

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

CRR 441 of 2018

IA No. CRAN 2 of 2018 (Old No: CRAN 2811 of 2018)

Indranil Bhattacharjee & Anr.

Vs.

The State of West Bengal & Anr.

With

CRR 4191 of 2017

Sujata Dutta

Vs. State of West Bengal & Ors.

For the petitioner in CRR 4191 : Mr. Tapas Dutta, Adv.
of 2017 & opposite party no. 2 Mr. Mrityunjoy Halder. Adv.
in CRR 441 of 2018

For the petitioner in CRR 441 : Mr. Sourav Chatterjee, Adv.
Of 2018 & opposite party nos. Mr. Souvik Nandy, Adv.
2 & 3 in CRR 4191 of 2017 Mr. Soumya Nag, Adv.

For the State in CRR 441 of : Mr. Debasish Roy, Ld. P.P.
2018 Mr. Anand Keshari, Adv.

Heard On : 22.08.2023, 01.09.2023,
26.09.2023, 07.12.2023,
07.12.2023, 11.12.2023,

21.12.2023, 25.01.2024,
01.03.2024, 01.05.2024,
13.05.2024, 21.05.2024,
24.06.2024

Judgment On : :19.07.2024

Bibhas Ranjan De, J. :

1. Quashing of the proceedings in connection with A.C. No. 1637 of 2017 pending before the Court of Ld. Judicial Magistrate, 5th Court, Alipore under Section 427/454/120B/34 of the Indian Penal Code (for short IPC) has been sought for by the petitioners in connection with CRR No. 441 of 2018.
2. The prayer for speedy disposal of the said proceeding pending before the Ld. Judicial Magistrate, 5th Court, Alipore has been made by the petitioner in connection with CRR 4191 of 2017.
3. Both this revision applications are taken up together for disposal via this common judgement.

Brief facts:-

4. On 02.09.2014 at about 1.30 p.m. the accused/petitioners (in connection with CRR 441 of 2018) entered through the main

gate of the premises at Raja Rammohon Roy Road, Haridevpur, Kolkata-700041 and broke the padlock of the open car parking space owned by husband of the opposite party no. 2 (in connection with CRR 441 of 2018). On the basis of this event, an FIR being no. 447 of 2018 was lodged on 23.09.2014 to the Haridevpur Police Station where police submitted final report declaring the case as non-cognizable. Thereafter, Narazi petition was filed by the opposite party no. 2 on the basis of which further investigation was conducted. Again charge sheet was submitted by the investigating agency against the petitioner no. 2 (in connection with CRR 441 of 2018) under Section 427 of the IPC but again the opposite party no. 2 filed another Narazi petition with a prayer for further investigation by either CBI or CID. Then the case was converted into a complaint case vide order dated 23.02.2017 by Ld. Magistrate and after examination of the complainant and the available witnesses the Magistrate issued summon upon the accused under Sections 427/454/120B/34 of the IPC. Being aggrieved by and dissatisfied with the said order of the Ld. Magistrate, the accused/petitioners in connection with

CRR 441 of 2018 preferred a revision application with a prayer for quashment of the proceedings.

Arguments Advanced:-

With respect to CRR 441 of 2018:-

5. Ld. Counsel, Mr. Sourav Chatterjee, appearing on behalf of the petitioner in connection with CRR 441 of 2018 has mainly contended that the entire dispute arose out of an altercation regarding open space which is purely civil in nature and no criminal proceeding should be allowed to proceed further.
6. In support of his contention, Mr. Chatterjee has relied on a case of ***State of Haryana & others vs. Bhajanlal reported in 1992 Supp (1) SCC 335***, specifically relying on parameter 7 of the guidelines laid down by the Hon'ble Apex Court in exercising jurisdiction under Section 482 of the Code of Criminal Procedure (for short Cr.P.C) which stands as follows:-

“(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.”

7. Before parting with, Mr. Chatterjee has also highlighted some orders of the Court below wherein Ld. Judge has criticized the behavior of the Ld. Counsel appearing on behalf of the

opposite party no. 2 in connection with CRR 441 of 2018 wherein Ld. Counsel virtually threatened the Court that he would not accept any order of further investigation unless the same is directed to be conducted by either Detective Department or CBI. This behavior of the Ld. Counsel appearing on behalf of opposite party no. 2 clearly shows that they are hell bent to use the process of criminal law to harass the petitioners herein.

