

10.9. 2024
item No.1
n.b.
ct. no.24

CRR 510 of 2018

with
CRAN 1 of 2018(old No. CRAN 1179 of 2018)
+
CRAN 5 of 2020(Old No. CRAN 40 of 2020)
+
CRAN 7 of 2023

Chinta Barman & Anr.
Vs.
Kanaklata Gayen & Anr

Mr. Sekhar Kumar Basu,
Mr. Jakir Hossain,
Mr. Imdadul Biswas,
Mr. Shahan Shah,
Mr. Sk. Abumusa,
Mr. Umenum Khan,
Mr. Aninda Bhattacherya,
... for the petitioner.
Ms. Sibangi Chattopadhyay,
.... For the opposite party.

This is an application under Section 482 read with Section 401 of the Code of Criminal Procedure for quashing of the proceeding being Case No.C-60/17(TR 194/17) under Section 323 and 34 of the IPC pending before the learned Judicial Magistrate, 3rd Court at Diamond Harbour, District South 24 Parganas.

Mr. Sekhar Kumar Basu, learned Senior advocate appearing on behalf of the petitioners submits that the complaint case was initiated on the basis of complaint lodged by the complainant in the Court of ACJM, Diamond Harbour, South 24 Parganas. He submits that the learned Magistrate concerned after receiving the complaint has forwarded the same to the learned jurisdictional Magistrate. Learned jurisdictional Magistrate has

examined the complaint under Section 200 of the Code of Criminal Procedure and has directed the concerned police officer to cause an enquiry and submit a report under Section 202 of the Code of Criminal Procedure. On the basis of such direction, the ASI of Mathurapur P.S. has submitted a report. On perusing such report, the learned Magistrate concerned had issued a process against the present petitioner under Section 323/34 of the IPC. Mr. Bose submits that in respect of petitioner no.1 is concerned, there is no materials in the petition of complaint regarding commission of offence punishable under Section 323 of IPC. He further submits that the petitioner no.1 is a house wife. So, the process issued to the petitioner no.1 is baseless and liable to be set aside. Mr. Bose, learned senior advocate argued nothing regarding the merit of the case in respect of petitioner no.2.

Considering the submission, the complaint against the petitioner no.1 only is herebytake up for consideration.

Learned advocate appearing on behalf of the private respondent/ complainant submits that the learned Magistrate has issued the process according to the provision of law. The petition of complaint was specifically corroborated by the complainant according to the provision of law under Section 200 of the Code of Criminal Procedure. However, the learned Magistrate has also taken a pre-occasions by calling upon the report under the provisions of Section 202 of the Code of Criminal Procedure.

Learned advocate for the respondent further argued from the report, it would be revealed that the petitioner no.1 was very well involved regarding the commission of alleged offence of

voluntary causing heard to the to the complainant. She further submits that there are prima facie materials against the present petitioner no.1. So, the petitioner no.1 may be directed to face the trial.

Heard the learned advocates perused the petition of complaint. In considering the involvement of petitioner no.1, in the petition of complaint it has been alleged by the complainant that petitioner no.1 and her husband persuaded the complaint to put some LTI or signature over some blank papers. This is only allegation in the petition of complaint. However, on the basis of such allegation, the police have conducted the enquiry. The report of the enquiry discloses another fact that there some hot altercation between the complainant and the present petitioner nos. 1 and 2. For that reason, all the accused persons has manhandled the complainant. If the report of the police is prima facie taken to be true, that also the allegation against the present petitioner no.1 is not distinct but it is omnibus in nature.

Considering the entire aspect, it appears to me that this is a proceeding for quashing a complaint against the petitioner no.1., the Hon'ble Supreme Court has framed the guideline for quashing a complaint case.

In considering the observation of the Hon'ble Apex Court in the case of **Ch. Bhajan Lal & Ors. Vs. State of Haryana & Ors**, the Hon'ble Supreme Court has held that:

“8.1 In the exercise of the extra-ordinary power under Article 226 of the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given 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 guide-17 myriad kinds of cases wherein such power should be exercised:

- (a)** *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.;*
- (b)** *where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;*
- (c)** *Where the un-controverted 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 made out a case against the accused;*
- (d)** *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;*
- (e)** *Where the allegations made in the FIR or complaint are so abused and inherently improbably on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;*
- (f)** *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;

(g) *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.”*

In the above observation of the Hon’ble Supreme Court in **Bhajanlal (supra)** it is the direction of the Hon’ble Supreme Court that if the complaint is taken to be true and if thereafter it appears that the offence as alleged in the petition of complaint is not made out. Then the petitioner is entitled to get a favorable order and the criminal proceeding is liable to be quashed.

It further appears that the learned Magistrate has issued the process against the petitioner no.1 without being satisfying about the fact that prima facie allegations under Section 323 IPC have been made out against petitioner no.1.

Considering the above aspect, I am of the clear view the petition of complaint as well as the report prima facie does not disclose the commission of offence under Section 323 IPC against the present petitioner no.1. Thus, the present petitioner no.1 deserves a favourable order.

Under the above observation the criminal revisional being CRR 510 of 2018 is considered and allowed. The instant criminal proceeding being C-60/17(TR 194/17) pending before the learned jurisdictional Court against petitioner no.1 namely, Chinta Barman is hereby quashed.

The learned Magistrate is at liberty to proceed with the complaint case according to the provision of law in respect of otheraccused persons.

Learned concerned jurisdictional Magistrate is further directed to dispose of the complaint case according to the provision of law as early as possible more preferably within six months from the date of passing of this order.

Accordingly, CRR 510 of 2018 is disposed of.

Connected CRAN appeal, if pending, is disposed of.

(Subhendu Samanta, J.)