

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1599 of 2023

with

CRAN 2 of 2024

Partha Sarathi Bhowmick

Vs

Smt. Purnima Panja & Anr.

For the Petitioner : Mr. Sabir Ahmed,
Mr. Dhiman Banerjee,
Mr. Ezoz Ahmed.

**For the Opposite
Party No. 1** : Mr. Pradyat Saha,
Ms. Sanjana Rawat.

Hearing concluded on : 27.11.2024

Judgment on : 05.12.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceedings, being C.R. Case No. 204 of 2017, pending before the learned Judicial Magistrate, 5th Court, at Serampore, Hooghly.
2. The petitioner's case is that he was employed as Sub-Inspector of Police in Serampore Police Station in the year 2017 and while he was discharging his official duty, he has been falsely implicated in a complaint case initiated at the behest of the opposite party no. 1 herein for alleging commission of offence under Sections 324 /341 /354 /354B /506 /509 /34/120B of the Indian Penal Code.
3. The petitioner states that one Sujay Basu filed an application under Article 226 of the Constitution of India before the Hon'ble Court being WP No. 24936 (W) of 2016 and the said writ application came up for hearing on 07.12.2016 and after hearing the learned Advocates for the parties, the court was pleased to direct the respondent/licensee to provide electric connection to the writ petitioner according to his application within a period of four (4) weeks of communication of the order upon compliance of all formalities. The directions were passed upon the Officer-in-Charge of the local Police Station to render all necessary assistance to the respondent/licensee if requested to do so by them to assist for then implementation of the order.
4. Another writ application was filed by said Sujay Basu, being W.P. No. 90389(W) of 2016, before the Hon'ble Court alleging atrocities on the part of the respondent and inaction on the part of the police authorities. The

said writ application came up for hearing on 05.01.2017 wherein the court was pleased to observe that:-

“..... it shall be open to the writ petitioner to seek police help for implementation of the order passed by the learned Civil Court, in the event there is breach or violation of the said order at the behest of the private respondent by taking out appropriate proceeding before the learned Civil Court, which is in seisin of the matter. Furthermore, if the action of the private respondent constitutes punishable offence or act of apprehension of breach of public peace and tranquility in the locality, it shall also be open to the writ petitioner to initiate appropriate proceeding in accordance with law. Not only to mention that lawful order passed by the said judicial authority shall be implemented by the police authorities in accordance with law so as to extend free egress and ingress of the petitioner to the tenanted premises.....”

5. It is further stated that the said Sujay Basu on having got the said orders of the Hon'ble Court and in subsistence of the said orders, the District Engineer, Serampore, CESC Ltd. by a letter dated 27.02.2017 addressed to the Inspector-in-Charge of the local Police Station asked for necessary police assistance. The petitioner then along with the subordinate officers and staff went to the premises no. 91/92/E, Raja Rammohan Sarani (Kumirjola Road), Post Office-Mallickpara, P.S. Serampore, District-Hooghly, Pin-712203 to assist the CESC officials for compliance of the order dated 07.12.2016 passed by the Hon'ble court.
6. Thereafter, the officials of the CESC Limited effected connection, when the opposite party no. 1 has raised objection and prevented the petitioner from carrying out the solemn order of the Hon'ble Court.
7. The petitioner states that on 04.03.2017, the petitioner while discharging his official duty pursuant to the order dated 07.12.2016 passed by the Hon'ble Court in W.P. No. 24936(W) of 2016 and order dated 05.01.2017

passed in W.P. No. 90389(W) of 2016 wherein the direction was to maintain the public peace and tranquility in the locality, the petitioner to discharge his official duty went there and found that the complainant/opposite party no. 2 has been preventing the officials of the CESC Ltd. from carrying out their duty. The opposite party then initiated the present case against the petitioner.

8. The petitioner states that he was deputed by the Inspector-in-Charge, Serampore P.S. to carry out the said act as directed by the Hon'ble Court.
9. The opposite party has filed his affidavit-in-opposition and has vehemently opposed the prayer for quashing of the petitioner stating that the dispute is to be decided in trial.
10. The petitioner has relied upon the judgment of the Calcutta High Court in ***Golakpati Mahato vs. State of West Bengal, 1980 0 Supreme(Cal) 53, Criminal Revision No. 1875 of 1984, decided on February 23, 1980,*** wherein it has been held:-

"9. But the learned Counsel for the petitioner has contended that the accused/petitioner (Receiver) is protected in view of the provisions contained ss. 78 and 79 of the Indian Penal Code and that no prosecution lies against him in view of the bar under s. 197 of the Code of Criminal Procedure. In support of his contentions, he has relied upon two decisions of this Court reported in (1) 59 CWN 481 (Banwarilal Aganvala v. Sudhmnoy Basu) and (2) 1982 (1) CHN 470 (Rambadan Choubey v. State).

10. Section 78 of the Indian Penal Code reads as follows:

"Nothing which is done in pursuance of or which is warranted by the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Cant may have had no jurisdiction to pass

such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction"

11. Section 79 of the Indian Penal Code reads as follows:-

"Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it."

