

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2339 of 2018

Sarabjot Singh @ Sabbi and Others
Versus
The State of West Bengal and Another

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

Heard on : 25.06.2024

Judgment on : 06.09.2024

Ajay Kumar Gupta, J:

1. Petitioners being the accused persons filed this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceedings of G.R. Case

No. 503/2018, pending before the Court of the Learned Additional Chief Judicial Magistrate, Asansol, arising out of Asansol (South) Police Station Case No. 88/2018 dated 06.03.2018 under Sections 386/449/326/365/506/120B/34 of the Indian Penal Code. After conclusion of investigation, a Charge Sheet being Charge Sheet No. 56/2018 dated 31.03.2018 under Sections 452/323/365/468/506/34 of the Indian Penal Code has been submitted against the petitioners.

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

2a. The opposite party no. 2 filed a petition of complaint under Section 156(3) of the CrPC before the Court of the Learned Additional Chief Judicial Magistrate, Asansol and same was registered as Complaint Case No. 199 of 2018 wherein the opposite party no. 2 made an allegation, *inter alia*, that the petitioner no. 2 is the full-blooded sister and the petitioner no. 1 is the brother-in-law of the complainant. With ulterior motive to grab the properties of the deceased father of the complainant/opposite party no. 2, the petitioner no. 1 was pressurizing the opposite party no. 2 to transfer his right, title and interest therein without offering any fair price thereof and also attempted to take forcible possession of the said properties.

2b. It was further alleged that on protest by the opposite party no. 2 to such illegal acts, the petitioner no. 1 threatened him with dire consequences.

2c. It was further alleged that the sister and brother-in-law of the opposite party no. 2, namely, Ranjeet Kaur and Harjinder Singh who were close relatives of the opposite party no. 2 induced the opposite party no. 2 by saying that they would arrange for a flat at New Delhi near their residence because the opposite party no. 2, actually, intended to purchase a flat at New Delhi but as he was residing at U.S.A., he was not in a position to negotiate with the seller to finalise the purchase procedure from such a long distance. Accordingly, opposite party no. 2 purchased a draft from SBI, California and converted the same into Rs. 22,00,000/- and transferred the same into the account of Ranjeet Kaur. But, despite such transfer and after waiting for a considerable period of time, the opposite party no. 2 did not receive any response from Ranjeet Kaur. It appeared to him that said Ranjeet Kaur and Harjinder Singh had misappropriated the said sum of Rs. 22,00,000/-.

2d. It was further alleged that the opposite party no. 2 sent a notice to the petitioners through his learned advocate therein calling upon them to refund the entire sum. However, no response was received from them. As such, the opposite party no. 2 filed a petition

of complaint against Ranjeet Kaur and Harjinder Singh before the learned Additional Chief Judicial Magistrate, Asansol praying for treating the said petition of complaint as an FIR and to initiate investigation.

2e. It was further alleged that on 18.02.2018 when the opposite party no. 2 and his wife were in their residence at Hill View Park, Asansol at that time the present petitioners along with two unknown persons being armed with fire arms, criminally trespassed into their house. Thereafter, the said accused persons assaulted the opposite party no. 2 with kicks and blows, as a result the opposite party no. 2 fell down on the ground and sustained serious injuries on his person. When the wife of the opposite party no. 2 came to rescue him, she was also assaulted by the accused persons and even threatened with dire consequences. Petitioner no. 1, by pointing a revolver on the forehead of the opposite party no. 2, obtained his signatures on Non Judicial Stamp Paper, Vakalatnama and some blank demi papers. The petitioners, thereafter, asked the opposite party no. 2 to withdraw the complaint and on refusal, the accused persons forcibly took away the opposite party no. 2 in their vehicle with a view to kill him and on their way to Jubilee More, Asansol, the opposite party no. 2 was assaulted and was also forced to put his signatures on some

other papers. Thereafter, the accused persons left the opposite party no. 2 at Jubilee More and fled away.

2f. The opposite party no. 2 was medically treated on 19.02.2018 and, thereafter, went to lodge a complaint against the accused persons to the Police Station but was advised by the police authorities to approach before the Learned Court. Eventually, opposite party no. 2 approached before the Learned Court below. On the other hand, the petitioners herein denied and disputed the allegations of the Opposite party no. 2 and further contended in the petition that they are completely innocent and in no way connected with the alleged offences. Accused persons have been falsely entangled into this case. Under the above circumstances, they approached before this Hon'ble Court by filing this Criminal Revisional application for consideration.

