

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1134 of 2019

Luna Das (Mondal)

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Jayanta Kr. Biswas,
Ms. Tanuja Sarkar.

For the State : None.

For the Opposite Party No. 2 : Mr. C. Das,
Mr. Altaf Hossain.

Hearing concluded on : 11.01.2024

Judgment on : 25.01.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceeding being Misc. Case No. 48 of 2016 (T.R. 762 of 2016) under Sections 193/197/199 of the Indian Penal Code pending in the Court of the Learned Judicial Magistrate, 10th Court, Alipore, South 24 Parganas.
2. **FACTS:-**

The petitioner states that the petitioner and opposite party no. 2 got married following Hindu rites and rituals on 10.05.2004.
3. Out of the said wedlock a female child and a male child were born on 23.03.2007 and 16.11.2009 respectively.
4. As the petitioner was subjected to torture in her matrimonial home by the inmates which became unbearable, she was compelled to leave her matrimonial house and lodge an complaint with the Bishnupur Police Station against the opposite party no. 2 and others.
5. Said First Information Report gave rise to Bishnupur Police Station Case No. 141 of 2013 dated 16.03.2013 under Sections 498A/406/34 of the Indian Penal Code against the opposite party no.2 and others.
6. The Investigating Agency in course of investigation, searched the house of the opposite party no.2 and seized certain articles from his house after preparing a proper seizure list dated 16.03.2014 as complained of.

7. The petitioner filed an application under Section 125 of the Code of Criminal Procedure being S.C. No. 429 of 2014 praying for maintenance to the tune of Rs. 10,000/- for herself and Rs. 15,000/-for her minor children.
8. During the pendency of the said application, **the opposite party no.2/husband filed an application** in the Court of Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas being Misc. Case No. C-48 of 2016 under Section 200 read with Sections 340/195(1)(a)/195(1)(b) of the Code of Criminal Procedure for alleged commission of offence punishable under Sections 193/197/199 of the Indian Penal Code against the petitioner.
9. The petitioner states that the order passed by Learned Magistrate asking the petitioner to appear before the Learned Court on the basis of the application filed by the opposite party no. 2 and the deposition thereof is devoid of any reasoning indicating satisfaction of the Learned Magistrate.
10. Hence the revision.
11. **The case as made out in the petition of complaint by the opposite party no. 2 herein,** is that it appears from the application U/sec 125 Cr.P.C. along with ad-interim maintenance application that the petitioner herein/wife served, contained false statements made with an ulterior motive for her illegal gain, knowing fully well that all those statements are false.

- 12.** It is stated in the complaint that the opposite party therein/wife made a statement in Para 6 of the said application, as follows:-

“The petitioner/wife had already filed an application under Section 498A I.P.C. and the opposite party/husband and his in-laws are now on bail and that police has already filed charge sheet against them.”

- 13.** It is further stated that the opposite party/wife made all those false statements knowing fully well that there is no such case pending against the petitioner/husband and others. And if there was any such case pending then she should have disclosed and/or submitted the case number to the Ld. Court.

- 14.** It is also stated that the opposite party/wife also made a statement in Para 7 of her said application that:-

“The petitioner/wife now reside in her father’s house since the said incident, facing financial crisis and has no sufficient income to maintain herself and her two male child.”

- 15.** It is thus stated in the complaint that, the opposite party/wife made all those false statements regarding her income, with an ulterior motive for her illegal gain, as she is a school teacher of Amtala Nevadita Balika Vidyalaya (H.S.) and presently gets a salary of Rs. 35,000/- or more per month.

- 16.** The complainant also states that the opposite party/wife also has an illegitimate male child, and knowing fully well that said male child is not the petitioner’s child but with an ulterior motive, the opposite party/wife

also claimed maintenance for her illegitimate male child from the petitioner.

- 17.** It is further stated in the complaint that the opposite party/wife made many false statements as well as false affidavit before the Ld. Court with an ulterior motive for her illegal gain knowing fully well that she concealed the truth. As such it was stated that she has committed an offence which is punishable under Section 193 I.P.C.
- 18.** That as the opposite party/wife has made all those false statements before the Ld. Court suppressing the truth with an intention to obstruct justice, it was alleged that the opposite party committed offences punishable under Sections 193/197/199 of the Indian Penal Code.

