

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1640 of 2022

HARASUNDAR MALLICK

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Sourav Prasanna Mukherjee.

For the State : None.

For the Opposite Party No. 2 : None.

Hearing concluded on : 13.12.2024

Judgment on : 13.12.2024

SHAMPA DUTT (PAUL), J. :

1. Learned counsel for the opposite party no.2 has chosen not appear in spite of appearing in this case on a prior date being 14.11.2024 and also on being informed by the learned counsel for the petitioner. As such, the matter is taken up for hearing *ex parte*.
2. The present revisional application has been preferred against an order dated 12.04.2022 passed in CR Case No.908C of 2016 by the learned Judicial Magistrate, 5th Court, Bankura vide which the learned Magistrate has rejected the prayer for discharge of the petitioner.
3. The complaint in the present case has been initiated by the President of the Managing Committee of Bhulanpur High School in Bankura by way of a petition of complaint dated 26.07.2016 filed before the Chief Judicial Magistrate under Section 156(3) of Cr.P.C. The said complaint has been registered against the sole accused/the petitioner herein who was the Headmaster of the School at the relevant point of time. The allegations as made in the written complaint are as follows:-

“.....There is no Managing Committee in the school between 2011 to 2015. We apprehend that taking the advantage of absence of Managing Committee in the School, the Headmaster has misappropriated those government grants which amounts to around

Rs.46,00,000/- as on date. Repeated request for clarifying all these anomalies by the headmaster became futile. The headmaster is absent from his duty since more than one month. Meanwhile or our prayer an enquiry was initiated by D.I. of Schools (S.E), Bankura. I filed a photocopy of the enquiry report dated 17.06.2016. The enquiry remained incomplete. Meanwhile getting no redressal we informed the matter to the B.D.O Onda Block, to the D.I. of Schools and other Officers of the District Administration.....”

4. Relevant documents have been annexed to the revisional application. It appears that the specific allegation against the petitioner is regarding misappropriation of government funds received towards Mid-day Meal in school during the period from 2011 to 2015.
5. The letter dated 19.01.2012 issued by the Deputy Secretary (General) of the West Bengal Board of Secondary Education(for short ‘WBBSE’) addressed to the Teacher-in-Charge of Bhulanpur High School, Bankura reads as follows:-

“.....I am directed to convey the order of the President, West Bengal Board of Secondary Education appointing Sri Manik Chandra Ghanta, Assistant Inspector of Schools, Sadar Sub-Division, Bankura to act as Administrator of Bhulanpur High School, P.O.- Jamjuri, Dist. – Bankura.

The order of the President dated 17-01-2012 is reproduced below:-

*"I have considered the report of the District Inspector of Schools (SE). Bankura bearing no. 3000/S dated **09.09.11** and recommendation received from the Director of School Education, West Bengal, vide memo no. 1004-SC/G dated 12.12.2011 on the affairs of Bhulanpur High School, P.O.- Jamjuri, Dist.- Bankura. and other papers in the file in this regard.*

*It is observed from the report of the District Inspector of Schools (SE), Bankura that the term of the Managing Committee is valid upto 04.01.2014. **But all the members from the Managing Committee have tendered their resignation. At present, the Managing Committee has lost its representative character and an administrative deadlock has been created in the school.***

In the above situation, I am decidedly of the view that an emergency has arisen in the affairs of the school. Hence to safeguard the interest of the institution, prompt action is called for.

*In consideration of the facts and circumstances aforesaid, I, President, West Bengal Board of Secondary Education, **in exercise of the powers conferred upon me under Section 28(2) of the West Bengal Board of Secondary Education Act, 1963, as amended, read with Clause 8 (1a) of Rules for the Management of Recognised Non-Government Institutions (Aided & Unaided), 1969, as amended, hereby appoint Sri Manik***

Chandra Ghanta, Assistant Inspector of Schools, Sadar Sub-Division, Bankura to act as Administrator of Bhulanpur High School, P.O. - Jamjuri, Dist.- Bankura, for a period of one year from the date of assumption of charge of the school or till completion of the reconstitution of the Managing Committee of the school with the election of office-bearers, or until further orders, whichever is earlier, to fill up the administrative vacuum with immediate effect.

The Administrator so appointed will assume charge of the school forthwith and exercise powers and perform the functions of the Managing Committee including the power to operate the Bank & Postal Accounts standing in the name of the school.

The Administrator shall take steps towards the reconstitution of the Managing Committee in accordance with the provisions of Management of recognised Non-Govt. Institutions (Aided & Unaided), Rules, 1969, as amended, from time to time and under Government Notification No.855-Edn.(S) dtd.23-12-80 and instructions issued by the Board from time to time in this regard, within the tenure of his appointment.

The Administrator of the school will also take steps for the formation of Staff Council & Academic Council, as contemplated under Rules 29 & 30 of the Rules for Management of the recognised Institutions (Aided & Unaided) 1969, as amended, to advise him in the

matter of smooth and proper functioning of the Institution.

This order will not be applicable if any contrary order from the Hon'ble Court prevails.

On assumption of charge the Administrator will send a report on the affairs of the school."

You are, therefore, requested to contact the Administrator appointed under this order and assist him/her in assuming charge of the school and send a report to this office regarding assumption of charge of the school by the Administrator....."

6. **Vide an order dated 09.04.2015 the Joint Secretary to the Government of West Bengal, School Education Department, Secondary Branch issued an order vide which nominees of the department and Directorate of School Education were appointed as members of the Committee of Bhulanpur High School being converted into a Government Sponsored School vide notification dated 30.09.2013.**
7. **It is thus clear that during the period alleged, Administrator appointed by the WBBSE vide letter dated 19.01.2012 and the order of the Joint Secretary, School Education Department dated 09.04.2015 prima facie show that the school was being run by the Administrator appointed by the said Department and the petitioner was no way concerned**

with the running of the school and as such the question of prima facie defalcation for the period alleged does not arise.

8. The complainant has also chosen not appear and contest the instant case.

9. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in **State of Karnataka v. L. Muniswamy (1977) 2 SCC 699** held that*

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. In para 7 of the judgment, the following has been stated :

‘7. ... 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.’

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 1992 Supp (1) SCC 335. 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 fides 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 1992 Supp (1) SCC 335 which is to the following effect :

‘102. (7) Where a criminal proceeding is manifestly attended with mala fides 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 1992 Supp (1) SCC 335 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.”

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :*

“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.”

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.**

- 10. The present case falls under clause 3 and 7 of *Para 102 of Bhajan Lal (Supra)*.**
- 11. Accordingly, the order dated 12.04.2022 passed in CR Case No.908C of 2016 by the learned Judicial Magistrate, 5th Court, Bankura is hereby set aside and the entire proceeding being CR Case No.908C of 2016 in the Court of the learned**

Judicial Magistrate, 5th Court, Bankura is hereby quashed, in respect of the petitioner namely Harasundar Mallick.

- 12. CRR 1640 of 2022 thus stands disposed of.**
- 13.** All connected application, if any, stands disposed of.
- 14.** Interim order, if any, stands vacated.
- 15.** Let a copy of the Judgment be sent to the learned trial court at once.
- 16.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]