

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 372 of 2016

IA No: CRAN 7 of 2017 (Old No: CRAN 2839 of 2017)

Nudrat Akhter & Ors.

Vs.

The State of West Bengal & Anr.

With

C.R.R. 388 of 2016

Ishrat Akhter & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioner

:Mr. Kallol Mondal, Adv.

Mr. Krishan Ray, Adv.

Mr. Souvik Das, Adv.

Mr. Anamitra Banerjee, Adv.

For the opposite party no. 2

:Mr. Uttam Kumar Ghosh, Adv.

Ms. Ananya Poddar, Adv.

For the State

:Mr. Imran Ali,Adv.

Heard on

:05.01.2024, 11.03.2024,
19.03.2024

Judgment on

:28th March, 2024

Bibhas Ranjan De, J.

1. Both the revision applications are taken up together for disposal via this common judgement on account of identical issue involved in both the cases initially put into motion by Aneesha Asfer who is the common opposite party (O.P. No. 2) in both the revision applications.

Brief facts:-

CRR 372 of 2016

2. Petitioners no. 1, 2 & 6 are the sister-in-laws of the opposite party no. 2 herein. Petitioner no. 3 is the husband of petitioner no. 2 and petitioner no. 5 is the husband of petitioner no. 6. Petitioner no. 4 is the son of the uncle-in-law of the opposite party no. 2. The full blood brother of the petitioners no. 1,2 & 6 namely Afser Shamim married the opposite party no. 2 herein and started residing along with his mother Ishrat

Akhter (petitioner no. 1 of CRR 388 of 2016). It has been alleged that since after marriage the opposite party no. 2 in collusion with her husband started torturing the said Ishrat Akhter (petitioner no. 1 of CRR 388 of 2016) in every possible manner both physically and mentally in order to acquire the ancestral property. Such torture reached its saturation point on 20.01.2013 when she was viciously assaulted by the opposite party no. 2 herein along with her husband which resulted in severe injuries to the mother (petitioner no. 1 of CRR 388 of 2016) of the petitioner 1,2 & 6 herein.

- 3.** On receipt of such information by the local people, petitioner no. 2 herein reached there and took her mother to the hospital. After recovery the mother-in-law of the opposite party no. 2 made a complaint to the Beniapukur Police Station which resulted in initiation of Beniapukur Police Station case no. 28 of 2013 dated 24.01.2013 under Section 326/114 of the Indian Penal Code (for short IPC). After initiation of such case a mass petition was made by majority of the local people with a prayer for prolonged custody of the opposite party no. 2 and her husband as they were arrested by that time. After completion of investigation in connection with the

aforementioned case charge sheet was submitted against the opposite party no. 2 and her husband.

4. Afterwards, the opposite party no. 2 filed a complaint before the Ld. Additional Chief Judicial Magistrate (for short A.C.J.M.), Sealdah, South 24 Parganas against the petitioners with a prayer for issuance of direction for investigation under Section 156(3) of the Code of Criminal Procedure (for short Cr.P.C) with the allegation that her ornaments and other valuable articles have remained inside the almirah of her matrimonial residence from where she has been evicted on the pretext of some false allegations. After considering the complaint petition the Ld. Magistrate took cognizance which resulted in registration of the complaint case no. 893 of 2013 under Section 406/114 of the IPC. The case was subsequently transferred to the Court of Ld. Judicial Magistrate (for short J.M.) 5th Court, Sealdah, for disposal

5. CRR 388 of 2016

6. The opposite party no. 2 herein filed another complaint on 21.02.2015 before the Ld. A.C.J.M., Sealdah on the similar set of allegations mentioned hereinabove. But, this time the name of husband, mother-in-law of the opposite party no. 2 herein was also included along with the other petitioners. Ld.

Magistrate after perusal, forwarded the same to Beniapukur Police Station for investigation and accordingly Beniapukur Police Station case no. 246 of 2015 dated 23.05.2015 was started.

Argument Advanced:-

7. Ld. Counsel, Mr. Kallol Mondal, appearing on behalf of the petitioners in both the revision applications has submitted that the petitioners in connection with 372 of 2016 reside elsewhere as it appears from the application under Section 156(3) of Cr.P.C. Mr. Mondal has contended that opposite party no. 2 has filed the application under Section 156(3) of Cr.P.C. in connection with both the revision applications with some bald allegations and to wreak vengeance as admittedly mother-in-law of opposite party no. 2 filed a case against opposite party no. 2 and her husband for merciless assault and for which she was treated in hospital. Mr. Mondal has further submitted that both the opposite party no. 2 and her husband were arrested and remained in custody. It is further submitted that mother in-law filed case against the opposite party no. 2 and her husband on 24.01.2013. Whereas opposite party no. 2 filed case under Section 156 (3) of Cr.P.C initially against her sister-in-laws and their respective husbands and

one brother-in-law before the Ld. A.C.J.M., Seladah on 30.10.2013 in connection with CRR 372 of 2016. Again opposite party no. 2 filed a case under Section 156(3) of Cr.P.C against all the petitioners in connection with CRR 388 of 2016 i.e. earlier 156(3) complaint along with the mother-in-law and the husband of opposite party no. 2 herein subsequently on 21.02.2015.

