand and they did not receive their deposits. The complainant questioned the accused Dev Jyoti who retaliated and threatened him to keep silent and advised him not to share the fact with anyone. The complainant alleges that the accused took nearly Rs.5 crores from his clinic and has deposited in his own account and another Rs.10 crores was cheated by Dev Jyoti in the name of his company and brand from different persons, when the complainant insisted to return his money and that of others which he has taken in the name of his company, the complainant was threatened for being implicated in fake, concocted criminal cases. The complainant has lost trustworthiness in the market and after suffering huge loss the accused are sending criminals to kill him and his family. Very recently complainant has again been threatened by an unidentified person when he was about to enter his home. The complainant therefore prayed for taking steps against the accused persons.

On the basis of the aforesaid complaint Dum Dum Police Station case no. 420 of 2019 dated 28.05.2019 was registered for investigation against Dev Jyoti Chatterjee, Shukla Chatterjee, Priya Chatterjee and other three unknown persons. The investigating agency conducted their investigation and on conclusion of investigation submitted charge-sheet before the learned Additional Chief Judicial Magistrate, Barrackpore, under Sections 384/420/120B of the Indian Penal Code. The investigating agency in order to substantiate their case relied upon 6 witnesses which included the complainant Abhijit Paul, Bijay Paul, Anup Kumar Bose, Lady ASI Harieat

Tirkey Minj (Investigating Officer of the case) and Sub-inspector Jnanomoy Manna (Investigating Officer of the case).

Mr. Kaushik Chatterjee, learned advocate appearing for the petitioners submitted that the complainant himself being a defaulter and having accepted money has initiated the present criminal case on fraudulent and vexatious grounds which has no foundational facts. Learned advocate emphasised that the complainant is a defaulter and under the garb of initiation of the present criminal case is trying to shield himself, as earlier the present petitioner no.1 initiated a case at Budh Colony Police Station, Patna wherein before the Court the complainant undertook to repay a sum of money for obtaining relief in the criminal case at the stage of consideration of anticipatory bail and having failed to do so in close proximity of time initiated the present criminal case which glaringly reflects that the process of the criminal Court was set into motion with an oblique motive and the same should not be allowed to continue.

Learned advocate for the petitioners relied upon the judgments of the Hon'ble Supreme Court in Mahindra & Mahindra Financial Service Limited & Anr. –Vs. – Rajiv Dubey, (2009) 1 SCC 706; M.N. Ojha & Ors. –Vs. – Alok Kumar Srivastav & Anr., (2009) 9 SCC 682 and Sunil Kumar –Vs. – Escorts Yamaha Motors Ltd. & Ors., (1999) 8 SCC 468.

Attention of the Court was drawn to paragraphs 18 and 19 of Mahindra & Mahindra Financial Service Limited (supra) and it was emphasized that 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 because of private and personal grudge, it would be duty of the High Court to invoke the provision of Section 482 of the Code of Criminal Procedure and prevent abuse of the process of the Court.

Petitioner also referred to several paragraphs of M.N. Ojha (supra) and submitted that although the provision of Section 482 of Cr.P.C. may not be exercised at a preliminary stage but it has also been settled that the High Court cannot refuse to exercise its jurisdiction in an appropriate case if the interest of justice so requires.

Attention of the Court was also drawn to paragraph 4 of Sunil Kumar (supra) and it was emphasised that where a criminal proceedings have been filed to pre-empt an appropriate proceeding in such circumstances allowing a frivolous proceeding to continue would, in fact result in needless harassment and oppression to a party and it is for the High Court to interfere by exercising its powers under Section 482 of Cr.P.C. to secure the ends of justice.

Learned advocate for the petitioners lastly submits that the genesis of the present case is a manner of abusing the process of Court and as such for the interest of justice the present criminal case should be quashed against them.

On the other hand Mr. Pratim Priya Dasgupta, learned advocate appearing for the complainant/opposite party no.2 supported the case of the

prosecution and submitted that on the basis of the complaint made by the complainant the investigating agency has independently conducted an investigation and arrived at their conclusion. The conclusion of the investigating agency reflects that a case has been made out under Section 384/420/120B of the Indian Penal Code. As a case has been made out, in such circumstances it would be prudent for the criminal case to be taken to its logical conclusion and interference at this stage would result in an irreparable loss and injury, as also against the ends of justice. It was reiterated that the allegation under Section 384 of the Indian Penal Code is a serious offence as the accused persons tried to take law in their own hands by force and by way of using deadly weapons, consequently there was no other option to the complainant except to approach the police authorities and the police authorities arrived at their conclusion on the basis of the materials collected by them. In order to substantiate his argument he relied upon *Jitul Jentilal Kotecha -Vs. - State of Gujarat & Ors.*, (2022) 13 SCC 652; *Rajesh -Vs. - State of Maharashtra*, 2017 SCC OnLine Bom 8411 and *Biram Lal & Ors. -Vs. - State*, 2006 SCC OnLine Raj 603.

