

20.05.2024

Sl. No.: 14

Court No.30
BM

CRR 2303 of 2022

**Smt. Jyoti Sharma @ Smt. Jyoti Kumari Sharma
Vs.**

The State of West Bengal & Anr.

Ms. Koyeli Bhattacharya
Mr. Kunal Ganguly
Mr. Santosh Kumar Pandey

... for the petitioner

Mr. Joydeep Roy
Ms. Sujata Das

... for the State

- 1.** The present revisional application has been preferred praying for quashing of the proceeding of G.R No.1070 of 2020 arising out of Uttarpara P.S. Case No.242 of 2020 dated 17.08.2020 under Sections 448/323/506/34 of the Indian Penal Code pending before the learned 3rd Judicial Magistrate at Serampore.
- 2.** It appears from the record that on 06.08.2020 one Punam Sharma filed a petition of complaint under Sections 447/448/354B/436/379 of the Indian Penal Code which was numbered as C.R. Case No.140 of 2020 before the learned Court of Additional Chief Judicial Magistrate at Serampore against as many as two accused persons including the present petitioner and the said learned Court was pleased to direct the Inspector-in-Charge, Uttarpara P.S. to investigate in terms of Section 156(3) of Code of Criminal Procedure.
- 3.** On the basis of the said petition of complaint the police registered a case being Uttarpara P.S. Case No.242 dated 17.08.2020 under Sections 447/448/354B/436/379 of the Indian Penal Code against the petitioner and her husband.

4. The allegations leveled in the said petition of complaint which was treated as F.I.R is in a nutshell as follows :-

“(a) That the accused persons due to their previous grudge used to harass the complainant by various ways. But the complainant ignored the same as Yogesh Sharma is her relative. On 14.07.2020 at about 8:25 PM when the complainant was alone at home, Yogesh and Jyoti entered forcibly into the room of the complainant and Yogesh molested the complainant by touching her private parts with the instigation of Jyoti Sharma and on protest Yogesh became violent and lit fire on the bed of the complainant out of which the bed cover was burnt. The complainant raised hue and cry and at the time of leaving Jyoti Sharma snatched the gold chain of the complainant weighting 2 vorries. The complainant thereafter went to Kanaipore T.O.P to lodge necessary complaint but she was advised to approach the learned court.”

5. The investigating agency on completion of investigation filed charge sheet being charge sheet No.516 of 2020 on 31.12.2020 under Sections 448/323/506/34 of the Indian Penal Code.

6. Hence, the revision praying for quashing of the same on the ground that the said proceeding is totally malicious and it has been preferred to wreck vengeance upon the petitioner.

7. In spite of being served there is no representation on behalf of the opposite party no.2 complainant.

8. At the time of hearing the learned counsel for the petitioner has relied upon a judgment passed by a Co-ordinate Bench of this court in CRR 2641 of 2021 delivered on 18.04.2023 wherein the Court quashed the proceeding in Uttarpara P.S Case No.475 of 2018 dated 29.06.2018 under Sections 498A/323/34 of the Indian Penal Code against the present petitioner also filed by the

complainant herein. The Hon'ble Co-ordinate Bench was pleased to observe that the application under Section 156(3) of the Cr.P.C., filed for alleged offence under Section 498A of IPC was after 22 years.

9. From the materials on record, it also appears that there was a Title Suit being No.218 of 2015 between the parties which was disposed of by the learned Civil Judge, Junior Division, First Court, Serampore, Hooghly on 18th March, 2017, wherein the defendant (husband of the complainant herein) in the said case was directed to vacate the suit property within 45 days by a decree of eviction. The husband of the complainant herein in the said case then preferred a Title Appeal being No.53 of 2017. The said appeal was also dismissed by the learned Appellate Court and the judgment of the Civil Judge, Junior Division was affirmed on **21.06.2018.**

10. On **27th June, 2018** the application under Section 156(3) of the Cr.P.C. was filed the proceedings therein under Section 498A IPC, was quashed in CRR 2641 of 2021, on 18.04.2023.

11. The parties in the present case initiated on 17.08.2020, are the same.

12. Learned counsel for the State has placed the case diary. On perusal of the case diary, it appears that the opposite party no.2 has alleged that the petitioner in this case has snatched her gold chain weighting 2 Bhories. Learned counsel for the State has fairly submitted that there is no such material in the case diary.

13. Considering the materials in the case diary and on hearing the learned counsel for both the parties, this court finds that there is no material or ingredient on record to substantiate the offence

alleged in the present case and permitting such a case to proceed to a trial shall be abuse of the process of law.

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. There being a civil suit between the parties, which was decreed in favour of the petitioner and another criminal case quashed in respect of the petitioner, the proceedings in the present case is prima facie mala fide and has been filed with an ulterior motive for wreaking vengeance on the petitioner due to personal grudge.

16. The present case thus comes within **clause 7 of paragraph 102 of** the judgment of ***Bhajan Lal (Supra)***.

17. The criminal revision is accordingly allowed.

18. The proceeding being G.R. No.1070 of 2020 arising out of Uttarpara P.S case No.242 of 2020 dated 17.08.2020 under Sections 448/323/506/34 of Indian Penal Code pending before the learned 3rd Judicial Magistrate at Serampore, **is accordingly quashed in respect of the petitioner.**

19. All applications connected thereto stand disposed of.

20. Interim order, if any, stands vacated.

21. Let a copy of the order be sent to the learned trial court for compliance.

22. Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)