

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 766 of 2022

Hasin Jahan & Ors.

Vs.

State of West Bengal & Anr.

For the petitioners	:	Mr. Imtiaz Ahmed Mr. Ghazala Firdaus Ms. Smita Saha Mr. Sk. Saidullah Mr. Debopam Roy Mr. Mithun Mondal Mr. Md. Arsalan
For the O.P. no. 3	:	Mr. Utsah Chatterjee Mr. Kaushik Chakraborty
For the O.P. no. 2 in person	:	Mr. Md. Niyazuddin
For the State	:	Mr. Debasish Roy Mr. Imran Ali Ms. Debjani Sahu
Heard on	:	17.09.2024
Judgement on	:	08.10.2024

Ajoy Kumar Mukherjee, J.

1. Being aggrieved by the impugned proceeding, namely Suri police station case no. 299 of 2021 dated 07.08.2021, corresponding to G.R. case No. 946 of 2021, presently pending before learned CJM, Suri, Birbhum,

petitioners/accused persons have preferred the present application with a prayer for quashing the said proceeding.

2. It has been contended by Mr. Ahmed on behalf of the petitioners that the petitioner no.1 lodged a complaint against the defacto complainant of the present proceeding alleging that on 17.05.2021 at around 10 a.m. while petitioner no. 1 was cleaning her father's room, her brother in law and sister started cursing her with fowl languages and when she raised protest, her brother in law assaulted her and outraged her modesty and for which she filed a complaint before the Suri police station being case no. 187/21 dated 17.05.2021. Petitioners further contention is, as a counter blast of the said complaint, petitioner no. 1's sister namely Shahin Afrin filed present written complaint after about three months of alleged date of occurrence, against the present petitioner on 07.08.2021, with the allegation that on the same date i.e. on 17.05.2021 at around 10-11 a.m. on the pretext of cleaning the floor of the house, petitioners herein started abusing the complainant with filthy languages and when her children started crying the accused persons chased the complainant and her babies, taking bricks in their hand, in order to kill them and the accused persons/petitioners herein also tried to strangulate the *de facto* complainant by putting a pillow in the mouth of the complainant and when her babies started shouting, the witnesses reached the spot and finding the witnesses presence, the petitioners/accused persons fled away from the spot. Thereafter the defacto complainant had gone to police station but police did not take their complaint and thereafter under the courts order investigation started.

3. Mr. Ahmed on behalf of the petitioners further submits that the allegations made by the opposite party/*de facto* complainant is totally baseless and the innocent petitioners have been falsely implicated in the present proceeding. The fact is that the *de facto* complainant does not want that the petitioners should stay in her parent's house and wanted to grasp the entire property of her parents. The investigating agency did not appreciate that the impugned proceeding has originated from personal animosity and counter blast and as such falls within the periphery of those circumstances, where the investigating authority before proceeding for investigation should have more cautious and circumspective but the investigating authority without considering the basic principle, that materials should disclose commission of a cognizable offence, had submitted a perfunctory charge sheet under sections 341/323/506/34 of Indian Penal Code (in short IPC) against the petitioner. In fact the investigating authority have miserably failed to show that there are ingredients under section 341/323/506/34 of IPC. The allegations levelled against the petitioners that they had attempted to asphyxiate the *de facto* complainant with the help of a pillow is a cock and bull story and has not been substantiated by any cogent evidence except the seizure of one pillow, which by itself is neither proof nor indicative of anything. The daughters of petitioner No.1 was not even present at the time of alleged occurrence as falsely alleged.

4. Mr. Ahmed further submits that it is unfortunate that learned Magistrate also did not make any endeavour at the time of taking cognizance, ignoring settled principle of law that while taking cognizance of an offence, the learned magistrate ought to have been more careful and

cautious. He further submits that considering the materials available so far, one must not have any doubt in his mind that the acquisition against the petitioners cannot stand and as such it will be a travesty of justice, if they are not relieved from the criminal prosecution and asked to face the hazards of trial as the oral assertion of allegation, without any evidence cannot stand in support of acquisition.

5. He further submits that on perusal of the FIR, written complaint, charge-sheet and materials collected during investigation, no case has been made out against the petitioners and it is palpable that such prosecution has been initiated with utmost *malafide*, out of personal vengeance. Learned Trial Court committed gross mistake in taking cognizance upon the alleged offences against the petitioners without considering that cognizance of an alleged offence can be taken only when the magistrate has reason to believe that the petitioners have committed a cognizable offence and as such he ought to have recorded a subjective satisfaction with regard to the commission of alleged offence before taking cognizance. Disclosure of cognizable offence by the *de facto* complainant and the investigating agency, is pre requisite of law for allowing further continuance of the proceeding, which is conspicuously absent in the present case.