Learned advocate appearing for the complainant/opposite party on the other hand has referred to paragraph 25 and 29 of *Jitul Jentilal Kotecha* (supra) which is set out as follows:

“25. *It is trite law that the High Court must exercise its inherent powers under Section 482 sparingly and with circumspection. In the decision in Jugesh Sehgal v. Shamsher Singh Gogi [Jugesh*

Sehgal v. Shamsher Singh Gogi, (2009) 14 SCC 683 : (2009) 5 SCC (Civ) 482 : (2010) 2 SCC (Cri) 218] , this Court has held that, “[t]he inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice”. In *Simrikhia v. Dolley Mukherjee* [*Simrikhia v. Dolley Mukherjee*, (1990) 2 SCC 437 : 1990 SCC (Cri) 327] this Court in another context, while holding that the High Court cannot exercise its inherent powers to review its earlier decision in view of Section 362CrPC, observed that the inherent powers of the High Court cannot be invoked to sidestep statutory provisions. This Court held : (*Simrikhia case* [*Simrikhia v. Dolley Mukherjee*, (1990) 2 SCC 437 : 1990 SCC (Cri) 327] , SCC p. 439, para 5)

“5. ... Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.”

(emphasis supplied)

29. Recently, in *Mahendra K.C. v. State of Karnataka* [*Mahendra K.C. v. State of Karnataka*, (2022) 2 SCC 129 : (2022) 1 SCC (Cri) 401] this Court has reiterated the well-settled test to be applied by the High Court for exercise of its powers under Section 482 for quashing an FIR : (SCC p. 142, para 16)

“16. ... the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, *prima facie* establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner

that a judge conducting a trial would, on the basis of the evidence collected during the course of trial.””

Reference has also been made to Rajesh (supra) with emphasis being made on paragraph 5 of the said judgment which for convenience is referred as follows:

“5. We are afraid that the first information report registered against the applicant cannot be quashed on the basis of the submission made on behalf of the applicant. Section 383 of the Penal Code defines extortion. It is no doubt true that for committing an offence of extortion, a person should put the other person in fear of injury and thereby dishonestly induce the other person to deliver any property or valuable security to the person who puts the other person in fear of injury. Section 384 of the Penal Code provides for the punishment for extortion. We are however, concerned with Section 385 of the Penal Code as the offence is registered against the applicant under the said Section. Section 385 may come into play before the offence of extortion is committed. The said provision could be attracted in a case where a person, in order to commit extortion puts any other person in fear or attempts to put any person in fear of any injury. The ingredients of the offence under Section 385 of the Penal Code could be satisfied when, with a view to commit extortion or in order to commit extortion a person puts any other person in fear or attempts to put the other person in fear of any injury. The punishment for extortion is provided under Section 384 of the Penal Code whereas the punishment for putting a person in fear of injury in order to commit extortion is provided under Section 385 of the Code and the said punishment is lesser than the punishment for extortion. Section 385 of the Code provides the punishment for an attempt to commit extortion, when the attempt has failed to induce the delivery of the property or valuable security. In an offence punishable

under Section 385, the threat or intimidation is intended to induce the delivery of the property but without success. In the instant case, though the non-applicant no. 2 had not parted with the property or valuable security, as the amount of Rs. 1,00,000/- was allegedly demanded by the applicant and the non-applicant was allegedly put in fear of injury the offence punishable under Section 385 could be registered against the applicant.”

The complainant/opposite party has also referred to Biram Lal (supra) and drawn the attention to paragraph 10 of the said judgment which is as follows:

“10. Section 383 IPC defines ‘extortion’ whereas Section 384 IPC is the penal section for extortion whereas Section 385 IPC is for attempt to commit extortion. In order to complete the act of extortion the person who was put in fear, must have been induced to deliver the property. If the act of inducement caused by the wrong doer should bring forth its result at least by the victim consenting to deliver property even if actual delivery does not take place due to any fortuitous circumstances which would constitute extortion, but if it fails to produce the requisite effect, the act would remain only at the stage of attempt to commit extortion. In the instant case, even if the offence of extortion is held to be not made out for want of delivery of the property atleast, the offence of attempt to commit extortion is clearly made out, as has been held in the case of Romesh Chandra Arora v. The State: AIR 1960 SC 154.”

