

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2425 of 2022

Sangita Garodia & Anr.

Vs

Ashish Garodia

For the Petitioners : Mr. Moyukh Mukherjee,
Mr. Abhijit Singh.

For the Opposite Party : Mr. Sandipan Ganguly,
Mr. Karan Dudhwewala.

Hearing concluded on : 12.03.2024

Judgment on : 22.04.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceeding, being Complaint Case No. 689/2022, pending before the Learned 9th Judicial Magistrate at Alipore, alleging commission of offence under Sections 323/341/506/509(ii)/34 of the Indian Penal Code.
2. The petitioners submits that the complainant namely Ashish Garodia is the brother in law of the petitioner no.1 and husband of the petitioner no.1 namely Sangita Garodia who died on 31st January, 2010.
3. That to usurp the property at 1B, Mandevilla Gardens, PS-Gariahat, Kolkata-700 019, the complainant started various form of torture upon the petitioners as well as the daughter of the petitioner no.1.
4. **The allegations made in the aforesaid complaint are inter-alia to the effect that:-**

The complainant herein is the wife of Kanupriya Garodia. That the complainant lodged a complaint against the accused number 1 and 2 namely, Sangita Garodia and Shri Vatsa Garodia who happens to be the sister in law and nephew respectively of the opposite party. The husband of the accused no. 1, Late Vijay Kumar Garodia is also the elder brother of the complainant, herein. That the complainant along with his elderly parents, were subjected to all sorts of mental as well as physical torments at the hands of the petitioners no. 1 and 2. That the

accused Sangita Garodia always has the habit of creating nuisance over trivial issues and had abused the complainant and his wife. Petitioner number 1 used slangs and grimpy language. Moreover day by day the behavior of the accused became so hostile and bad mannered that it is not at all viable in a peace loving family, to bear such nuisance. That the accused/petitioner no. 1, had the habit of using slangs, bullying the complainant and his family members. It is further stated that accused no. 1, herein/petitioner no. 1 did not even look after the old and ailing parents during their lifetime and also used filthy language and slangs. That on 24/06/2021, at about 6:45 am, the complainant, as a part of his regular habit went to the terrace for his morning walk and to his utter dismay found that the lock of the collapsible gate was hanging and on closely observing he discovered that the lock had been broken. That the complainant got panic stricken and unnerved, fearing that some thief or burglar may have broken in, while everyone was asleep. The complainant decided to check the CCTV footage and got astonished and shocked on finding that the petitioner no. 1 and 2 with their maid servant, Chandana, herein petitioner no. 3 were the ones who had broken the lock with a kitchen tool (Shilnora). It is further stated that the keys of the entrance of the gate were kept in a common space from where anyone in the family could have accessed, hence there was no need to break open. The complainant finding himself in a state of concern, for the sake of safety of himself, his wife and their child informed the matter to Gariahat police station on 25.06.2021. That evenafter the said incident till date the petitioner no. 1 and 2 have not refrained from abusing the family of the complainant by using abusive and grimy language. That the accused persons did not hesitate in being rude and adamant and thereby abusing

and mistreating the ailing wife of the complainant who had suffered a major cerebral stroke in 2019 by punishing her when she tried to stop the accused no. 1 using such words against the complainant. On 11.03.2022 at about 11.30 a.m. when the complainant was ready to leave for work purpose, the accused no. 1, 2 and 3, (the petitioner no. 3 is the maid of the petitioner no. 1 and 2), the wife of the complainant heard some noise from the main door and when she tried to open the door, the accused persons pushed her forcefully and entered the room. The aggressive attitude of the accused persons had made it clear to the complainant that the accused persons were creating a brawl over there. Then after the accused person started bullying the complainant and used mucky and dirty language by threatening the complainant to leave the house permanently along with his family within a week, else he would apply all his power to throw them out of the property in any manner, since then the accused persons are leaving no stone unturned. That the petitioner no. 1 and 2 threatened the complainant with dire consequences, if the complainant informed the matter to the concerned police station for legal action.