19. FINDINGS:-

On hearing both sides and considering the materials on record, it appears that the deposition of the opposite party no. 2 herein/complainant is at page 40 to the revisional application and there in, on oath, he has admitted that his wife/the petitioner herein has filed a criminal case under Sections 498A/406 of I.P.C. **Thus it appears that the statements at paragraph 6 of the petition of complaint filed by the opposite party no. 2 is not correct.**

- 20.** The order in Criminal Motion 15/2022 dated 19.07.2023, passed by the Learned Additional Sessions Judge, 18th Court, South 24 Parganas, Alipore, also notes the registration of a case under Section 498A of I.P.C.

- 21.** The Court also dismissed the prayer of the opposite party no.2/husband herein by holding that he **did not file any documents** in support of his prayer that the petitioner/wife herein is a teacher and that the said matter was to be decided during trial.
- 22.** From the orders dated 23.02.2017 and 18.05.2017 in ACM 429/14 pending before the Learned Judicial Magistrate, 10th Court, Alipore, it appears that the learned advocate on behalf of the petitioner has admitted that she is a teacher but as it had not been mentioned in the application under Section 125 Cr.P.C., **an amendment was sought to be made** and the said petition for amendment is pending.
- 23.** The opposite party no. 2/husband also prayed for rejection of the said application under Section 125 Cr.P.C. on the said ground and the same was rejected by the trial and also the revisional Court on the findings that the said matter was subject to trial.
- 24. The present case** has been registered against the petitioner/wife under Sections 193/197/199 of I.P.C. on the basis of a complaint filed by opposite party no. 2/husband herein.
- 25. Section 193 I.P.C., lays down:-**

“193. Punishment for false evidence.-Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with

imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.– A trial before a Court-martial is a judicial proceeding.

Explanation 2.–An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Explanation 3.– An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Ingredients of offence.–The essential ingredients of the offence under Section 193 are as follows:–

- (1) The accused was legally bound to state the truth either by an oath or an express provision of law;
- (2) The accused made the declaration in question;
- (3) Such declaration or statement was made in a stage of judicial proceeding;
- (4) The statement or declaration so made was false;
- (5) The accused knew it to be false or believed it to be false or did not believe it to be true;
- (6) The accused made such false statement intentionally.”

26. Section 197 I.P.C., lays down:–

“197. Issuing or signing false certificate.–Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Ingredients of offence. –The essential ingredients of the offence under Section 197 are as follows:–

- (1) The accused issued or signed a certificate;
- (2) Such certificate was required in law to be issued or signed;

- (3) It related to admission of a fact;
- (4) It is legally admissible in evidence;
- (5) The certificate is false on material particulars;
- (6) The accused knew or had reason to believe that it was false.”

27. Section 199 I.P.C., lays down:-

“199. False statement made in declaration which is by law receivable as evidence.- Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching upon any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Ingredients of offence.-The essential ingredients of the offence under Section 199 are as follows:-

- (1) Accused made or superscribed a declaration;
- (2) A Court, public servant or other person was bound or authorised by law to receive such declaration in evidence;
- (3) Accused made a statement in such declaration;
- (4) Such statement was false;
- (5) Such statement was material to the object for which the declaration was made;
- (6) Accused knew that it was false.”

28. CONCLUSION:-

On careful perusal of the materials on record and the discussion made earlier in this order, it is evident that the ingredients required to constitute the offences alleged are clearly absent in respect of the petitioner here in and **the said case appears to have been made, only out of grudge and vengeance against his (separated) wife who**

has not only initiated proceedings under Section 498A I.P.C. but also claimed maintenance.

29. 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.**”*

30. **The petitioner’s case clearly comes under clause 7 of Para 102 in *Bhajan Lal (Supra)* and as such, this is a fit case where the inherent powers of this Court should be exercised to prevent abuse of the process of law and also in the interest of justice.**

31. **CRR 1134 of 2019 is thus allowed.**

32. The proceeding being Misc. Case No. 48 of 2016 (T.R. 762 of 2016) under Sections 193/197/199 of the Indian Penal Code pending in the

Court of the Learned Judicial Magistrate, 10th Court, Alipore, South 24 Parganas, **is hereby quashed in respect of the petitioner.**

- 33.** All connected applications, if any, stand disposed of.
- 34.** Interim order, if any, stands vacated.
- 35.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 36.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)