

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 552 of 2020

Smt. Neeta Chakraborty

Vs

The State of West Bengal & Ors.

For the Petitioner : Ms. Rituparna De Ghosh,
Mr. Siddhartha Paul,
Mr. Soumyadeep Ghosh.

For the Opposite Party Nos. 2 & 3 : Mr. Pinak Kr. Mitra.
Ms. Ariba Shahab,

For the State : Ms. Puspita Saha.

Hearing concluded on : 11.01.2024

Judgment on : 29.01.2024

Shampa Dutt (Paul), J.:

1. The present revision application has been preferred against an order dated 12.12.2019 passed by the Learned Additional Sessions Judge, Fast Track Court No.5 at Barasat, North 24 Parganas in S.C. No. 289/17 in connection with G.R. Case No. 1010 of 2015 arising out of Bidhannagar (North) Police Station Case No. 289 dated 14.11.2015 under Sections 341/325/354/307/506/34 of the Indian Penal Code, pending before the Court of the Learned Additional Sessions Judge, Fast Track Court No.5 at Barasat, North 24 Parganas, wherein the Learned Judge has been pleased to discharge the Opposite Party no. 2 and 3 herein.

2. FACTS:-

The case of the Petitioner/Complainant is that the Opposite Party No.2 is the brother-in-law of the petitioner and Opposite Party No. 3 is the wife of the Opposite Party No. 2.

3. Since 2013, the petitioner and her husband have been victims of conspiracy, ill treatment and abuse at the hands of the Opposite Party Nos. 2 and 3 directly as well as indirectly.
4. On 12.11.2015, the petitioner and her husband further became victims of abuse of assault at the hands of Swapan Mukherjee (uncle-in-law of the petitioner), Monika Sasmal and Rabindranath Sasmal (the house help of the Opposite Party Nos.2 & 3) under instructions of and in conspiracy with the Opposite Party nos.2 and 3. The petitioner on

14.12.2015 lodged a complaint with Bidhannagar (North) Police Station intimating the incident. The said complaint was registered as Bidhannagar (North) Police Station Case no.289 dated 14.11.2015 under Sections 341/325/354/307/506/34 of the Indian Penal Code.

5. After completion of investigation, the Investigating Agency filed its final report in the form of Charge Sheet being no. 96/16 dated 31.05.2016 under Sections 341/325/354/307/506/34 of the Indian Penal Code against the Opposite Party Nos.2 and 3 besides Swapan Mukherjee, Monika Sasmal and Rabindranath Sasmal.
6. After the copies of statements and charge sheet as per the provision under Section 207 of the Code of Criminal Procedure was served upon all accused persons, on 20.03.2018, the accused persons filed an application under Section 227 of the Code of Criminal Procedure for discharge before the Learned Additional Sessions Judge, Fast Track Court No. 5 at Barasat, North 24 Parganas.
7. After hearing the parties, the Learned Additional Sessions Judge, Fast Track Court No.5 at Barasat, North 24 Parganas, on 12.12.2019, passed an order, inter alia, discharging the Opposite Party Nos. 2 & 3.
8. Hence, the revision against the said order of discharge.
9. **FINDINGS:-**

The Learned counsels for the Petitioner, Opposite Parties Nos.2 & 3 and the State who has placed the Case Diary have been heard.

10. On perusal of the written complaint it is found that the Opposite Party Nos. 2 & 3 were not present at the time of incident in the present case.
11. They have been implicated along with the other accused persons who have not been discharged from this case.
12. Vide the order under revision it is apparent that the statement of Narayan Chakraborty (husband of the complainant) confirmed that the Opposite Party nos. 2 and 3 were not present at the place of occurrence, at the time of the alleged incident. Documents in support of the Opposite Parties no. 2 & 3 being out of station at the relevant time were also filed before the trial court and considered by the Court. While considering the prayer for anticipatory bail of these petitioners, the Court observed that the defacto complainant has no objection for grant of anticipatory bail in respect of these petitioners.

13. **CONCLUSION:-**

Admittedly there is a family property dispute between the parties, who are related.

14. In ***Mahmood Ali & Ors. vs State of U.P. & Ors., in Criminal Appeal No. 2341 of 2023, on August 08, 2023,*** the Supreme Court has held:-

*“11. The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of **State of Haryana v. Bhajan Lal**, AIR 1992 SC 604. The parameters are:-*

“(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.”

*We are of the view that the case of the present appellants falls within the parameters Nos. 1, 5 and 7 resply of **Bhajan Lal (supra)**.*

12. *At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or 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 for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just 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. 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 try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

13. In *State of Andhra Pradesh v. Golconda Linga Swamy*, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:-

“5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has

power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. **When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.**

6. In **R.P. Kapur v. State of Punjab**, AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect

and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....”

(Emphasis supplied)”

15. Accordingly considering the materials on record, this Court finds no reason to interfere with the order under revision as the same has been passed on the basis of materials on record and thus in accordance with law.
16. **CRR 552 of 2020 is dismissed.**
17. The order dated 12.12.2019 passed by the Learned Additional Sessions Judge, Fast Track Court No.5 at Barasat, North 24 Parganas in S.C. No. 289/17 in connection with G.R. Case No. 1010 of 2015 arising out of Bidhannagar (North) Police Station Case No. 289 dated 14.11.2015 under Sections 341/325/354/307/506/34 of the Indian Penal Code, pending before the Court of the Learned Additional Sessions Judge, Fast Track Court No.5 at Barasat, North 24 Parganas, wherein the Learned Judge has been pleased to discharge the Opposite Party no. 2 and 3 herein **is affirmed.**
18. All connected applications, if any, stand disposed of.
19. Interim order, if any, stands vacated.

- 20.** Copy of this judgment be sent to the learned Trial Court 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.)