8. In order to substantiate his claim, Mr. Chatterjee has relied on some cases which stands as follows:-

- ***Haji Iqbal alias Bala through S.P.O.A vs. State of Uttar Pradesh & Ors.*** reported in **2023 SCC OnLine SC 946**
- ***Haji Iqbal alias Bala through S.P.O.A vs. State of Uttar Pradesh & Ors.*** reported in **2023 SCC OnLine SC 948**
- ***State of Haryana & Ors. vs. Bhajan Lal & Ors.*** reported in **1992 Supp (1) SCC 335**
- ***Vineet Kumar Goel vs State of Uttar Pradesh and Anr*** reported in **2017 (13) SCC 369**
- ***Ahmad Ali Quarashi & Anr vs. State of Uttar Pradesh and Anr*** reported in **2020 (13) SCC 435**

- ***Raj Kumar Mondal vs. State of West Bengal*** reported in **2021 SCC OnLine Cal 2069**

9. Per contra, Ld. Counsel, Mr. Tapas Dutta, appearing on behalf of the opposite party no. 2 in connection with CRR 441 of 2018 has mainly contended that if merely a Civil Suit is pending or there is prima facie civil dispute, it does not absolve the accused from criminal proceeding. In a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the complainant that itself cannot be a ground to quash a criminal proceeding. It is a settled proposition of law that both civil and criminal proceedings can run concurrently.

10. Before parting with, Mr. Dutta has argued that the High Court should not generally exercise power under Section 482 of the Cr.P.C. after order of taking cognizance and issuance of process against the accused is being given by the Court below.

11. In order to substantiate his argument, Mr. Dutta relied on the cases mentioned below:-

- ***Rakhi Mishra vs. State of Bihar*** reported in **(2017) 16 SCC 772**

- ***Vijayander Kumar & Ors. vs. State of Rajasthan & Anr.*** reported in **(2014) 3 SCC 389**
- ***Devendra Prasad Singh vs. State of Bihar*** reported in **(2019) 4 SCC 351**
- ***Supriya Jain vs. State of Haryana & Anr.*** reported in **(2023) 7 SCC 711**

Ratio of the cases relied on behalf of the parties:-

12. From careful scrutiny of the cases relied on behalf of Mr. Chatterjee following ratios have come up for consideration which can be summarized as follows for brevity of discussion:-

- Inherent power given to the High Court under Section 482 of Cr.P.C is with the purpose and object of advancement of justice. In case the process of Court is tried to be abused by any person the Court has to thwart that attempt at the very threshold.
- If the Court is satisfied that the criminal proceeding initiated by the complainant is with an ulterior motive due to private and personal grudge then that proceeding is liable to be quashed as per parameter no. (7) enumerated in the case of ***Bhajan Lal*** (supra).

- If the petitioner 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.
- 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 in order to exercise jurisdiction under Section 482 of the Cr.P.C.

13. Per contra, Mr. Dutta has also relied on some cases in order to substantiate his own argument. From analysis of the cases relied by him following ratios have come up for determination which stand as follows:-

- At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to

ascertain whether a prima facie case is made out for summoning the accused persons. At this stage, the Magistrate is not required to consider the defence version nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not.

- The High Court while hearing application under Section 482 of the Cr.P.C has no jurisdiction to appreciate the statement of the witnesses and record a finding that there are inconsistencies in their statements. This can only be done during trial while deciding the issues on merit but not in proceedings under Section 482 of Cr.P.C.
- Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

- A given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a cognizable offence or not.
- It is settled proposition of law that a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the Criminal Court upon arriving at the satisfaction that there exists a prima facie case.
- If the allegations made in the complaint prima facie suggest that there can be a slightest possibility that the accused might have committed the offence alleged then he must stand trial and no order of quashment should be given while adjudicating matters of similar nomenclature.

