

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1268 of 2023

Md. Hussain & Another
Versus
The State of West Bengal & Another

For the Petitioners : Mr. Rajdeep Mazumdar, Adv.
Mr. Mayukh Mukherjee, Adv.
Mr. Pritam Roy, Adv.
Mr. Abhijit Singh, Adv.
Ms. Triparna Roy, Adv.

For the O.P. No. 2 : Mr. Bibaswan Bhattacharya, Adv.
Ms. Bindia Paul, Adv.

For the State : Mr. Madhusudan Sur, Adv.
Mr. Dipankar Pramanik, Adv.

Heard on : 27.02.2024

Judgment on : 19.03.2024

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed by the accused persons/petitioners under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceedings in connection with Harishchandrapur Police Station Case No. 71/23 dated 27.01.2023 under Sections 341/195A/34 of the Indian Penal Code corresponding to G.R. Case No. 232 of 2023 and the order dated 23.03.2023 passed in the said proceeding by the learned Chief Judicial Magistrate, Chanchal, Malda, thereby issued Warrant of Arrest against the petitioners in the aforesaid proceeding.

2. The factual matrix of the instant case leading to filing of this application is as under: -

2a. Opposite Party No. 2 is the wife of one Humayun Kabir and their marriage was held on 13.10.2022 as per the Islamic Rites and Rituals. Opposite Party No. 2 alleged that at the time of marriage, cash amounting to Rs. 5,00,000/- as well as other articles were given as dowry to her husband on demand. After passing ten months of their marriage, the husband started torture upon her physically and mentally upon non-fulfilment of further demand of more dowry.

2b. It was further alleged that her husband used to make video of their physical relations to show the outsiders. In addition, he throttled and assaulted to kill her by pouring kerosene oil on her body. Several other allegations are levelled against her husband and other in-laws.

2c. On the basis of her written complaint, Malda Cyber Crime Police Station Case No. 56/22 dated 01.12.2022 under Sections 498A/323/324/325/307/34 of the Indian Penal Code read with Sections 66C/66E/67/67A of the Information Technology Act and 3/4 of the Dowry Prohibition Act was registered against the husband and others.

2d. It has been further alleged that during the pendency of the said aforesaid case, by way of a written complaint alleged that the petitioners and others threatened her with dire consequences. On the basis of said written complaint, another case was further registered as Harishchandrapur Police Station Case No. 71/23 dated 27.01.2023 under Sections 195A/341/34 of the Indian Penal Code against the Petitioner and others though the claim of the petitioners is that the impugned FIR has been lodged falsely, vexatious and fabricated one only in order to harass the petitioners. Petitioner No. 1 is the uncle-in-law of the opposite party no. 2 herein and petitioner

no. 2 is the son of petitioner no. 1 herein. They are no way connected with the instant case. Therefore, they pray for quashing of the aforesaid proceeding. Hence, the instant revisional application has come up before this Court for its disposal.

SUBMISSION ON BEHALF OF THE PETITIONERS:

3. Mr. Mazumdar along with others, appearing on behalf of the Petitioners submitted that the allegations levelled against the present petitioners are out and out false. No such incident took place ever with the complainant. She lodged this complaint, when the petitioners obtained bail under Section 439 of the Code of Criminal Procedure from the Hon'ble High Court on 05.01.2023 in earlier case, Malda Cyber Crime Police Station Case No. 56/22 dated 01.12.2022, lodged by Opposite Party No. 2 and they were released from custody on 07.01.2023.

3a. It is further submitted that accusation, whatsoever made by the Opposite Party No. 2/wife, does not fall under Sections 195A/341/34 of the Indian Penal Code. Despite of the fact, the police authority has lodged an FIR against the present petitioners under Sections 195A/341/34 of the Indian Penal Code. At the same time, the police, even after thorough investigation, unable to collect any materials against the present petitioners to establish a prima facie

case under Sections 195A/341/34 of the Indian Penal Code. When the offence has not been committed under those sections, the entire proceeding is required to be quashed to secure the end of justice otherwise it would be an abuse of process of law and that should not be continued any further. To bolster his contention, the learned counsel appearing on behalf of the petitioners placed a reliance of a decision passed in ***Salib alias Shalu alias Salim vs. State of U.P. and Others***¹.

3b. It is further submitted that if FIR as well as Charge Sheet be considered in entirety even then that does not fulfil the ingredient of the offences as alleged or make out a case against the accused persons/petitioners herein. In support of his contention, he placed a reliance of a judgment passed in ***State of Haryana and Others Vs. Bhajan Lal and Others***² and particularly mentioned the instant case falls within the Category I, which has been stipulated in the said judgment as such only on that score the entire proceeding is liable to be quashed.