Mr. Arijit Ganguly, learned advocate appearing for the State has produced the Case Diary and drawn the attention of the Court to the statement of the witnesses which included the complainant Abhijit Paul, Bijay Paul, Anup

Kumar Bose and three police officers who were associated with the case. It was submitted that as the police authorities have submitted the charge-sheet, in the circumstances it would be fit and proper to take the trial to its logical conclusion and as such the application should be dismissed.

As the petitioners relied upon certain documents which relate to Budh Colony Police Station case no. 181 of 2019 it would be worthwhile before relying upon the said document to consider the principles settled by the Hon'ble Apex Court in *Rajiv Thapar & Ors. -Vs. - Madan Lal Kapoor*, reported in (2013) 3 SCC 330, paragraph 30 of the said judgment is relevant for the purposes of the present case and as such the same is quoted below:

“30. *Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:*

30.1. *Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?*

30.2. *Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?*

30.3. *Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the*

material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. *Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?*

30.5. *If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”*

Petitioners relied upon the formal FIR as well as the charge-sheet filed in connection with Budh Colony Police Station case No. 181 of 2019 dated 20.05.2019 wherein a case was registered at the instance of the petitioner no.1 (being the complainant). The investigating officer after conclusion of investigation submitted charge-sheet under Section 406/420/342/379/506/120B of the Indian Penal Code against Bijoy Paul and Abhijit Paul (complainant). It was also pointed out that in connection with Budh Colony police station case no. 181 of 2019 on or about 18.01.2020 it has been recorded by the Hon’ble Judge of the High Court of Patna in Criminal Miscellaneous Case no. 80357 of 2019 that Abhijit Paul and Bijoy Paul expressed their willingness to pay a sum of Rs.21 lakhs in favour of the petitioner no.1. The said application was dismissed by a Coordinate Bench holding that a Memorandum of Understanding was signed by the parties on or

about 15.01.2019. Thus, the documents which have been relied upon are of unimpeachable character and it reflects that transactions took place between the parties and the complainant. Here it would be pertinent to state that immediately after the petitioner no.1 filed the case at Budh Colony police station on 20.05.2019 the present complainant filed an information relating to cognizable offences which was genesis of the registration of Dum Dum Police Station case no. 420 of 2019 dated 28.05.2019.

I have also taken into account the statements of the complainant and the supporting witnesses being Bijoy Paul who was also implicated in connection with Budh Colony police station and has been cited as a witness, needless to state that the other witness Anup Bose was also named in the FIR of Budh Colony Police Station but was not named in the charge-sheet. The substance of the statement under Section 161 Cr.P.C. also reflected certain transactions which had taken place between the parties, in fact in the statement of Bijoy Paul the contentions relate to dispute in respect of statement of accounts.

I have considered the submissions of the learned advocate for the parties and the materials appearing in the Case Diary and I find that the complainant has suppressed the previous facts relating to business transactions which existed between them. There was distortion in the narration of facts in the letter of complaint which was scripted in a manner which would suit the powers of a police officer to register a case for a cognizable offence. Though there are allegations relating to phone calls being made in course of

investigation, so far as other persons being involved who came down at the residence or office of the complainant/opposite party no.2 to threaten him, nothing has been revealed during investigation.

Having considered the aforesaid materials, I am of the view that the principles set out in Achin Gupta –Vs. – State of Haryana & Anr. reported in 2024 SCC OnLine SC 759 is applicable to the facts of the present case. Paragraph 35 of the judgment which is relevant for the purposes of the present case is set out as follows:

“35. *In one of the recent pronouncements of this Court in Mahmood Ali v. State of U.P., 2023 SCC OnLine SC 950, authored by one of us (J.B. Pardiwala, J.), the legal principle applicable apropos Section 482 of the CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 CrPC or the 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 of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be 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 as, 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, to try and read between the lines.”

In view of the settled principles of the law and the materials so relied upon by the prosecution as well as the manner in which the case was initiated and charge-sheet submitted in connection with the instant case being Dum Dum PS Case 420 of 2019 dated 28.05.2019, I am of the opinion that the continuance of the same would degenerate itself into a weapon of harassment as the complainant has scripted a series of allegations, suppressed materials facts and abused the process of Court thereby causing grave miscarriage of justice.

Consequently all further proceedings arising out of Dum Dum Police Station case no. 420 of 2019 dated 28.05.2019 (corresponding to G.R. No. 2492 of 2019) including the charge-sheet submitted therein being no. 799 of 2021 dated 19.08.2021, which is pending before learned Additional Chief Judicial Magistrate, Barrackpore is hereby quashed.

Accordingly, CRR 3 of 2023 is allowed.

Pending connected applications, if any, are consequently disposed of.

Case Diary be returned to the learned advocate appearing for the State.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities. .

(Tirthankar Ghosh, J.)