6. Pointing finger in the chronology of events, Mr. Ahmed further submitted that FIR No. 229 of 21 dated 07.08.2021 is clearly a counter blast to the FIR no. 127 of 21 dated 17.05.2021 and it is very much indicative from the dates. He further contended that in order to prevent judicial process from being an instrument of oppression of harassment, exercise of inherent power by courts under the provision of 482 of the code is not only

desirable but also necessary so that the judicial forum may not be allowed to be utilized for an oblique motive at the instance of any vindictive litigant.

7. In this context he referred the grounds laid down by Apex Court in ***A.M. Mohan Vs. The state represented by SHO and another in SLP Cri. No. 9598 of 2022*** and also ***State of Haryana Vs. Bhajanlal, supp (1992) 1 SCC 335.***

8. Mr. Niyazuddin appearing in person, being opposite party no. 2, vehemently opposed the petitioners' prayer for quashing the impugned proceeding. He submitted that from annexure P2 it is clear that there is no delay in FIR as the cause of action for filing FIR took place from 17th May, 2021 onwards. He further submits that FIR 299/21 is the counterblast of FIR No. 187/2021, is a misleading statement as both FIRs do not arise from same transaction. Accordingly the issue raised in the present proceeding requires trial and it cannot be decided on merit, if it is quashed at its threshold. Moreover, there are authorities which states that even if an FIR is a counterblast of any earlier FIR, the same cannot be the ground for quashing FIR. He further submits that the petitioner no. 1 is a highly influential person. The petitioner have miserably failed to show that their case falls under the category of rarest of rare cases, which calls for interference by this court invoking jurisdiction under section 482 of the Code. He further submits that in ***Mrs. Neeharika Infrastructure Pvt ltd.*** reported in **AIR 2021 SC 1918** Supreme Court clearly laid down parameters for quashing a proceeding and it has been held that the power of quashing of FIR, under section 482 of the Code should be employed only in rarest of rare cases. He further submits that the petitioners in support of quashment

had taken the plea of factual defences, which cannot be entertained within the parameters of limited enquiry, permissible in a petition under section 482 of Cr.P.C. In this context he relied upon the case of ***Ratish Babu Unnikrishnan Vs. State Government of NCT, Delhi and another***, reported in **2022 SCC Online SC 513**. Referring another case in ***CBI Vs. Aryan Singh, Criminal Appeal No. 1025-1026 of 2023***, he contended that High Court cannot conduct a mini trial while exercising power under section 482 or at the stage of discharging. He further contended whether the instant criminal proceeding is malicious or not, is not required to be considered at this stage. What is required to be considered now is prima facie case and materials collected during investigation, which warrant the accused to be tried

9. In the present case, in the FIR and in the case diary there are enough material and witnesses which warranted the accused to be tried. In this context he also relied upon ***Ramveer Upadhaya Vs. State of U.P. and another***. He further submitted that it is well settled proposition of law that a criminal prosecution, if otherwise justified and based on adequate evidence, does not become vitiated on account of *malafides* or personal vendetta of the complainant.

10. Referring the case of ***Rajib Thappa Vs. Madan lal*** reported in **(2013) 3 SCC 330**, he further pointed out that even if the accused is successful in showing some suspicious circumstances or doubt in the allegations levelled by the complainant, it would be impermissible to discharge the accused before trial, because it would result in giving finality to the acquisitions levelled by the prosecution /complainant without allowing them to adduce

evidence to substantiate the same. He further contended referring ***State of odisha Vs. Saroj Kumar Sahu*** reported in **AIR Online 2005 SC 1019** that probabilities of the prosecution version cannot be analysed at the stage of quashing and the allegations of *mal fides* of the informant are of secondary importance.

11. He further contended that High Court would exceed its jurisdiction under section 482 Cr.P.C., if a detailed enquiry into the merits of the allegations is conducted. An FIR is not expected to be an encyclopedia. Referring ***State of Telangana Vs. Habib Adulla Zilani*** reported in **(2017) 2 SCC 779**, he pointed out that inherent powers do not confer any arbitrary jurisdiction on the High court to act according to whim or caprice but it has to be exercised sparingly with circumspection and in the rarest of rare cases. In this context he also referred the parameters laid down in para 103 of **BhajanLal's Case (supra)**. Referring ***Ratish Babu Unnikrishnan Vs. State Government of NCT, Delhi and another, Criminal Appeal No. 694-695 of 2022***, he further pointed out that Apex Court reminded that the consequences of scuttling the criminal process at a pre trial stage can be grave and irreparable. Quashing proceeding at preliminary stage will result in finality without the parties having had an opportunity to adduce evidence and if such thing is allowed, the accused may be given an unmerited advantage in the criminal process. Accordingly he has prayed for dismissal of the present application.