- 8.** Before parting with, Mr. Mondal has submitted that one mass petition addressed to the officer-in-charge of Beniapukur Police Station was filed alleging *inter alia* that both the opposite party no. 2 and her husband used to mercilessly beat the petitioner no. 1 in connection with CRR 388 of 2016 and used to lock her alone in the flat whenever they went out.
- 9.** Ld. Counsel, Mr. Uttam Kumar Ghosh, appearing on behalf of the opposite party no. 2 in both the revision applications has submitted that dispute regarding ancestral property led these cases. It is submitted that sister-in-laws of opposite party no. 2 forced her mother-in-law to execute the deed. It is further submitted that opposite party no. 2 was subjected to both physical and mental torture as her husband has been deprived of ancestral property and ultimately both of them

were driven out as a result of repeated provocation by her sister-in-laws along with her mother-in-law.

10. It is further contended that the petitioner no. 6 of CRR 372 of 2016 demanded Rs. 5 to 7 lacs from the opposite party no. 2 so that her husband can start some business of his own. The opposite party no. 2 was time and again hackled by the petitioners for being a divorcee lady. In addition to that opposite party no. 2 was also held liable for not being able to become a mother. All the sister-in-laws and the mother-in-law of the opposite party no. 2 tried to hatch a conspiracy in order to oust her and get the husband of the opposite party no. 2 remarried again.

11. Ld. Counsel, Mr. Imran Ali, appearing on behalf of the State in connection with CRR 388 of 2016 has submitted that there are sufficient materials in the case diary to put the petitioners into trial.

Analysis:-

12. After careful scrutiny of the complaints under Section 156(3) of Cr.P.C in connection with both the revision applications at hand it appears that the main points of contention made by the complainant are absolutely identical with each other. Both the petition of complaints did not

disclose any specific allegation or specific role of the accused to constitute any offence alleged.

13. I have gone through the case diary carefully and I find that during investigation following prima facie material have been explored:-

- Immediately prior to filing both these complaints a complaint was lodged by the petitioner no. 1 in connection with CRR 388 of 2016 who is the mother-in-law of the opposite party no. 2 herein.
- Both the written complaints under Section 156(3) of Cr.P.C. were filed on 30.10.2013 & 21.02.2015 respectively in the Court of Ld. ACJM, Sealdah whereas petitioner no. 1 in connection with CRR 388 of 2016 filed a complaint before the Beniapukur Police Station which resulted in the initiation of Beniapukur Police Station Case no. 28 of 2013 dated 24.01.2013 under Section 326/114 of the IPC and accordingly charge sheet was submitted against the opposite party no. 2 herein and her husband/son of the petitioner no. 1 in connection with CRR 388 of 2016.
- From the case diary it further appears that during investigation several documents were collected showing

admission of petitioner no. 1 (mother-in-law of opposite party no. 2 herein) in the hospital for a considerable period, after being mercilessly assaulted by the opposite party no. 2 herein and her husband which is also reported in the daily newspaper.

- Case diary further discloses one mass petition signed by 180 local people was submitted before the Beniapukur Police Station in connection with Beniapukur Police Station Case no. 28 of 2013 filed by the petitioner no. 1 with a prayer for prolonged custody of the opposite party no. 2 herein and her husband for their immense physical and mental torture on the helpless old lady for a long period of time.
- It further appears from the case diary that opposite party no. 2 and her husband remained in custody for almost 2 (two) months.

14. Taking risk of repetition, it is pertinent to mention here that opposite party no. 2 lodged both the complaints under Section 156(3) of Cr.P.C. against all the petitioners qua revision applications after serving out custody for almost two months for committing an offence of merciless assault upon petitioner no. 1 herein.

15. In exercising jurisdiction under Section 482 this Court cannot confine to the complaint only but also the evidence collected during investigation as well as other attending circumstances. In this regard, it would be worthy to refer the case of ***Haji Iqbal alias Bala Through S.P.O.A. Vs. State of U.P. and Others*** reported in **2023 SCC OnLine SC 946** wherein Hon'ble Apex Court observed in paragraph 15 as follows:-

“15. 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.”*

16. What I have discussed in the earlier paragraphs in terms of the complaint petition under Section 156(3) of Cr.P.C. as well as materials collected during investigation surely falls within the ambit suggested by **Haji Iqbal** (supra).

17. The entire discussions on the basis of petition of complaints as well as evidence collected during investigation boils down only to the position that written complaints qua both the revision applications were filed as a counter blast of the case filed by the petitioner no. 1 in connection with CRR 388 of 2016 wherein both opposite party no. 2 and her

husband had to suffer judicial custody for almost 2 (two) months.

18. It is true that the power under Section 482 of Cr.P.C. cannot be exercised sparingly save and except in exceptional cases. In this regard, Hon'ble Apex Court in ***State of Haryana and others vs. Bhajanlal and others*** reported in **1992 Supp (1) SCC 335** laid down the following parameters in paragraph 102 which runs 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.”

- 19.** All facts and circumstances appearing in this case squarely falls within the parameter 7 of **Bhajanlal** (supra) for exercising jurisdiction under Section 482 of Cr.P.C.

- 20.** In the result, both the impugned proceedings qua CRR 372 of 2016 & CRR 388 of 2016 are hereby quashed.
- 21.** As a sequel, both the revision applications stand allowed.
- 22.** Case diary be returned.
- 23.** Connected applications, if there be any, stand disposed of accordingly.
- 24.** Interim order, if there be any, also stands vacated.
- 25.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 26.** 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.]