

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2043 of 2021

With

CRAN 1 of 2021

Kailash Vijayvargiya

Versus

The State of West Bengal and Another

For the Petitioner : Mr. Rajdeep Majumder
Mr. Mayukh Mukherjee
Ms. Aishwarya Bazaz
Ms. Triparna Roy
.....Advocates

For the State : Mr. Suman De
....Advocate

Heard on : 04.10.2024

Judgment on : 07.11.2024

Ajay Kumar Gupta, J:

1. Petitioner being the accused has preferred this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceedings being G.R. Case No. 1246/2021 arising out of Cyber Crime Police Station Case No. 2/2021 dated 06.05.2021 under Sections 504/505(1)(b)/120B of the Indian Penal Code, 1860 now pending before the Court of the Learned Chief Judicial Magistrate, Purba Medinipur at Tamluk.

2. The factual matrix of the instant case is as under:

2a. The Opposite Party No. 2 alleged inter alia that the Petitioner herein shared pictures of two women being assaulted and humiliated by some persons via social media through his Twitter account. Such incident allegedly took place in the area of the informant. However, the informant stated that the entire episode is absolutely fallacious and it was because of such misleading information and statements, a tension created in the said region and thereby leading to a disturbance of the peace in the locality. On the basis of such written complaint, a First Information Report was registered being Cyber Crime Police Station Case No. 2/2021 dated 06.05.2021 under Sections 504/505(1)(b)/120B of the Indian Penal Code, 1860 against the Petitioner for initiating investigation.

2b. On the contrary, the Petitioner asserts that he is an eminent, distinguished and renowned political figure from the opposition party of the State. Furthermore, it is also stated that the Petitioner herein is a dignified, reputed and reverted member of the Society, who has amassed the adulation of the Public at large. At the time of lodging such alleged complaint, he was the National General Secretary of the opposition party of the State. He has always worked within the frame work of the law of the land and the sense of the constitutional institutions, sovereignty and safety. Despite the said facts, after the results of the West Bengal Assembly Elections were declared, the Ruling Party being rife with Political vendetta, falsely initiated the instant case against the Petitioner, using police administration, which is under its control even though the alleged offences are non-cognizable in nature, which does not empower the police authority to investigate without order of the Learned Magistrate. No direction has ever been passed under Section 155 (2) of the Cr.PC by the Learned Magistrate before investigation. Furthermore, the offence as alleged by the complainant does not fulfil the essential ingredients of any criminal offence whatsoever as such registration of First Information Report by the police authority is illegal and harassing one to the petitioner. Consequently, the Petitioner approached with this Criminal Revisional application before this Hon'ble High Court with a

prayer as aforesaid and same has come up before this Bench for its disposal.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. Mr Majumder, learned counsel for the Petitioner submitted that the First Information Report has been registered against the Petitioner under Sections 504/505(1)(b)/120B of the Indian Penal Code, 1860 though the offences are not at all attracted for allegations as alleged by the Opposite Party No. 2. Furthermore, such alleged offences are non-cognizable in nature. In such cases, it is mandate of the law that permission is required to be obtained from the concerned Magistrate for the investigation. Without such order, Police Authorities are not empowered to proceed with to investigate of the case. No direction or order has been passed by the Learned Magistrate under Section 155(2) of the CrPC. The Police Authority has initiated the investigation against the Petitioner without valid order or authority, which exposes the political vendetta and spiteful demeanour of the Investigating Agency, who are allegedly acting on the instructions of the Ruling Party. Such illegal proceedings are required to be quashed for the ends of justice otherwise it would be great injustice to the Petitioner. To bolster his contention, the learned counsel has placed reliance of judgments passed in the cases of ***Bilal***

***Ahmed Kaloo v. State of A.P.*¹ and *State of Haryana and Others v. Bhajan Lal and Others*².**

SUBMISSION ON BEHALF OF THE STATE:

4. Mr. De, learned advocate representing the State has produced the Case Diary. Learned advocate opposed the prayer of the petitioner and further submitted that the alleged offences are cognizable in nature. The Petitioner tried to disrupt the local peace and integrity amongst the people. The Petitioner had posted via his twitter account that few unknown ladies are being assaulted physically by Ruling Party Workers and the incident reportedly happened at Kendamari area even though it was a fake and malicious post. The intention of the Petitioner was to disrupt the peace in the locality. During investigation, the Investigating Officer collected such post from the Twitter handle. Two CD drives containing the downloaded videos from Twitter, multiple screenshots were taken while video was playing and a screen recording was made of downloading and copying process of all data from computer of Cyber Crime PS to CD drive seized under proper seizure list. The Investigation is still pending as such the instant Criminal Revisional application has no merit and is liable to be dismissed.

¹ (1997) 7 Supreme Court Cases 431;

² 1992 Supp (1) Supreme Court cases 335.