12. Learned counsel appearing on behalf of the State placed the case diary and opposed the petitioners prayer for quashing the impugned proceeding.

13. I have considered submissions made by the parties.

Decisions

14. Though it may not be possible for any court to lay down any precise or inflexible guidelines or rigid formula or to give an exhaustive list, wherein power under section 482 of the Code for quashing of an FIR should be exercised, however in **Bhajanlal's Case, 1992 Supp (1) SCC 335**, the Apex Court has pointed out certain circumstances where the court may be justified in exercising such jurisdiction. These are in short, where the FIR does not prima facie constitute any offence, where it does not disclose a cognizable offence justifying investigation by the police, where the allegations 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, where there is an express legal bar engrafted in any of the provisions of the Code and where a criminal proceeding is manifestly attended with *malafide* and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and persons grudge.

15. So far as fact of the present case is concerned, it is not in dispute that on the self same day i.e. on 17.05.2021, the petitioner no.1 herein first initiated a criminal proceeding being Suri police station case no. 187/2021 dated 17.05.2021, under sections 323/325/354/506 and 34 of the Indian Penal Code and in the said case after completion of investigation police submitted charge sheet on 31.05.2021 against the complainant/opposite party no.2 herein. The reason for delay in initiating present proceeding as explained by opposite party no.2 is that she went to the police station for

lodging FIR but police did not take any action and as such she had to move before learned magistrate and as per direction of learned magistrate the police started the instant criminal proceeding being Suri P.S. case no. 229 of 2021 dated 17.01.2021 under sections 241/323/307/406/34/504/120B of the IPC. However, in the instant case after completion of investigation police has submitted charge-sheet against the present petitioner under section 341/323/506/34 of the Indian Penal Code.

16. Before going to further details, let me take into consideration the ingredients to constitute offence under section 341 and 323 IPC. In order to constitute an offence under section 341, the prosecution has to prove

- (i) That accused persons obstructed the opposite party no.2 and he did it voluntarily and
- (ii) That he prevented the complainant from proceeding in certain direction in which she had the right to proceed.

17. Similarly in order to constitute an offence under section 323 of IPC, prosecution is to prove that the

- (i) Accused voluntarily caused bodily pain, disease or infirmity to the victim.
- (ii) The accused did so with intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim.

18. So far as section 506 is concerned, it is a non cognizable offence and so far as section 34 of IPC is concerned it does not create a substantive offences but enunciates a rule of liability for an offence. Accordingly applicability of section 34 depends upon the fact as to whether, in furtherance of the common intention each of the accused

persons/petitioners have committed any offence under section 323/341 of the IPC or in other words unless offence under section 341 and/or section 323 prima facie establishes against the accused persons, section 34 independently has got no role to play.

19. The relevant portion of the averments with regard to the imputations against the petitioners as stated in the FIR is as follows:-

“on 17.05.2021 at about 10 to 11 a.m. all the three accused persons on the pretext of cleaning the floor started abusing the complainant. At that time complaint's two children got frightened and started crying. Then the three accused persons chased the complainant and her children with bricks in their hand and when they reached the bedroom, the accused persons tried to suffocate the complainant by putting pillow in her mouth and then the children of the complainant started shouting and then and there witnesses reached the spot and seeing them the accused persons fled away. It is further alleged in the complaint that if the witnesses would not have reached on the spot, complainant would have died due to suffocation and further allegation is that the accused persons are trying to grab the property of the deceased brother of the complainant.”

20. A bare perusal of the written complaint it reveals that even in the averments made in the FIR, the allegation with regard to wrongful restraint by the petitioners is completely absent. There is no allegation in the FIR that the accused persons obstructed the *de facto* complainant or that they prevented the *de facto* complainant from proceeding in certain direction in which she had the right to proceed. The materials collected during investigation which includes statements recorded under section 161 of the Code also does, not speak about any such allegation to attract section 341 in the present context.

21. Though the entire allegation made in the complaint is confined to the imputation that the petitioner have grabbed the property of deceased brother of the complainant and that out of grudge they tried to kill the *de facto* complainant by putting pillow on her mouth but such allegation could

