

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 398 of 2019

With

CRAN 1 of 2020

(Old No. CRAN 1336 of 2020)

Sankha Ghosh & Ors.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Sandipan Ganguly, Sr Adv.
Mr. Nilendra Narayan Ray,
Mr. A. Chakraborty,
Mr. B. Nandi.

For the State : Mr. Madhusudan Sur,
Mr. Manoranjan Mahata.

For the Opposite Party No. 2 : None.

Hearing Concluded on : 09.01.2024

Judgment on : 16.01.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of Uluberia P.S. Case No. 06 of 2019 dated 04.01.2019 under Sections 188/506/34 of the Indian Penal Code, 1860.
2. During pendency of this case the Petitioner No. 3 Timir Baran Ghosh has expired.
3. The petitioner's case is that they are in possession of their ancestral home situated at Village and P.O.- Banitala, P.S. Uluberia, District – Howrah, Pin – 711316.
4. The petitioners further state that they are presently the co-owners of 40 satak of the said Baastu land along with other legal heirs of Late Dasarathi Ghosh and had undertaken repairing jobs at the said property of their portion as the same was in a dilapidated state and required urgent repairing.
5. During the said repairing job, the opposite party no. 2 obstructed the repairing job and falsely alleged that the repairing job is being carried out in her portion and that the petitioners are encroaching upon her properties.
6. The petitioners having faced such difficulty informed the local Police Station, being Uluberia Police Station and appraised the Police Authorities of the actual state of affairs. The complaint, so preferred by

the petitioner no.1 was registered as Uluberia P.S. Case GDE No. 2286 dated 25.11.2018.

7. Subsequently the petitioners came to know that the Opposite Party No. 2 has also filed one complaint before the Uluberia Police Station being FIR No. 06 of 2019 at Uluberia Police Station under Sections 188/506/34 of the Indian Penal Code, 1860.
8. The petitioners state that the actual state of affairs is that a civil case being Title Appeal No. 170 of 2012 is pending before the Learned District Judge's Court at Howrah regarding the title of the opposite party no. 2 in the said disputed property.
9. It is the case of the petitioner that in no manner have the petitioners encroached over the alleged property of the opposite party no. 2 and have consciously confined themselves only towards repairing of the damaged portion of their undisputed part of the property.
10. It is further submitted by the petitioner that a partition suit being Title Suit No. 331 of 2018 is also pending, in which the petitioner and his mother and sister have added themselves as parties.
- 11. In spite of due service there is no representation on behalf of the opposite party no. 2/complainant.**
12. The State has submitted that the case has ended in a charge sheet.
13. The petitioner has filed copies of relevant deeds in respect of the said properties, in support of his case.

14. The present case has ended in a Charge Sheet under Sections 341/506/34 of the Indian Penal Code against the accused persons. The copy of the Charge Sheet along with other documents has been filed by the petitioner by way of a supplementary affidavit.
15. From the written complaint filed in this case, it appears that as there was a property dispute between the parties, the opposite party no. 2/complainant herein filed a Title Suit being No. 331 of 2018 before the Court of the Learned Civil Judge (Sr. Division) at Uluberia, wherein she got an order of injunction. Subsequently, due to the alleged disobedience by the petitioners of the order of injunction, she got an order directing police to ensure implementation of the order of statusquo (injunction).
16. Now the case, against the petitioner is that in spite of such orders by the Civil Court, the petitioners are allegedly forcibly constructing their house and on raising objection, the petitioners allegedly gave threats to her life.
17. Hence the complaint in the present case.
18. **Section 341 IPC, lays down:-**

“341. Punishment for wrongful restraint.-Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Ingredients of offence.-The essential ingredients of the offence under Section 341 are as follows:-

- (1) Accused obstructed a person;*
- (2) He did it voluntarily;*
- (3) It prevented such person from proceeding in certain direction in which he had the right to proceed.”*

19. Wrongful restraint is defined in Section 339 IPC:-

“Section 339 IPC. Wrongful restraint.-Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said to wrongfully restrain that person.

Ingredients of offence.-The essential ingredients of the offence under sec. 339 are as follows:-

- (1) Accused obstructed voluntarily;
- (2) The obstruction prevented the victim from proceeding in any direction;
- (3) The victim had every right to proceed in that direction.”

20. The next offence alleged is under Section 506 IPC which lays down:-

“506. Punishment for criminal intimidation.-Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both,

if threat be to cause death or grievous hurt, etc.-and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ingredients of offence.-The essential ingredients of the offence under sec. 506 are as follows:-

- (1) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;
- (2) The accused did so with intent to cause alarm to the victim of offence;
- (3) The accused did so to cause the victim to perform any act which he was not legally bound to do.”

- 21. In the present case,** as seen from the materials on record and the case diary, there is no such materials, even prima facie showing the ingredients required to Constitute the offences alleged in the written complaint and also as stated in the charge sheet.
- 22.** The statements in the case diary also speak about the civil suits and the order of injunction.
- 23.** The dispute in this case is clearly a family property dispute and purely civil in nature
- 24. The Supreme Court in several precedents has discouraged such criminal 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).**

25. The Supreme Court in **Randheer Singh Vs. State of Uttar Pradesh & Ors., (2021) 14 SCC 626**, held:-

On noting several precedents the Court finally held:-

*“.....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.**”*

26. In **Paramjeet Batra vs State of Uttarakhand & Ors.**, Criminal Appeal No. 2069 of 2012 (arising out of SLP (Crl.) No. 7720 of 2011), on 14 December, 2012, the Supreme Court held:-

“7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts

alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.

8. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by respondent 2 against him alleging offence under Section 406 of the IPC. Possession of the shop in question has also been handed over by the appellant to respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise."

27. 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.**”*

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

- 29. There being no prima facie materials on record to substantiate the allegations against the petitioners, the proceeding in the present case is thus liable to be quashed.**
- 30. CRR 398 of 2019 is allowed.**
- 31.** The proceedings being Uluberia P.S. Case No. 06 of 2019 dated 04.01.2019 under Sections 188/506/34 of the Indian Penal Code, 1860 **is hereby quashed in respect of the petitioners.**
- 32.** All connected applications, if any, stand disposed of.
- 33.** Interim order, if any, stands vacated.
- 34.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 35.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)