

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 515 of 2020

Susmita Pandit

Versus

State of West Bengal & Another

For the Petitioner : Mr. Ayan Bhattacharjee, Adv.
Mr. Amitabrata Hait, Adv.
Mr. Arpit Choudhury, Adv.

For the State : Mr. Madhusudan Sur, Adv.
Mr. Dipankar Paramanick, Adv.

Heard on : 26.04.2024

Judgment on : 26.07.2024

Ajay Kumar Gupta, J:

1. Petitioner/accused has filed this criminal revisional application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 seeking quashing of the proceeding in connection with Netaji Nagar Police Station Case No. 312 of 2018 dated 15th September, 2018 under Sections 354A/506/34 of the Indian Penal Code, 1860 corresponding to ACGR No. 4463/2018 pending before the Court of the learned Additional Chief Judicial Magistrate at Alipore, South 24 Parganas.

2. The factual matrix, leading to filing of this instant revisional application, is as under:

2a. On 15th September, 2018 opposite party no. 2 had lodged a written complaint before the Officer-in-Charge of Netaji Nagar Police Station against four accused persons including the petitioner herein alleging therein that Samir Pandit and the petitioner herein tried to torture the mother of the de-facto complainant. The accused Samir Pandit came to her house and entered into the room of the de-facto complainant while she was changing her dress and at that time the said accused person tried to molest her with ill motive. However, the de-facto complainant succeeded to rescue herself. As a result, Netaji Nagar Police Station Case No. 312 of 2018 was registered under

Sections 354A/506/34 of the Indian Penal Code, 1860. The said Samir Pandit is the biological father of the petitioner. In the FIR, another allegation made against the petitioner is to the effect that the petitioner being the daughter of Samir Pandit along with others always instigated and tortured the mother of the complainant but no specific and particulars of alleged offences made against the present petitioner.

2b. It is further case of the petitioner that without proper investigation, purportedly a charge sheet being Charge Sheet No. 188/2018 dated 12.10.2018 under Sections 354A/506/34 of the IPC has been filed against four accused persons including the petitioner though the petitioner was totally innocent. She had no role to play in the alleged offences. There is no sufficient material available in the charge sheet to proceed with the case against the petitioner. Therefore, the entire proceeding against the petitioner is an abuse of process of law which requires immediate interference by this Hon'ble High Court under Section 482 of the CrPC.

2c. Besides the above facts, the charge sheet filed under Section 354A of the IPC qua the petitioner is incongruous because Section 354A cannot apply against a female accused. It can only apply qua a male accused person because the Section opens with the term "a

man”. As such, the entire proceeding is required to be quashed against the petitioner.

Under the above facts and circumstances, the instant criminal revisional application has been filed seeking relief as prayed for.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. The first limb of argument made by the learned counsels appearing on behalf of the petitioner is that the ingredients of Section 354A and Section 354 are completely different. Here, after filing charge sheet Section 354A was made applicable against the present petitioner though it ought not be applicable towards a female accused. Section 354A of IPC specifically opens up with the term “a man”. As such, charge under Section 354A of the IPC can only apply qua a male accused. Furthermore, from the entire materials available in the charge sheet, it would be evident that no specific or particular allegation made against the petitioner towards assault or use of criminal force justifying the charge even under Section 354 of IPC and that the same cannot be metamorphosed into the charge under Section 354 of the IPC in absence of any material far less any cogent material.

3a. The second limb of argument made by the learned counsels that there are material contradictions in the statements of the witnesses and victim girl recorded under Sections 161 and 164 of the CrPC and FIR as such it goes in favour of the petitioner. The petitioner has only been roped as she happens to be the daughter of the principal accused and no specific role has been attributed to the petitioner either in the FIR or other materials collected during the investigation. In view thereof, continuation of the present case qua the petitioner is nothing but a wild goose chase that too at the cost of public exchequer. As such, that proceeding should not be continued any further and required to be quashed against the present petitioner.