not be substantiated during investigation and as such the investigating authority has not charge sheeted the accused persons under section 307 or 406 of IPC, though the petitioners were initially booked under those sections. In fact the materials in the case diary shows that police during investigation had only seized one pillow as per seizure list. It is complaint's specific case in the FIR, when the accused persons were trying to asphyxiate petitioner by putting pillow on her mouth, the witnesses namely Md. Hossain, Nazma, Kurban and Sk. Sahajahan reached the spot and seeing them the accused persons fled away and her further case is unless said witnesses reached the spot, at that very moment the accused persons could have strangled the complainant. Out of said four alleged eye witnesses Md. Hossain and Nazma stated before police that they have heard that over the issue of grabbing property of complainant's brother, quarrel took place between the parties and beside this they know nothing further about alleged incident. Other two witnesses Kurban and Sahajahan have stated that accused persons have grabbed business and money of complainant's brother and over the said issue on 17.05.2021, accused persons assaulted her and threatened her with dire consequences, which they have heard from complainant Sahin Afrin. During investigation no witness including aforesaid cited witnesses has come forward to support the *de facto* complainant's case that petitioners tried to asphyxiate her. In fact the witnesses including the seizure witnesses have stated that at the time of seizure only they have heard that the particular pillow was used for alleged commission of offence by the petitioner. On careful perusal of statements

recorded under section 161 of Cr.P.C., it appears that all of them categorically stated that they have not seen any such incident.

22. The allegation of grabbing property of the deceased brother of the complainant by the petitioners herein, if any, that must have been a pure civil dispute among the parties and from the averments made in the FIR and also from the materials available in the case diary, there is no indication that such allegation of grabbing property by the petitioners, can attract criminality.

23. Now so far as section 323 of IPC is concerned only 2/3 evasive words have been put in the FIR without attributing any specific allegation against any of the accused persons. The relevant portion of the FIR if translated into english version stands as *“all the three accused persons on the pretext of cleaning floor started abusing and assaulting defacto complainant”*. However, the witnesses who made statement before police during investigation did not support the case of assault. The witnesses stated that they have heard that on 17.05.2021 at about 10-11a.m. “Jhamela” (quarrel and/or trouble) arose between the parties over the issue of sharing the movable and immovable properties left by the deceased brother of the complainant. Even the witnesses who tried to incorporate the word in their statement ‘*mardhor koreche*’ (assaulted) has also stated that they have not seen anything but they have heard about the same. The witnesses have also specifically stated, they have made the statement before police on the basis of what they have heard from defacto complaint Shahin Afrin and they do not have any direct knowledge about the allegations levelled therein. Even during investigation the investigating authority has sought for injury report, if any, from

superintendent sadar hospital but the hospital authority clearly stated that patient was not admitted on that day in the said hospital. Thereafter notice under section 91(A) of Cr.P.C. was also sent to the *de facto* complainant to furnish the documents in support of her allegations, made in the FIR but in reply to the same, the *de facto* complainant admitted by making statement under section 161 of Cr.P.C that she is not in a position to show any document in support of her allegation and the reason assigned by her is that the accused persons have grabbed all those documents.

24. On careful perusal of the averments in the complaint and the statement of all the witnesses, recorded during investigation no specific allegation has been attributed against any particular petitioner in the complaint and none of the witnesses have alleged any specific role of the petitioners in committing the alleged offence, though it is required to be brought to the notice of the court about the particulars of offence committed by each and every accused and the role played by each and every accused in committing of that offence. Here the bald statement made in the complaint is sadly vague and it does not show as to which accused has committed what offence and what is the exact role played by each petitioner in the commission of alleged offence.

25. In such view of the matter the available materials do not disclose any case justifying offence under section 323 of IPC in the absence of any material to show that the accused persons/petitioners voluntarily caused bodily pain to the complainant with intention to cause hurt. Accordingly there is no prima facie document or evidence to constitute offence under section 323 IPC. Infact the allegation of assault under the FIR is general and

omnibus and can at best be said to have been made out on account of small skirmishes and as such do not warrant for prosecution. Under such circumstances it would be an abuse of the process of the law to allow the prosecution to continue against the petitioners on the basis of a vague and general complain which is silent about the precise acts of the petitioners. Since no specific role has been attributed to the petitioner/accused person regarding wrongful confinement or voluntarily causing hart, it would be unjust if the petitioners are forced to go through the tribulations of a trial. It has been highlighted by the Apex court in various instances that a criminal trial leading to an eventual acquittal, also inflicts severe scars upon the accused and such an exercise must therefore be discouraged.

26. Therefore upon consideration of the relevant circumstances and on perusal of the FIR, the final report and all other documents, I am satisfied that no case is made out against any of the petitioners and the pendency of the proceeding against them before the magistrate would be an abuse of process of court. It is settled law that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The veiled object behind the present lame prosecution appears to be made to harass the petitioners and I am of the view that since the impugned prosecution is wholly unfounded, therefore to secure the ends of justice and for preventing abuse the process of the criminal court, the proceeding is liable to be quashed.

27. In such view of the matter **CRR 766 of 2022** is allowed. The impugned proceeding being GR case no 946 of 2021 pending before learned CJM, Suri, Birbhum is hereby quashed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)