¹ 2023 SCC OnLine SC 947.

² 1992 Supp (1) Supreme Court Cases 335

SUBMISSION ON BEHALF OF THE STATE:

4. Mr. Sur with Mr. Pramanick, learned counsels appearing on behalf of the State produced the Case Diary and strenuously submitted that the accused persons have continuously threatened her to withdraw the previous case with dire consequences that they would kill her. He further referred the statement of the witnesses recorded under Section 161 of the Cr.PC as well as the complainant from where it transpires that the petitioners had threatened the complainant when she was going from Harishchandrapur to Malda, when both the accused persons threatened her with dire consequences to kill her if she would not withdraw the previous case filed against them. She further stated in her statement that on 8th January, 2023 when her brother went to Islampur for his work, the accused persons had threatened him to kill. In support of her statement, the other witnesses have also narrated the similar incident to corroborate the same. Accordingly, a prima facie case has been established against the present petitioners. As such, the instant criminal revisional application is required to be dismissed with costs.

SUBMISSION ON BEHALF OF THE OPPOSITE PARY NO. 2:

5. Mr. Bhattacharya with Ms. Paul learned counsels, on the other hand, appearing on behalf of the Opposite Party No. 2 vehemently

argued and submitted that the accused persons are very notorious and they had threatened to the opposite party no. 2 with dire consequences and asked her to withdraw the earlier case lodged by the opposite party no. 2 under Sections 498A/323/324/325/307/34 of the Indian Penal Code read with Sections 66C/66E/67/67A of the Information Technology Act and 3/4 of the Dowry Prohibition Act. Not only that they are continuously threatening her. During investigation, sufficient materials have been collected against them to establish a prima facie case and when the prima facie case established against the petitioners, then this Court may dismiss the revisional application at threshold.

DISCUSSIONS, ANALYSIS AND CONCLUSION BY THIS COURT:

6. Having heard the submissions of the parties and upon careful perusal of the FIR, Charge Sheet and judgment referred by the petitioners, it reveals a written complaint was lodged by one Hamina Khatun, opposite party no. 2 to the effect that several times the accused persons threatened to the complainant as well as her brother with dire consequences to kill them if they would not withdraw the case vide Malda Cyber Crime Police Station Case No. 56/22 dated 01.12.2022 under Sections 498A/323/324/325/307/34 of the Indian Penal Code read with

Sections 66C/66E/67/67A of the Information Technology Act and 3/4 of the Dowry Prohibition Act. After conclusion of investigation, a charge sheet was submitted against the present petitioner and others being Charge Sheet No. 330/2023 dated 20.04.2023 under Sections 195A/341/34 of the IPC. Upon perusal of the statements recorded under Section 161 of the complainant and other witnesses, it is found similar statements were recorded as similar as written complaint. But the question remains here whether allegations levelled by the complainant constitute offences or fulfilled the ingredients under Sections 195A/341/34 of the IPC.

7. For the sake of ready reference and to ascertain the ingredients of the Sections 195A/341/34 of IPC, those Sections are extracted below one by one as under:

“S. 195A. Threatening any person to give false evidence. - Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both; and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such

innocent person is punished and sentenced.

S. 341. Punishment for wrongful restraint. -

Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

S. 34. Acts done by several persons in furtherance of common intention. - When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

8. Upon careful perusal of all these sections, this Court finds the allegations levelled by the complainant and materials collected during the investigation do not constitute any offence punishable under Sections 341/195A/34 of the IPC because the judgment placed reliance by the learned counsel for the petitioners in ***Salib alias Shalu alias Salim vs. State of U.P. and Others*** is squarely applicable in the instant case because to give threat to a person to withdraw a complaint or FIR or settle the disputes would not attract the Section 195A of the IPC. Furthermore, materials regarding restraining the complainant or her brothers are absent in written complaint or material collected during the investigation. Accordingly, Section 341 is also not attracted.

9. When allegations/ingredients about the main offence are not attracted or fulfilled, the question of Section 34 for acts done by several persons in furtherance of common intention does not arise at all. The Hon'ble Supreme Court in the aforesaid referred case observed in Paragraph Nos. 15, 16, 17, 18 and 19 as under:-

“15. There is a different angle to this matter. It appears that the investigating agency has invoked Section 195A of the IPC. Section 195A of the IPC reads thus :-
“Section 195A. Threatening any person to give false evidence.— Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both; and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.”