5. The petitioners further state that the impugned proceedings is based on false allegations and all orders passed in connection with the said proceeding are otherwise bad in law and are liable to be set aside and/or quashed.
6. **From the materials on record and the case diary it is evident that:-**

- I. Several complaints have also been filed by the petitioner no.1 against the opposite party no.2/complainant and his family.
- II. The offences alleged against the petitioners are under Sections 323/341/506/509(ii)/34 of the Indian Penal Code and has been registered as a complaint case.
- III. **Admittedly the parties are related to each other.**
- IV. The petitioner no.1's, husband and father of the petitioner no. 2, is the brother of the complainant.
- V. The dispute between the parties is prima facie a **family property dispute.**
- VI. Though the opposite party is being represented, there has been no affidavit in opposition filing documents to prima facie show that there was prima facie an offence under Section 323 of IPC committed by the petitioners.

7. Section 341 of IPC, lays down:-

“341. Punishment for wrongful restraint.—
Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Ingredients of offence.-The essential ingredients of the offence under sec. 341 are as follows:-

(1) Accused obstructed a person;

(2) He did it voluntarily;

(3) It prevented such person from proceeding in certain direction in which he had the right to proceed.”

8. In **N. S. Madhanagopal & Anr. vs K. Lalitha (Supra)**, the Supreme Court further held:-

"..... Section 341 of the IPC talks about punishment for wrongful restraint. Section 341 reads thus:

"341. Punishment for wrongful restraint - Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both."

*The complaint also fails to disclose the necessary ingredients to constitute the offence of wrongful restraint. **In order to attract application of Section 341** which provides for punishment for wrongful restraint, it has to be proved that there was obstruction by the accused; (ii) such obstruction prevented a person from proceeding in a direction to which he had a right to proceed; and (iii) the accused caused such obstruction voluntarily. **The obstructor must intend or know or would have reason to believe that the means adopted would cause obstruction to the complainant.***

The averments made in the complaint according to us are not sufficient to even constitute the offence of wrongful restraint. In the overall view of the case, we are convinced that no case is made out against the appellants herein as alleged by the complainant....."

9. The complainant has alleged that when he went to the terrace he found the lock broken. There is nothing on record to show that the property is not a joint property of the parties to this case. The terrace is thus prima facie for the use of all the members in the house.
10. The Opposite party has relied upon the following Judgments in support of the order dated 16.03.2022 and 05.05.2022:-

(a) *Fiona Shrikhande vs State of Maharashtra and Anr.*,
(2013) 14 SCC 44.

(b) *Alka Bapu Gund vs Prakash Kanhaiyalal Kankaria and Ors.*, (2017) 11 SCC 108.

(c) *Pradeep S. Wodeyar vs State of Karnataka*, (2021) 19 SCC 62.

11. Firstly, from the order dated 05.05.2022, wherein the Magistrate has taken prima facie cognizance, it appears that, in the said order nothing has even been formally considered. Neither the evidence nor any documents etc. **The order does not show even prima facie application of mind.**

12. Secondly, the dispute in the present case is clearly a **family property dispute and thus a civil dispute.**

13. The Supreme Court in several precedents has discouraged such proceedings initiated by the complainant, only to harass the other party. Some of the rulings are as follows:-

a) *M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors.*,
Appeal (crl.) 834 of 2002 decided on 20.07.2006 (Para 8, 9, 10).

b) *Birla Corporation Ltd. vs Adventz Investments and holdings*,
(Criminal Appeal No. 877 of 2019) (Para 86).

c) *Mitesh Kumar J. Sha vs. The State of Karnataka & Ors.*
(Criminal Appeal no. 1285 of 2021) (Para 37, 41, 42).

- d) *R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022 (Para 17).*
- e) *Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023 (Para 21, 24).*
- f) *Paramjeet Batra vs State of Uttarakhand & Ors., (2013) 11 SCC 673.*

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 Supreme Court in **Randheer Singh Vs. State of Uttar Pradesh**

& Ors., (2021) 14 SCC 626, held:-

On noting several precedents the Court finally held:-

*“.....There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. **The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.**”*

16. In ***Paramjeet Batra vs State of Uttarakhand & Ors., Criminal Appeal No. 2069 of 2012 (arising out of SLP (Crl.) No. 7720 of 2011)***, on 14 December, 2012, the Supreme Court held:-

*“7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. **Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.***

8. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2’s attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by respondent 2 against him alleging offence under Section 406 of the IPC. Possession of the shop in question has also been handed over by the appellant to respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise.”