12. Section 197(1) of the Code of Criminal Procedure read as follows:

"(1) When any person who is or was a Judge or Magistrate, or a public servant not removable from his office have by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government.

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs or a State, of the State Government".

13. In 59 CWN 481, it was held that the Rule requiring leave of the Court to sue a Receiver is an ancient rule based, not on any statutory authority but on reasons of public policy. For all practical purposes, the Rule has become a part of the law of the land. Its application is not limited to suits, strictly so called, but also extends to other legal proceedings.

14. In 1982 (1) CHN 470, it was held that the receiver carried out the order of the Court which appointed him as such and, Therefore, it is necessary first to draw the attention of the Court

concerned which appointed him Receiver that his appointment is of no legal effect after the decisions of the Supreme Court and get discharge of the Receiver and not straightaway to prosecute him without obtaining consent of the Court concerned.

15. I am in respectful agreement with the decisions reported in the cases relied on by the learned Counsel for the petitioner I hold That a Receiver appointed by a Court is entitled to protection under ss.71 and 79 of the Indian Penal Code and that prosecution should apply to the Court appointing such Receiver for sanctions to prosecute him.

16. In view of the discussions made above, this revision petition is allowed and the criminal proceeding pending against the accused/petitioner is hereby quashed and the Rule is made absolute. The State shall however, be at liberty to apply for sanction before the Court concerned if it still desires to prosecute the petitioner.”

11. A report filed by the Inspector-in-Charge, Serampore P.S. dated 06.10.2023 is on record.

12. It appears from the report that the Inspector-in-Charge, Serampore P.S. has verified that the petitioner had been deputed for compliance of the order of the Hon’ble High Court. The relevant extract of the said report is as follows :

*“.....During enquiry from the available PS records, it is revealed that on 04/03/2017 **the petitioner named Partha Sarathi Bhowmick was entrusted and deputed for compliance of the order Hon’ble High Court, Calcutta dated 07/12/2016 in c/w WP No. 90389(W)/2016 and for extending assistance to the CESC personal regarding connection of new electric supply at the house of Sujay Basu. On that date he was present for discharging his official duty regarding connection of new supply of electricity.***

During his duty he assist the CESC representative to install a new electric service line along with 5/60A Meter vide Meter No. 5870336 reading 00000 in favour of Sujay Basu at 91/92E Raja Ram Mohan Roy Sarani, Kumirjala Road, Mallickpara, PS-Serampore, Hooghly as per order of Hon'ble High Court, Calcutta....."

13. The Supreme Court in ***Shadakshari Vs State of Karnataka & Anr., Criminal Appeal No.256 of 2024, decided on 17.01.2024***, held as follows:-

"17. Section 197 Cr.PC deals with prosecution of judges and public servants. Section 197 reads as under:

"197. Prosecution of Judges and public servants:

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction (save as otherwise provided in the Lokpal and Lokayuktas Act, 2013) –

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring

therein, the expression "Central Government" were substituted.]

[Explanation — For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of Sub-Section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.]

[(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period

commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

18. *As per sub section (1) of Section 197 where any person who is or was a judge or magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of the Central Government or the State Government, as the case may be.*

19. *The ambit, scope and effect of Section 197 Cr.PC has received considerable attention of this court. It is not necessary to advert to and dilate on all such decisions. Suffice it to say that the object of such sanction for prosecution is to protect a public servant discharging official duties and functions from undue harassment by initiation of frivolous criminal proceedings.*

20. *In State of Orissa Vs. Ganesh Chandra Jew, (2004) 8 SCC 40, this court explained the underlying concept of protection under Section 197 and held as follows:*

“7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal

proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his

official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.”

21. *This aspect was also examined by this court in Shambhu Nath Misra (supra). Posing the question as to whether a public servant who allegedly commits the offence of fabrication of records or misappropriation of public funds can be said to have acted in the discharge of his official duties. Observing that it is not the official duty to fabricate records or to misappropriate public funds, this court held as under:*

“5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained.”

22. *Even in D. Devaraja (supra) relied upon by learned counsel for respondent No. 2, this court referred to Ganesh Chandra Jew (supra) and held as follows:*

“35. In State of Orissa v. Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104] this Court interpreted the use of the expression “official

duty” to imply that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. Section 197 of the Code of Criminal Procedure does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty.”

14. 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.**

- 15.** The present case falls under category 1, 3 and 7 of **Para 102 of Bhajan Lal (Supra).**

- 16. But in the present case it has been duly verified that the petitioner was discharging his official duty as such is entitled to the prosecution under Section 197 Cr.P.C.**
- 17. CRR 1599 of 2023 is allowed.**
- 18. The proceeding in C.R. Case No. 204 of 2017, pending before the learned Judicial Magistrate, 5th Court, at Serampore, Hooghly under Sections 324/341/354/354B/506/509/34/120B of the Indian Penal Code and all subsequent orders passed therein is hereby quashed, in respect of the petitioner, namely Partha Sarathi Bhowmick.**
- 19. All connected applications, if any, stand disposed of.**
- 20. Interim order, if any, stands vacated.**
- 21. Copy of this judgment be sent to the learned Trial Court for necessary compliance.**
- 22. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.**

(Shampa Dutt (Paul), J.)