DISCUSSIONS AND FINDINGS OF THIS COURT:

5. Considering the rival contentions and submissions made by the learned counsels appearing for the parties and on careful perusal of the Case Diary, it appears on the basis of Written Complaint of One Uttam Pramanik, Son of Late Joydeb of Kendamari (GP Member) P.S. - Nandigram to the effect that since 03.05.2021 at 22.38 hrs , it has been repeatedly observed that posts were made by the Petitioner under the name of Twitter account of 'Kailash Vijayvargiya' that few unknown women are being assaulted physically and also humiliated by two unknown males and the incident reportedly took place at Kendamari area. Complainant believed that no such incident occurred in reality in such area and it was a fake and malicious post solely to disturb the local peace and harmony amongst people in the locality. On the basis of written complaint, a First Information Report was registered against the Petitioner under Sections 504/505(1)(b)/120B of the Indian Penal Code, 1860 for investigation.

6. During investigation, the Investigating Officer collected such post from Twitter handle. Two CD drives containing downloaded video from Twitter, multiple screenshots were taken while video was played and screen recording was made of downloading and copying process of all data from computer of Cyber-Crime PS to CD drive seized under proper seizure list. Statements of the witnesses were recorded under

section 161 of the CrPC but no Charge Sheet has been submitted till date by the Investigating Officer. On the other hand, it was raised by the Petitioner that Sections 504/505(1)(b)/120B of the Indian Penal Code, 1860 are registered against the petitioner herein though he is innocent. Furthermore, alleged offences, as alleged, are non-cognizable in nature. In such case, investigation cannot be initiated without order of the Learned Magistrate.

7. It would be appropriate to refer the Sections 504/505 (1) (b)/120B of the Indian Penal Code, 1860 for ready reference and to understand the situation of the present case.

Section 504 of the Indian Penal Code read as follows:

“S. 504. Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Section 505 (1) (b) of the Indian Penal Code read as follows:

“S. 505.....- (1)....

(a).....

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c)

shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

Section 120B of the Indian Penal Code read as under:

“S.120B. Punishment of criminal conspiracy.--(1)

Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

8. The aforesaid Sections are non-cognizable in nature as per column 4 of the First Schedule of the Indian Penal Code, 1860. In such situation, what steps are required to be followed by the Police Authority are clearly indicated by the Hon'ble Supreme Court in the case of ***State of Haryana and Others v. Bhajan Lal and Others*** in Paragraphs 31 to 34.

“31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a

case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

32. *Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression “information” without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, “reasonable complaint” and “credible information” are used. Evidently, the non-qualification of the word “information” in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, ‘reasonableness’ or ‘credibility’ of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word*

“information” without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that ‘every complaint or information’ preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that ‘every complaint’ preferred to an officer in charge of a police station shall be reduced in writing. The word ‘complaint’ which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word ‘information’ was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.

33. *It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.*

34. *In this connection, it may be noted that though a police officer cannot investigate a non-cognizable offence on his own as in the case of cognizable offence, he can investigate a non-cognizable offence under the order of a Magistrate having power to try such non-cognizable case or commit the same for trial within the terms under Section 155(2) of the Code but subject to Section 155(3) of the Code. Further, under the newly introduced sub-section (4) to Section 155, where a case relates to two offences of which at least one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offences are non-cognizable and, therefore, under such circumstances the police officer can investigate such offences with the same powers as he has while investigating a cognizable offence.”*

9. Accordingly, all Sections mentioned in the instant case or started against the Petitioner are non-cognizable in nature. In such situation, the instant case in hand, falls squarely under the category (4) as mentioned in the celebrated judgment of Hon’ble Supreme Court passed in the case of **State of Haryana and Others Vs. Bhajan Lal and Others** in Paragraph 102 as under:

“102. This Court in the backdrop of interpretation of various relevant provisions of CrPC 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to 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 Act concerned (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 Act concerned, 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.”

10. In the light of above discussion and upon perusal of the Judgments referred by the learned counsel for the petitioner and the legal Maxim “Sublato Fundamento Cadit Opus” meaning thereby “initial action by the Police Authority without following the provision as laid down in the Criminal Procedure Code is bad, all subsequent

actions are bad” are squarely applicable in the present case and if proceeding continued in such condition, it would amount to an abuse of process of law and to secure the ends of justice, this Court can exercise its inherent power or jurisdiction under Section 482 of the CrPC corresponding to Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 to quash the aforesaid proceeding.

11. Accordingly, **C.R.R. 2043 of 2021** is, thus, **allowed. CRAN 1 of 2021** and connected application, if any, is also, thus, disposed of.

12. Consequently, proceedings being G.R. Case No. 1246/2021 arising out of Cyber Crime Police Station Case No. 2/2021 dated 06.05.2021 under Sections 504/505(1)(b)/120B of the Indian Penal Code now pending before the Court of the Learned Chief Judicial Magistrate, Purba Medinipur at Tamluk is hereby quashed insofar as the present Petitioner is concerned.

13. Case Diary, if any, is to be returned to the learned Counsel for the State.

14. Interim order, if any, stands vacated.

15. Let a copy of this judgment be sent to the learned Court below for information.

16. Parties will act on the server copies of this judgment uploaded on the official website of this Court.

17. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)