16. A plain reading of the aforesaid provision indicates that if any individual is threatened with any injury to his person, reputation or property and such threats are administered with intent to cause that person to

give false evidence, the same would constitute an offence under Section 195A of the IPC. In our opinion, none of the ingredients to constitute the offence punishable under Section 195A of the IPC are disclosed, on plain reading of the FIR and the further statement of the first informant including the statement of the so-called eye witness. The allegation in the FIR is that the accused persons threatened and pressurised the first informant to withdraw her first FIR bearing No. 122 of 2022 registered for the offences punishable under Sections 376D, 323, 120B, 354A and 452 of the IPC. There is nothing to indicate that the accused persons threatened the first informant with intent that the first informant gives false evidence before the Court of law. The later part of Section 195A makes it very clear that false evidence means false evidence before the Court of law. On such false evidence if a person is convicted and sentenced, then the person found guilty of administering threats would be liable to be punished with the same punishment and sentence in the same manner and to the same extent as such innocent person is punished and sentenced. The word “false” in Section 195A should be read in the context with what has been explained in Section 191 of the IPC which falls in Chapter XI – of False Evidence and Offences Against Public Justice. Thus, even if we believe the allegations levelled in the FIR to be true, none of the ingredients to constitute the offence punishable under Section 195A

are disclosed. To give threat to a person to withdraw a complaint or FIR or settle the dispute would not attract Section 195A of the IPC.

17. In the aforesaid context, we must look into Section 195A of the Code of Criminal Procedure (CrPC). Section 195A of the CrPC reads thus: -

“Section 195A. Procedure for witnesses in case of threatening, etc.—A witness or any other person may file a complaint in relation to an offence under section 195A of the Indian Penal Code (45 of 1860).”

18. The plain reading of the aforesaid provision indicates that if a witness or any other person receives threats and such threats are administered with an intent to cause that person to give false evidence before the Court, then such witness or person can file a complaint in relation to the offence under Section 195A of the IPC. It goes without saying that such complaint has to be lodged before the Court recording the evidence. Section 195A of the CrPC provides a remedy of filing a complaint. “Complaint” means as defined under Section 2(d) of the CrPC which reads thus:-

“Section 2(d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation. —A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;”

19. We are conscious of the fact that Section 195A of the IPC is a cognizable offence. In a cognizable offence, police has power to investigate. We are not going into the question whether the bar of Section 195 of the CrPC would apply to Section 195A of the IPC as we have taken the view that none of the ingredients to constitute the offence punishable under Section 195A of the IPC are disclosed in the facts of the present case.”

Accordingly, in the present case also, none of the ingredients fulfil to constitute the offence punishable under Sections 195A/341/34 of the IPC.

10. Furthermore, another judgment relied by the petitioners in ***State of Haryana and Others Vs. Bhajan Lal and Others*** is also squarely applicable in the present case in hand because upon perusal of the FIR or materials collected during investigation, a prima facie case has not been constituted/established under Sections 195A/341/34 of the IPC against the present petitioners. It is fallen in

the Category-I stipulated in Paragraph 102 of the said judgment as under:

“102. This Court in the backdrop of interpretation of various relevant provisions of CrPC 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to 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 Act concerned (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 Act concerned, 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.”

11. In the light of above discussions, analysis and in view of the observations made by the Hon’ble Supreme Court, this Court is of the considered view that the proceeding against the present petitioners is deemed an abuse of process of law because the allegations levelled against the petitioners do not constitute an offence under Sections 341/195A/34 of the IPC. Consequently, this Court can exercise inherent power under Section 482 of the Cr.PC to quash the proceeding to secure the end of justice.

12. In such a situation, the proceeding in connection with Harishchandrapur Police Station Case No. 71/23 dated 27.01.2023 under Sections 341/195A/34 of the Indian Penal Code (corresponding to G.R. Case No. 232 of 2023) is hereby quashed with regards to the present petitioners, namely, Md. Hussain and Md. Ejaz Ahmed. Order for Warrant of Arrest, issued by the learned Court against the present petitioners, namely, Md. Hussain and Md. Ejaz Ahmed, is also set aside.

13. Accordingly, **CRR 1268 of 2023** is, thus, allowed without order as to costs. Connected applications, if any, are also, thus, disposed of.

14. Let a copy of this judgment and order be sent to the learned Court below for information.

15. Case Diary is to be returned to the learned counsel for the State.

16. Interim order, if any, stands vacated.

17. Parties shall act on the server copies of this order uploaded on the website of this Court.

18. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)