

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 930 of 2024

Mr. Biswajit Roy

Versus

Ms. Mala Sharma & Anr.

For the Petitioner : Mr. Pallab Mohan Chakraborty

For the State : Ms. Amita Gaur
Mr. Saibal Krishna Dasgupta

Heard on : 09.12.2024

Judgment on : 19.12.2024

Dr. Ajoy Kumar Mukherjee , J.:

1. Opposite party no.1 herein lodged a written complaint on 19.12.2016 against present petitioner and others alleging that on 18th December, 2016 the present petitioner and other accused persons entered into the house of complainant forceably and had assaulted the complainant with fist and blows. When the complainant raised protest the accused persons had snatched her gold ornaments valued Rs. 50,000/-. Moreover, another accused namely Pallav Mohan Chakraborty outraged her modesty and the present petitioner/accused pressed her throat with a view to strangulate

her. When her son raised alarm the accused persons fled away. The complainant was suffering from throat pain due to such assault and for which she was treated in the hospital on 18th December, 2016.

2. On the basis of said allegation, Nabadwip P.S. Case no. 507 dated 19.12.2016 which correspondence to G.R. Case no. 497 of 2016 was started. After completion of investigation police submitted chargesheet against two accused persons under section 448/323/34 IPC.

3. Out of four FIR named accused two were not charge-sheeted and present petitioner after submission of charge sheet prayed for discharge but learned court below turned down his prayer by an order dated 15th March, 2022. Mr. Pallab Mohan Chakraborty on behalf of the petitioner submits that accused no. 2 and 3 are residing at Serampore, Hooghly which is far away from the place of occurrence and they were not present at the alleged place of occurrence. He further submits that the charge sheet have been submitted without interrogating private opposite party under section 164 of the Code of Criminal Procedure. He also submits that the present criminal proceeding has been initiated on the basis of out and out false allegation, which is evident from the fact that the present FIR has been copied from the allegations made in the FIR in connection with Nabadwip P.S. case no. 497 dated 09.12.2016 corresponding to G.R. Case no. 488 of 2016. Accordingly petitioner has prayed for quashing the entire proceeding.

4. Ms. Gour learned counsel appearing on behalf of the State placed the case diary and submits that the proceeding has arisen over a family dispute and she leaves the matter to the discretion of the court.

5. In spite of service private opposite party/complainant is not represented.

6. Before I enter into facts of the present case and submission made by the parties, it is necessary to look into the scope and ambit of inherent jurisdiction which can be exercised by the High Court under section 482 of the Code of Criminal Procedure. Supreme Court in **State of Haryana Vs, Bhajanlal, 1992 SCC (Cri) 426** had elaborately considered the scope and ambit of section 482 in the context of quashing the criminal proceeding. In para 102, the court enumerated cases where power can be exercised under 482 of the Code. Relevant portion of the judgment may be reproduced below.

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.

7. Supreme Court time and again has examined the scope of jurisdiction and laid down several principles which govern the exercise of jurisdiction of the High Court under section 482 Cr.P.C. A three Judges Bench of Supreme court in **State of Karnataka Vs. L. Muniswamy** reported in **(1977) 2 SCC 699** held in para 7 as follows:-

“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.”

8. In State of **Karnatak Vs. M. Devendrappa & another** reported in **(2002) 3 SCC 89** a three Judges Bench of the Apex Court held that authority of the court exists for advancement of justice and if any attempt is made to abuse that authority, so as to produce injustice, the court has power to prevent abuse.

9. In **Vineet Kumar Vs. State of U.P. (2017) 13 SCC 369** supreme Court held in para 41 as follows:-

“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 [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . 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 fide 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 [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , which is to the following effect: (SCC p. 379, para 102)

“102. (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.”

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 [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , 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”

10. Coming to the facts of the present case it appears that though the defacto complaint namely Mala Sharma has made various allegations in the FIR but while she was examined by police during investigation she has stated that the accused persons are close relative and that she has married one of her school friend against the desire of the family members of her father's house and her said family members never accepted her marriage with her school friend. On the date of occurrence at about 8.00 p.m. when she was watching T.V. show, at that time his elder brother who is the petitioner herein and her brother in law (Jamaibabu) Dibakar Bhattacharjee tried to take her forcibly at her father's house denying her marriage and at that time her elder brother Biswajit Roy (petitioner herein) had slapped her and ordered her to return to her father's house along with

them, which she refused. Then on hearing hue and cry adjacent neighbours came to the spot and asked the petitioner and her Jamaibabu to leave the place. She also stated that she was never medically treated as alleged in the FIR.

11. The investigating agency also recorded statements of neighbours who almost corroborated the statement of complainant stating that the petitioners and aforesaid Dibakar Bhattacharya, who are her elder brother and Jamaibabu tried to bring her back to her father's house and then they reached the spot and resisted them to take her to her fathers house, as she was not willing to return to her fathers house.

12. The materials collected during investigation clearly demonstrate that over a family dispute the complainant opposite party no.1 has implicated her elder brother and her brother in law with some omnibus allegations over her marriage dispute and thereby an attempt has been made to misuse the process of law without analysing the long term ramifications of a trial on the accused persons. The materials collected during investigation depicts that the complainant had married against the will of her parental family members who refused to accept such marriage. Her elder brother who is the petitioner herein along with other accused had tried to take her back to her father's house, which she did not agree and lodged the present complaint, which can at best be said to have been made out on account of small skirmishes, which does not warrant prosecution. There appears to be hell and heaven difference in the statement made by the complainant in the FIR with that of statement made while she was examined under section 161 of the Code.

13. The available facts and circumstances manifestly indicates that the criminal proceeding has been instituted with an ulterior motive for wrecking vengeance and the court must ensure while adjudicating an application under section 482 that criminal prosecution be not used as an instrument of harrasment or for seeking private vendetta or with an ulterior motive to pressurize the accused.

14. Above-mentioned category 7 mentioned in Paragraph 102 of **Bhajanlal case (supra)** is clearly attracted in the facts and circumstances of the present case

15. Having regard to the materials available during investigation and relying upon the well settled principle of law as mentioned in the **Bhajanlal case (supra)**, I do not find any ground to continue the prosecution against the petitioner and hence the proceeding is liable to be quahsed qua the petitioner.

16. CRR 930 of 2024 is allowed.

17. The impugned proceeding being Nabadwip P.S. Case no. 507 dated 19.12.2016 corresponding to G.R. Case no. 497 of 2016 presently pending before J.M., Nabadwip, Nadia is hereby quashed as against the present petitioner Biswajit Roy.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)