Mr. Bhattacharjee, learned counsel has relied the following judgments to bolster his submissions: -

- i. Tarun Kumar Pal V. State of West Bengal*¹;
- ii. State of Haryana and Others vs. Ch. Bhajan Lal and Others*²;
- iii. State of Rajasthan Versus Hemraj and Another*³;
- iv. Tolaram Relumal and another v. The State of Bombay*⁴;

¹ AIR ONLINE 2023 CAL 1571;

² AIR 1992 SUPREME COURT 604;

³ (2009) 12 Supreme Court Cases 403;

⁴ AIR 1954 SUPREME COURT 496;

*v. G. N. Verma v. State of Jharkhand and another*⁵;

*vi. Bijaya Kumar Agarwala v. State of Orissa*⁶

4. No one appears on behalf of the opposite party no. 2 in spite of giving several opportunities. No accommodation was sought for at the time of call.

SUBMISSION ON BEHALF OF THE STATE:

5. Mr. Madhusudan Sur along with Mr. Dipankar Paramanick, learned counsels appearing on behalf of the State submitted that the FIR named accused persons including the petitioner in furtherance with their common intention, threatened the complainant and her mother with dire consequences. In course of investigation, the investigating officer recorded the statements of the witnesses and the victim girl under Sections 161 and 164 of the CrPC from where it established a prima facie case against the petitioner under Sections 354A/506/34 of the IPC. As such, charge sheet has been submitted against the petitioner including other accused persons. There are other sufficient materials under Section 354A/506/34 of the IPC against the petitioner. Samir Pandit outraged the modesty of the complainant by demanding sexual favour at her residence and for such illegal demand of sexual favour, the petitioner in furtherance of

⁵ 2014 AIR SCW 4687

⁶ AIR 1996 SUPREME COURT 2531.

common intention involved in the alleged offence as such the Section 354A is applicable against the present petitioner. In the instant case, a charge sheet has already been submitted against all the accused persons. Accordingly, revisional application is liable to be dismissed.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

6. Having heard the arguments and submissions of both sides and on perusal of the materials available in the record, case diary and judgments referred by the petitioner, this Court is of the considered view that in the FIR, the complainant made an allegation against the petitioner only to the effect that the petitioner being the daughter of the principal accused instigated the offender to torture her mother and threaten them with dire consequences.

7. It is further alleged that they also threatened them that they would implicate them in false case in future. She also made an accusation that all the miscreants used to struck her while she was changing her dress in her room and gave an illicit proposal and pressurised her to share bed with the principal accused but when she refused, all the miscreants came to their house when she was alone in her residence but somehow, she managed to escape and raise alarm and saved her.

8. Upon perusal of the statement of the victim girl recorded under Section 164 of CrPC, it reveals she alleged only against the principle accused Samir Pandit and no specific allegation made against the present petitioner. Not a single allegation levelled against the present petitioner for an offence punishable under Section 354A/506/34 of the IPC.

9. From the perusal of the statement of the mother of the complainant recorded under Section 161 of CrPC, it reveals she narrated that all the accused persons have given threat with dire consequences but no particular date, time and place has been disclosed. It is an omnibus and general allegation.

10. From the entire evidence collected during the investigation, this Court does not find any specific role attributed against the petitioner with regard to the allegations made by the complainant.

11. Under such circumstances, all the allegations made against the present petitioner is merely for implication with an ulterior motive for wreaking vengeance on the accused and with a view to spite her due to private and personal grudge. In such a case, High Court can exercise inherent power under Section 482 of the CrPC to prevent the abuse of process of law and to secure the end of justice.

12. In the present case, the categories mentioned in 1, 3, 5 and 7 are squarely applicable as passed by the Hon'ble Supreme Court in a case ***State of Haryana and Others Vs. Bhajan Lal and Others*** in Paragraph 102 of the said judgment as under:

“102. This Court in the backdrop of interpretation of various relevant provisions of CrPC 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to 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 Act concerned (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 Act concerned, 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.”

