

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 1262 of 2017

Shri Harish Kumar Himatsingka

Vs.

The State of West Bengal & Anr.

For the Petitioner	:Mr. Ayan Bhattacharjee, Adv.
	Mr. Arpit Choudhury, Adv.
	Mr. Anil Choudhury, Adv.

For the State	:Mr. Faria Hossain, Adv.
	Ms. Mamata Jana, Adv.

Heard on	:18.01.2024, 17.01.2024, 30.11.2023,
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Judgment on	: 5th February 2024
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Bibhas Ranjan De, J.

1. The petitioner has preferred the instant revisional application with a prayer for quashing of the proceedings in connection with G.R. Case no. 4447 of 2011 arising out of Berhampore Police Station case no. 991 of 2011 dated 04.09.2011 under Sections 341/506/427/354/45 of the Indian Penal Code (for short IPC) pending before the Court of Learned Judicial Magistrate (for short J.M.), 3rd Court, Berhampore, Murshidabad.
2. Complainant / opposite party no. 2 herein submitted one application under Section 156(3) of the Code of Criminal Procedure (for short CrPC) alleging, *inter alia*, that accused/petitioner herein is a tenant under the complainant/opposite party no. 2 and the complainant was to receive a due amount of Rs. 21,31,200/- as arrear rent for 37 months. Hereinafter the complainant/opposite party no. 2 received the information that the petitioner forcefully broke the boundary wall on the western side of the said plot and constructed a shutter in order to make obstruction. When the petitioner along with some associates confronted the opposite party no. 2, he was subjected to abusive language and

physical harassment. The accused even assaulted the wife of the complainant with the intent to outrage her modesty and threatened the complainant and his associates with dire consequence of death. It has been further alleged that in the mean time, one of the associates of the petitioner snatched Rs. 5000/- out of the pocket of the opposite party no. 2 and fled. On 10.06.2011 the complainant informed the local Police Station about the whole incident but did not get any fruitful feedback. Afterwards on 13.06.2011 he informed the Superintendent of Police of Murshidabad about the same but still got not remedy. Being aggrieved, the complainant filed the instant application and the Ld. Magistrate was pleased to accept the same and referred it to the Jurisdictional police Station to investigate the case.

3. After investigation charge sheet was submitted against five accused including the petitioner to face trial under Section 341/506/427/354/34 of IPC.

Argument advanced:-

4. Ld. Counsel Mr. Ayan Bhattacharjee , appearing on behalf of the petitioner in course of argument, has submitted that there is landlord and tenant relationship between the parties and

the instant proceeding was put into motion with a view to evict the petitioner from the tenanted premises. It is further contended that no such incident ever happened at the instance of the petitioner. Mr. Bhattacharjee further submitted that the provision of Section 154 (1) and 154 (3) was not complied with within the meaning of ratio handed down by the Hon'ble Apex Court in ***Priyanka Shrivastava vs. State of U.P. reported in (2015) 6 SCC 287***

5. In support of his contention, Mr. Bhattacharjee relied on the following case ***Haji Iqbal @ Bala Through S.P.O.A Vs. State of U.P. & Ors*** reported in ***2023 SCC OnLine SC 946***
6. Ld. Counsel Ms. Faria Hossain, appearing on behalf of the State has relied on the investigation particularly the evidence collected therein against the accused/petitioner and it is submitted that written complaint clearly suggests prima facie commission of offence required to be adjudicated at the time of trial not at the threshold.

Analysis:-

Factual aspects:-

7. It is not disputed that petitioner is a tenant under opposite party no. 2 herein in respect of a showroom named as Laxican

Motor beside National Highway-34. It is alleged in the complaint that there was huge amount of arrear rent due to complainant. Therefore, relationship between the petitioner and opposite party no. 2 cannot be said to be a pleasant one.