Analysis:-

14. Before getting into the merit of the case at hand, I would like to discuss the general and consistent law laid down by the Honb'le Apex Court in exercising extra ordinary jurisdiction

under Section 482 of the Cr.P.C in a plethora of decisions which can be summarized as follows:-

- The inherent power of High Court under Section 482 of Cr.P.C for quashing has to be exercised sparingly with circumspection and in the rarest of rare cases.
- Exercise of inherent power under Section 482 of Code of Criminal Procedure (for short Cr.P.C) is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely be ended in acquittal.

15. The High Court in exercise of his jurisdiction under Section 482 of Cr.P.C does not function either as a Court of appeal or revision, also having no power to conduct a mini trial and only the power which can be exercised is namely,

- a) to give effect to an order under the Cr.P.C,
- b) to prevent abuse of the process of the Court, and
- c) to otherwise secure the ends of justice.

16. At this juncture, I cannot refrain myself from reproducing the eloquent principles laid down by the Hon'ble Apex Court in the celebrated judgement of **Bhajan Lal** (supra) which held as follows:-

“ 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. Before winding up, I think it would be profitable to refer certain observations of the Hon’ble Apex Court in dealing with

cases of similar nomenclature as depicted in the landmark judgement of **Haji Iqbal** (supra) which stands as follows:-

“...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...”

18. Having gone through the written complaint along with evidence collected during investigation, I **do not** find that the allegation made in the complaint/FIR even if taken on their face value and accepted in their entirety **do not** prima facie constitute any offence or make out a case against the petitioners /accused or where allegations made in the complaint and the evidence produced in support of the same **do not** disclose the commission of **any offence** and make out a case against the petitioners/accused, to exercise the extraordinary inherent power to quash the proceeding of this case. Moreso, whether the alleged occurrence as depicted in the

complaint took place on that specific date or not cannot be ascertained with conviction by this Court while exercising power under Section 482 of the Cr.P.C. All this material contradictions with regard to the alleged occurrence pointed out by Mr. Chatterjee is a subject matter of trial.

19. Now referring to the argument advanced on behalf of Mr. Chatterjee on the issue of the dispute being civil in nature i.e. relating to open space in the subject premises and no criminal case can be made out from the said dispute, but contents of the written complaint suggests some acts on the part of the petitioner in connection with CRR 441 of 2018 attracting penal provisions under the IPC. That apart, according to settled principle of law there is no bar in allowance of concurrent proceeding of civil and criminal cases arising out of the self same dispute.

20. Now coming to the next argument raised by Mr. Chatterjee regarding the unwarranted behavior on the part of the Counsel appearing on behalf of the opposite party no. 2 in connection with CRR 441 of 2018, cannot be the subject matter of this revision application.

21. In the light of the aforesaid discussion, I am sorry to subscribe to the view of Mr. Chatterjee that parameter no. 7 of case of ***Bhajan Lal*** (supra) squarely applies to the case at hand as the contents of the complaint itself do not prima facie appear that all allegations made therein are mala fide or instituted with an ulterior motive at this stage of the proceeding.

22. Discussions mentioned above clearly boils down to a position that this Court cannot quash the proceeding invoking power under Section 482 of Cr.P.C.

23. As a sequel, the revision application being no. CRR 441 of 2018 stands dismissed with no order as to costs.

With respect to CRR 4191 of 2017:-

Arguments Advanced:-

24. Ld. Counsel Mr, Dutta appearing on behalf of the petitioner prayed for necessary directions for expeditious disposal of this case.

25. On the contrary Mr. Chaterjee appearing on behalf of opposite party no. 2 & 3 has contended that direction for expeditious disposal cannot be entertained at this nascent stage.

Decision:-

- 26.** It is true that the proceeding was initiated in the year 2014. It is also fact that the proceeding is at a very nascent stage by issuing process against the opposite party no. 2 & 3.
- 27.** Therefore, though I am not inclined to pass any direction upon the Ld. Trial Court to dispose of the case within a specified time but this Court expects the early disposal of the case in accordance with law which is lingering since 2014.
- 28.** In the light of the aforesaid observation the revision application being no. CRR 4191 of 2017 stands disposed of.
- 29.** Interim order, if there be any, stands vacated.
- 30.** Connected applications, if there be any, stand disposed of accordingly.
- 31.** All parties to this revision application shall act on the server copy of this order downloaded from the official website of this Court.
- 32.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]