13. So far as the second argument is concerned, the learned counsels appearing on behalf of the petitioner submitted that Section 354A of IPC is not applicable to a woman rather it would be applicable only to a man as such prosecution of woman is impermissible.

14. In this regard, the learned counsels appearing on behalf of the petitioner placed reliance of a judgment passed in **State of Rajasthan vs. Hemraj and Another** wherein the Hon’ble Supreme Court held in Paragraph 5 as under:

“5. In order to appreciate rival submissions Sections 375 and 376 need to be noted. They, so far as relevant, read as follows: -

"375. Rape. - A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: -

First. --Against her will.

Secondly. --Without her consent.

Thirdly. --With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly. --With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. --With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. --With or without her consent, when she is under sixteen years of age.

Explanation. --Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. --Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. Punishment for rape.- (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable

to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever, --

xx xx xx xx xx

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation I.--Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

x xx xx xx xx"

8. A bare reading of Section 375 makes the position clear that rape can be committed only by a man. The section itself provides as to when a man can be said to have committed rape. Section 376(2) makes certain categories of serious cases of rape as enumerated

therein attract more severe punishment. One of them relates to "gang rape". The language of sub-section(2)(g) provides that "whoever commits `gang rape" shall be punished etc. The Explanation only clarifies that when a woman is raped by one or more in a group of persons acting in furtherance of their common intention each such person shall be deemed to have committed gang rape within this sub- section (2). That cannot make a woman guilty of committing rape. This is conceptually inconceivable. The Explanation only indicates that when one or more persons act in furtherance of their common intention to rape a woman, each person of the group shall be deemed to have committed gang rape. By operation of the deeming provision, a person who has not actually committed rape is deemed to have committed rape even if only one of the groups in furtherance of the common intention has committed rape. "Common intention" is dealt with in Section 34 IPC and provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it was done by him alone. "Common intention" denotes action in concert and necessarily postulates a pre- arranged plan, a prior meeting of minds and an element of participation in action. The acts may be different and vary in character, but must be actuated by the same common intention, which is different from same intention or similar intention. The sine qua non for bringing in application of Section 34 IPC that the act must be done in

furtherance of the common intention to do a criminal act. The expression "in furtherance of their common intention" as appearing in the Explanation to Section 376(2) relates to intention to commit rape. A woman cannot be said to have an intention to commit rape. Therefore, the counsel for the appellant is right in her submission that the appellant cannot be prosecuted for alleged commission of the offence punishable under Section 376(2)(g)."

15. In the present case offence as alleged under Sections 354A/506/34 of IPC. When there is an offence alleged under Section 34 IPC which comes to play when one or more persons at in furtherance with common intention of any offence deemed to have committed offence even only one of the groups in furtherance of the common intention has committed. The common intention is dealt with in Section 34 of IPC and provides that when a criminal act is done by several persons in furtherance with common intention of all, each of such person is liable for that act in the same manner as if it was done by him alone. Common intention denotes action in concert and necessarily postulates a pre-arranged plan, a prior meeting of minds and an element of participation in action. The acts may be different and vary in character, but must be actuated by the same common intention, which is different from the same intention or

similar intention. The sine qua non for bringing in application of Section 34 IPC is that the act must be done in furtherance of the common intention to do a criminal act. Section 354A of the IPC was inserted in IPC by Criminal Law Amendment Act, 2013. It says:

354A. Sexual harassment and punishment for

sexual harassment--(1) A man committing any of the following acts--

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
 - (ii) a demand or request for sexual favours; or
 - (iii) showing pornography against the will of a woman; or
 - (iv) making sexually coloured remarks,
- shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

From bare perusal of this Section, it would be evidence that Section 354A IPC can only apply qua a male accused. The section opens up with the term “a man”.

