

15.04.2024

Sl. No.: 18

Court No.30
BM

CRR 366 of 2022

Dipak Kumar Ghosh

Vs.

The State of West Bengal & Anr.

Mr. Mukunda Lal Sarkar

... for the petitioner

Mr. Imran Ali

Ms. Puspita Saha

.... for the State

Mr. Sagar Saha

Mr. Koushik Roy

Mr. Supriya Mahajan

... for the opposite party no.2

- 1.** The present revisional application has been preferred praying for quashing of proceeding being G.R Case No.1081 of 2021 arising out of Titagarh Police Station Case No.92 of 2021 dated 05.02.2021 under Sections 447 /448 /323 /325 /354 /506 /34/120B of the Indian Penal Code, 1860 culminating into Charge Sheet filed under Sections 341/323/354/506 of the Indian Penal Code pending before the learned Judicial Magistrate, 2nd Court, Barrackpore at North 24 Parganas and all orders passed in connection therewith including order dated 06.05.2021 passed by the learned Additional Chief Judicial Magistrate at Barrackpore thereby taking cognizance of the offences punishable under Sections 341/323/354/506 of the Indian Penal Code, 1860.
- 2.** The proceeding in the present case was initiated on the basis of an application under Section 156(3) of the Cr.P.C filed by the opposite party no.2 herein.
- 3.** The State has placed the case diary.

4. The petitioner has also filed a supplementary affidavit annexing the copy of the said application under Section 156(3) of the Cr.P.C.
5. On perusal of the said application and materials in the case diary, it appears that the parties are related to each other and the dispute relates to family property. Copy of an emergency ticket does not show any injury.
6. It is the case of the petitioner herein that the opposite party no.2 is continuously obstructing the petitioner from maintaining their property and carrying out any repairing work.
7. **Considering the materials on record, this court finds that the dispute between the parties is entirely civil in nature which also involves a deed of gift in respect of a property in favour of the petitioner.**
8. Considering all these facts, this court finds that prima facie ingredients required constituting the offence as alleged are not present in the material on record and also the case diary.
9. **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).*
- f) *Paramjeet Batra vs State of Uttarakhand & Ors., (2013) 11 SCC 673.*

10. 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.

11. The present case falls under category 1, 3 and 7 of **Para 102 of Bhajan Lal (Supra)**.
12. The Supreme Court in **Randheer Singh Vs. State of Uttar Pradesh & Ors., (2021) 14 SCC 626**, held:-

“18. The only question is whether there is any criminal offence disclosed in the FIR so far as the Appellant is concerned. When the High Court passed its order dated 5th October, 2017, Rajan Kumar (since deceased), the executant of the sale deed and the Power of Attorney holder was also an applicant before the Court. Today, there has been a change in situation, in that, criminal proceedings against Rajan Kumar have abated since Rajan Kumar is no longer alive. It is the case of the private respondent that the private respondent purchased property. In the meantime, Rajan Kumar, who is no longer alive, on the basis of a false Power of Attorney of Bela Rani, executed a sale deed in favour of Randheer Singh, i.e., the Appellant herein. There is only a vague averment “by connivance”. The next part of the sentence reads “Bela Rani had no right to sell the aforesaid plot.”

23. Even though an FIR need not contain every detail, an offence has to be made out in the FIR itself. It is the case of the Private Respondents that Bela Rani has no title. Bela Rani executed a false Power of Attorney in favour of Rajan Kumar (since deceased). Alternatively, the Power of Attorney, in itself, was a forged document.

24. A fraudulent, fabricated or forged deed could mean a deed which was not actually executed, but a deed which had fraudulently been manufactured by forging the signature of the ostensible executants. It is one thing to say that Bela Rani fraudulently executed a Power of Attorney authorising the sale of property knowing that she had no title to convey the property. It is another thing to say that the Power of Attorney itself was a forged, fraudulent, fabricated or manufactured one, meaning thereby that it had never been executed by Bela Rani. Her signature had been forged. It is impossible to fathom how the investigating authorities could even have been prima facie satisfied that the deed had been forged or fabricated or was fraudulent without even examining the apparent executant Bela Rani, who has not even been cited as a witness.”

On noting several precedents the Court finally held:-

“33. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.

34. The given set of facts may make out a civil wrong as also a criminal offence. Only because a civil remedy is available may not be a ground to quash criminal proceedings. But as observed above, in this case, no criminal offence has been made out in the FIR read with the Charge-Sheet so far as this Appellant is concerned. The other accused Rajan Kumar has died.”

- 13. From the materials on record,** it is clear that no criminal act or intent of the petitioner has been prima facie made out in respect of the offences alleged. The dispute is clearly a (civil) family property dispute, with no materials on record to prima facie show that the essential ingredients required to constitute the offences alleged are present against the petitioner.
- 14.** Thus there being no prima facie materials on record against the petitioner in respect of the offences alleged, the proceeding being G.R Case No.1081 of 2021 arising out of Titagarh Police Station Case No.92 of 2021 dated 05.02.2021 under Sections 447 /448 /323 /325 /354 /506 /34/120B of

the Indian Penal Code, 1860 culminating into Charge Sheet filed under Sections 341/323/354/506 of the Indian Penal Code pending before the learned Judicial Magistrate, 2nd Court, Barrackpore at North 24 Parganas **is accordingly quashed.**

15. CRR 366 of 2022 is thus allowed.

16. All applications, if any, connected thereto stand disposed of.

17. Interim order, if any, stands vacated.

18. Let a copy of the order be sent to the learned trial court for compliance.

19. Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)