8. According to written complaint on 25.05.2011 at about 5 p.m. the opposite party no.2, after getting an information regarding installation of shutter on the western side wall of the said plot confronted the petitioner. It is alleged that petitioner and his main assaulted the opposite party no. 2 and outraged the modesty of his wife and also snatched 5000/- rupees out of the pocket of the opposite party no.2 and fled away.
9. Therefore, genesis of the case is unlawful installation of a shutter on the western side wall of the plot.
10. In ***Haji Iqbal*** (supra) Hon'ble Apex Court observed in paragraph 15 as follows:-

“ 15. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a

*duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. **The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.** Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”*

- 11.** In the case at hand, police investigated the alleged offence and recorded statement of three witnesses under Section 161 of CrPC. During investigation police also prepared

a rough sketch map with index. Among the three witnesses wife of opposite party no. 2 stated illegal capturing of land and construction of road. Brother of complainant/opposite party no. 2 herein stated also capturing of land and construction of a gate. The other witness (not related) stated about construction of a road on the other land of complainant/opposite party no. 2.

12. Genesis of the case is the capturing of land but during investigation I do not find any single material to substantiate such allegation. Moreover, sketch map with index shows only place of occurrence beside the National Highway-34 and existence of showroom of Lexican Motor, office room of Lexican Motor and service centre only. Nothing regarding the capturing of land through construction of shutter and a road is appearing in the sketch map with index. Not only that, the allegation of theft of Rs. 5000/- could not be ratified during investigation.

13. That apart, allegation made in the complaint is about obstruction of land by constructing a shutter whereas during investigation it reveals that the petitioner captured other land of complainant by constructing road and gate. That apart,

there is nothing about specific role of any particular accused in committing offence alleged in this case. Evidence collected during investigation did not disclose role of any particular accused in commission of the alleged offence. Besides, allegation of snatching of Rs. 5,000/- from the pocket of opposite party no. 2 herein was also found ***ipse dixite***.

- 14.** In the background of strained relationship between the parties thereby filing of criminal proceeding out of personal grudge, cannot be ruled out.

Legal aspects:-

- 15.** In ***Priyanka Shrivastava*** (supra) Hon'ble Apex Court laid down the principle on taking cognizance of an offence alleged in a petition under Section 156(3) of CrPC without complying the Provision of Section 154(1) and 154 (3) of CrPC. Hon'ble Supreme Court observed as under:-

“ 30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass

certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. *We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”*

- 16.** In this case, though compliance of Section 154 (1) and 154(3) has been stated but there is nothing mentioned about such compliance in the affidavit of the application under Section 156 (3) of the CrPC. Therefore, Direction of the Hon’ble

Apex Court in **Priyanka Shrivastava** (supra) has not been complied with in the case at hand.

Conclusion:-

17. The entire unsubstantiated complaint proffered by the opposite party no.2 on the face of it, appears to be fabricated for wreaking vengeance. At this juncture, I find it profitable to refer the parameters laid down by the Hon'ble Apex Court for quashing of an FIR in a case of **State of Haryana Vs. Bhajanlal, Air 1992 SC 604** as follows:-

“(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.”

18. I am of the view that, in the case at hand, the case of the complainant/opposite party no. 2 herein falls within the parameters no. 3 & 7 of **Bhajanlal** (supra).
19. Having given my careful thought to the bold allegation made in the application under Section 156(3) of CrPC *vis-a-vis* the evidence collected during investigation and the fact that the investigation ended without any findings regarding the genesis of the allegation, I am inclined to exercise the jurisdiction under Section 482 of CrPC for quashing the proceeding.
20. As a result, the proceedings in connection with G.R. Case no. 4447 of 2011 arising out of Berhampore Police Station case no. 991 of 2011 stands quashed.
21. The revision application being no. CRR 1262 of 2017 stands allowed.
22. Case diary be returned.
23. Interim order, if there be any, stands vacated.
24. All pending applications stand disposed of accordingly.

- 25.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 26.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]