16. Section 10 of the IPC defines the word “man” denotes a male human being of any age: the word “woman” denotes a female human being of any age.

17. Earlier there was a Section 354 of the IPC. Under such section whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine. The essential of such offence under Section 354 are:

- i.** that the assault must be on a woman;
- ii.** that the accused must be used criminal force on her and
- iii.** the criminal force must have been used on a woman intending thereby to outrage her modesty.

The act will amount to outrage of modesty has its

18. The Section 354A itself is very clear, starts with a man in all sub-sections (1), (2) and (3). Accordingly, a woman cannot be said to

have committed an offence under Section 354A of IPC. Therefore, the learned counsel for the petitioner has rightly submitted that present petitioner cannot be prosecuted for alleged commission of offence punishable under Section 354A of IPC.

19. The Hon'ble Supreme Court in ***Tolaram Relumal and Anr. Vs. The State of Bombay*** held that it is a well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. As pointed out by Lord Macmillan in – 'L and N.E. Rly. Co. v. Berriman', 1946 AC 278 at p. 295 (B).

“Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language.”

Therefore, in interpreting the penal statute, a Court has to adopt a strict view thereof. Meaning of a penal provision cannot be extended or extrapolated by legal construction. This view has been taken by

Hon'ble Supreme Court in **Bijaya Kumar Agarwala v. State of Orissa** in paragraph nos. 17 and 18 which are as under:

17. Strict construction is the general rule of penal statutes. Justice Mahajan in *Tolaram v. State of Bombay* AIR 1954 SC 496 at 498-499 stated the rule in the following words:

“(1) if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature.”

18. The same principle was echoed in the judgment of the five Judge Bench in the case of **Sanjay Dutt v. The State through C.B.I., Bombay (1994) 5 JT (SC) 225: (1994 AIR SCW 4360)** which approved an earlier expression of the rule by us in *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijiava*, (1990) 4 SCC 76 at 86: (AIR 1990 SC 1962 at p. 1968)

“Therefore, when a law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of

the statute are not roped in by stretching the language of the law”.

Keeping in view the rules of interpretation of criminal statute and the language and intent of the Order and the Act, we find ourselves in agreement with the view expressed by Ranganath Misra, J. as he then was, in **Prem Bahadur’s case (1978 Cri LJ 683) (supra)**:

“The Orissa Order does not make possession without a licence an offence. Storage, however, has been made an offence. Between “possession” and “storage” some elements may be common and, therefore, it would be appropriate to say that in all instances of storage there would be possession. Yet, all possession may not amount to storage. “Storage” in the common parlance meaning connotes the concept of continued possession. There is an element of continuity of possession spread over some time and the concept is connected with the idea of a regular place of storage. Transshipment in a moving vehicle would not amount to storage within the meaning of the Orissa Order.” (p. 683)”

20. Considering the above discussions and propositions laid down by the Hon’ble Supreme Court, it can be safely accepted that a female cannot be an accused under Section 354A of the IPC as is evident from very terminology as used in the said enactment. This

offence is gender specific and only a male can be prosecuted under this offence. A female accused will not be covered under the mischief of this Section as a result of the specific words “a man” used in the Section 354A sub-sections (1), (2) and (3) of the IPC. Accordingly, the allegation of an offence punishable under Section 354A of IPC is not applicable against the present petitioner.

21. Accordingly, the proceeding in connection with Netaji Nagar Police Station Case No. 312 of 2018 dated 15th September, 2018 under Sections 354A/506/34 of the Indian Penal Code, 1860 corresponding to ACGR No. 4463/2018 against the present petitioner is hereby quashed.

22. Consequentially, **CRR 515 of 2020** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

23. Case Diary, if any, is to be returned to the learned Advocate for the State.

24. Let a copy of this judgment and order be sent to the learned Court below for information and taking necessary action.

25. Interim order, if any, stands vacated.

26. Parties shall act on the server copies of this order uploaded on the website of this Court.

27. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)