3. Despite giving several opportunities, none appears on behalf of the petitioners at the time of call. No accommodation was sought for. This matter pertains to year 2018. Accordingly, the matter has been heard in their absence.

SUBMISSION ON BEHALF OF THE STATE:

4. Ms. Faria Hossain along with Ms. Mamata Jana, learned advocates produced the Case Diary. Learned advocates further

submitted that a case being Asansol (South) Police Station Case No. 88/2018 dated 06.03.2018 under Sections 386/449/326/365/506/120B/34 of the Indian Penal Code was registered against the accused persons/petitioners herein in pursuant to the direction of the Learned Additional Chief Judicial Magistrate, Asansol in an application filed under Section 156(3) of the Cr.PC. Investigating Officer initiated investigation and after completion of investigation, a Charge Sheet being Charge Sheet No. 56/2018 dated 31.03.2018 under Sections 452/323/365/468/506/34 of the Indian Penal Code has been submitted against all the accused persons, when he found a prima facie case. During investigation, the Investigating Officer visited the Place of Occurrence and examined available witnesses as well as Medical Officers who treated the complainant and recorded their statements under Section 161 of the CrPC and collected injury report. He also attempted to serve notice under Section 41(A) of the CrPC upon the accused persons through the concerned Police Station via email, but it was in vain.

4a. It was further submitted that a prima facie case has been established against the accused persons for the commission of offences punishable under Sections 386/449/326/365/506/120B/34 of the Indian Penal Code.

Accordingly, the instant Criminal Revisional application has no merit and is liable to be dismissed.

DISCUSSIONS AND FINDINGS OF THIS COURT:

5. Considering the submissions of the learned advocates appearing on behalf of the State and on careful perusal of the Case Diary, it appears though the allegation of the complainant/opposite party no. 2 was that on 18.02.2018 when the opposite party no. 2 and his wife were in their residence at Hill View Park, Asansol at that time the present petitioners, along with two unknown persons being armed with fire arms, criminally trespassed into their house. Thereafter, the said accused persons assaulted the opposite party no. 2 with kicks and blows, as a result of which the opposite party no. 2 fell down on the ground and sustained serious injuries. When the wife of the opposite party no. 2 came to rescue him, she was also assaulted by the accused persons and even threatened with dire consequences.

6. It reveals from the perusal of the medical documents, i.e. prescriptions of Dr. K.B. Ghosh and Dr. P.K. Garg, that the case history, narrated by Mr. Jaswinder Singh/opposite party no. 2 to the Doctors, was totally different because he stated that he fell down and sustained injuries. Dr. K.B. Ghosh also informed in writing to the IO

of the instant case vide letter dated 20.03.2018 that the patient narrated a history of fall and pain on lumbar spines. Patient and patient party never stated about the history of assault. Accordingly, he advised to consult with general physician or neurosurgeon.

7. In view of facts and circumstances stated above, a dichotomy found in the complaint with respect of allegations and the narration before the doctors with regards to the assault by the accused persons. Nowhere in the doctors' prescriptions or certificates it is mentioned about the history of assault or victim sustained injuries due to assault. Furthermore, it appears the allegations, made by the complainant in the complaint as well as statements made before the Investigating Officer, are full of inconsistencies and discrepancies. No iota of materials transpired from the Case Diary with regards to issue of cheques as claimed by the complainant. In view of the aforesaid facts, if proceeding continued, it would be 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.

8. The instant case, in hand, falls squarely under the category (7) as mentioned in the judgment of Hon'ble Supreme Court passed in

the case of **State of Haryana and Others Vs. Bhajan Lal and Others**¹ 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

¹ AIR 1992 SUPREME COURT 604;

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.”

9. Accordingly, **C.R.R. 2339 of 2018** is, thus, **allowed**.

Connected applications, if any, are also, thus, disposed of.

10. Consequently, proceedings being G.R. Case No. 503/2018, pending before the Court of the Learned Additional Chief Judicial Magistrate, Asansol, arising out of Asansol (South) Police Station Case No. 88/2018 dated 06.03.2018 under Sections 386/449/326/365/506/120B/34 of the Indian Penal Code and Charge Sheet No. 56/2018 dated 31.03.2018 under Sections 452/323/365/468/506/34 of the Indian Penal Code is hereby quashed insofar as the present petitioners are concerned.

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

12. Interim order, if any, stands vacated.

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

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

15. 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.)