17. **Section 509 of the Indian Penal Code, lays down:-**

“509. Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any

sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, [shall be punished with simple imprisonment for a term which may extend to three years, and also with fine].

Ingredients of offence.- The essential ingredients of the offence under Section 509 are as follows:-

- (1) The accused uttered some words, or made some sounds or gesture or exhibited any object or intruded upon the privacy of a woman;*
- (2) The accused must have intended that the words so uttered or the sound or gesture so made or the object so exhibited should be heard or seen respectively by the woman;*
- (3) The accused thereby intended to insult the modesty of the woman.”*

18. Thus cognizance take by the Magistrate for offence alleged under Section 509/34 of IPC against the petitioners, **when the complainant is a man, is also not in accordance with law.**

19. Though the petitioners have assailed the order of the Magistrate dated 16.03.2022, which prima facie has been erroneously recorded, it is on record that process has been issued by the Magistrate for offences punishable under Sections 323/341/506/509(ii)/34 of IPC on 05.05.2022.

20. The **Magistrate’s non application of mind** is also evident from the order taking cognizance under Section 509(ii)(?) IPC and also the order dated 16.03.2022 taking cognizance under Section 138 N.I. Act in a proceedings under Sections 323/341/506/509/34 IPC.

21. In *N. S. Madhanagopal & Anr. vs K. Lalitha, in Criminal Appeal No. 1759 of 2022 (arising out of SLP (Crl.) No. 6039 of 2022),*

decided on October 10, 2022, the Supreme Court held:-

*“..... Taking cognizance of an offence under Section 190(1) of the Cr.P.C. and issue of process under Section 204 are judicial functions and require a judicious approach. This is a proposition not only based on sound logic but is also based on fundamental principles of justice, as a person against whom no offence is disclosed cannot be put to any harassment by the issue of process. **Issuance of process must be preceded by an application of judicial mind to the material before the court to determine if there is ground for proceedings against the accused.** When the allegations made in the complaint are found to be too vague and general without giving any material particulars of the offence alleged against the accused then the order of the Magistrate issuing process on the basis of the complaint would not be justified as there must be material prima facie, for issuance of process. We have our own doubts whether even the verification of the original complainant on oath was recorded before taking cognizance and issuing process.....”*

22. Section 506 of I.P.C., lays down:-

“506. Punishment for criminal Intimidation.-Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both,

if threat be to cause death or grievous hurt, etc.-and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ingredients of offence.- The essential ingredients of the offence under sec. 506 are as follows:-

- (1) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;*
- (2) The accused did so with intent to cause alarm to the victim of offence;*
- (3) The accused did so to cause the victim to perform any act which he was not legally bound to do.”*

23. Section 323 of I.P.C., lays down:-

“323. Punishment for voluntarily causing hurt.—
Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Ingredients of offence. *-The essential ingredients of the offence under sec. 323 are as follows:-*

- (1) Accused voluntarily caused bodily pain, deceased or infirmity to the victim;*
- (2) The accused did so with intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim.”*

- 24.** There is absolutely no material on record to prima facie show the presence of the ingredients required to constitute the offence under Section 323 of IPC.
- 25.** The petitioners are the sister-in-law and nephew of the complainant and they reside in the same family property. The husband of the petitioner no. 1/father of the petitioner no. 2 and the brother of the complainant is now dead.
- 26.** Thus none of the ingredients required to constitute the offences alleged are even prima facie present against any of the accused

persons/petitioners and as such the proceeding in this case is liable to be quashed.

27. CRR 2425 of 2022 is thus allowed.

28. The proceedings being Complaint Case No. 689/2022, pending before the Learned 9th Judicial Magistrate at Alipore, alleging commission of offence under Sections 323/341/506/509(ii)/34 of the Indian Penal Code, **is quashed in respect of both the petitioners.**

29. All connected applications, if any, stand disposed of.

30. There will be no order as to costs.

31. Interim order, if any, stands vacated.

32. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

33. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)