

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 2476 of 2016

Nataraj Saha

Vs.

The State of West Bengal & Anr.

With

C.R.R. 2477 of 2016

Nataraj Saha

Vs.

The State of West Bengal & Anr.

For the Petitioner

:Mr. Prasenjit Mukherjee, Adv.

For the State

:Mr. Bidyut Kumar Ray, Adv.

Mrs. Sima Biswas, Adv.

Heard on

: 12.09.2023, 12.12.2023, 02.01.2024,

Judgment on

:24th January, 2024

Bibhas Ranjan De, J.

- 1.** Both the revision applications are being taken up for disposal by this common judgement in connection with an incident alleged to have been committed by the petitioner on 12.06.2015 when petitioner/ accused entered into the chamber of Sub Divisional Officer (for short SDO), Rampurhat, Birbhum without permission and started abusing the SDO in connection with an RTI application dated 16.03.2015 and 11th May, 2015, throwing some unparliamentary and derogative language towards the Chair of SDO, Rampurhat , Birbhum.
- 2.** Accordingly, SDO Rampurhat, Birbhum lodged a written complaint on 12.06.2015 addressed to IC Rampurhat Police Station, Birbhum at 19.55 hours and Rampurhat Police Station Case no. 157 of 2015 under Section 353/186/504/506 of the Indian Penal Code (for short IPC) was started corresponding to GR Case no. 604 of 2015 pending before Ld. Additional Chief Judicial Magistrate, Rampurhat, Birbhum.
- 3.** It was further alleged that on the same day the same petitioner entered into the chamber of Child Development Project Officer (for short CDPO) Rampurhat I, ICDS projects without his

permission and abused using slang languages and threatened him of dire consequences in connection with RTI application expressing threat to torture and for sending him to the hospital. It was further alleged by the CDPO in the complaint that the accused/petitioner frequently attended his office and created trouble almost regularly.

- 4.** On receipt of that complaint addressed to IC Rampurhat Police Station at 16.10 hours, Rampurhat Police Station Case no. 155 of 2015 was started under Section 353/186/504/506 of IPC corresponding to GR Case no. 603 of 2015 pending before Ld. Additional Chief Judicial Magistrate, Rampurhat, Birbhum.
- 5.** Petitioner has come before this Court with an application under Section 482 of the Code of Criminal Procedure (for short CrPC) praying for quashing the proceeding in connection with Rampurhat, Police Station Case No.155 of 2015 in connection with revision application being no. 2476 of 2016.
- 6.** Same petitioner also filed application under Section 482 CrPC praying for quashing the proceeding in connection with Rampurhat Police Station case no. 157 of 2015 dated 12.06.2015 in connection with revision application 2477 of

2016. Both the cases are pending before the Ld. Additional Chief Judicial magistrate, Rampurhat, Birbhum.

Argument:-

7. Ld. Counsel, Mr. Prasenjit Mukherjee, appearing on behalf of the petitioner in both the revision applications submitted that the petitioner's elder sister participated in the selection process for the post of ICDS employee. She submitted an application under the Right to Information Act regarding result of the said recruitment process along with that Petitioners' sister submitted two letters expressing some derogative words. Concerned SDO issued notice to the elder sister of the petitioner to collect information from office room at SDO on 12.06.2015 at 11a.m.
8. Mr. Mukherjee has further submitted that the petitioner along with an authorization letter of his sister entered into the office room of SDO on the date and time and there the SDO called police personnel and security guard and directed them to beat the petitioner in his chamber and the petitioner was arrested at 11.30. a.m. by the Police. Though, SDO lodged complaint at 07.55 hours on 12.06.2015. Mr. Mukherjee has drawn my attention to the inspection memo of arrest of the petitioner in

connection with Rampurhat Police Station Case no. 155 of 2015 dated 12.06.2015 and tried to establish that time of arrest was over written. Mr. Mukherjee has further submitted that on the self same incident one proceeding under Section 107 of CrPC was initiated against the petitioner before the Executive Magistrate who passed an order for production of the petitioner/accused before him. Accordingly, Mr. Mukherjee also raised the issue of double jeopardy.

9. In support of his contention, Mr. Mukherjee relied on a decision of a Co-ordinate Bench in connection with CRR no. 2216 of 2019 and a case of ***Rajshekhar Agrawal vs. State of West Bengal and Ors. reported in 2016(2) AICLR 481 (Cal)***

10. Ld. Counsel, Mr. Bidyut Kumar Ray, appearing on behalf of the State has submitted that the written complaint in connection with both the revision applications disclose offences which was duly substantiated by the evidence collected during investigation and therefore question of quashing of those proceedings does not arise in terms of parameters laid down by the Hon'ble Apex Court on repeated occasions.

Analysis:-

11. Before delving into the merit of these revision applications it would be profitable to refer the parameters laid down by the Hon'ble Apex Court in ***State of Haryana and others Vs Bhajanlal*** reported in ***AIR 1992 SC 604*** in paragraph 102 as follows:-

“ 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.”

12. After taking both the written complaints lodged by SDO and CDPO into account, I find that the allegations made in the complaint, clearly manifest a prima facie case against the accused. Therefore, it can safely be held that the written complaints of these two revision applications do not fall for quashment in terms of parameter laid down by the Hon’ble Apex Court.

13. Mr. Mukhrjee has tried to convince this Court that the offence disclosed in the written complaints did not constitute any offence under Section 353/186 of IPC presumably relying on two words – ‘assault’ and ‘criminal force’.

14. Assault in a general sense is a threat by one person to inflict unlawful force against another person. However, Section 351 of IPC defines assault as an **act** of making gestures or preparation to use criminal force against a person, because of which a threat is created in the mind of the victim. Therefore,

‘physical assault’ depicted in Section 353 does not necessarily mean to assault physically.

15. On scrutiny of the written complaint, I find that the ingredients of offence under Section 353 /186 is absolutely present.

16. Mr. Mukherjee took a further plea of double jeopardy by referring to the proceeding under Section 107 of CrPC wherein accused/petitioner was detained in custody.

17. I am not agreeable with Mr. Mukherjee on issue of “double jeopardy” as proceeding under Section 107 CrPC was initiated against the accused petitioner for preventing him from committing breach of peace or disturbing public tranquility. Moreover, the accused can be taken to detention if he fails to execute and abide by the bond i.e ordered by the Magistrate. Therefore, the proceeding under Section 107 CrPC being a preventive measure cannot be equated with any offence punishable under the IPC. In absence of this criteria question of double jeopardy cannot be said to have been cropped up in the case at hand.

18. Mr. Mukherjee by referring to inspection (arrest) memo in connection with Rampurhat PS Case no. 155 of 2015,

submitted the time of arrest was interpolated. But, from the inspection memo in connection with Rampurhat Police Station Case no. 157 of 2015 it appears that accused/petitioner was arrested on 12.06.2015 at 20.25 hours. However, petitioner is always at liberty to raise all these issues i.e. discrepancy about time of arrest and the facts alleged in the revision application on behalf of the petitioner/accused during trial.

19. Mr. Mukherjee has submitted that SDO lodged complaint with the Police at 07.55 hours but from the written complaint lodged by SDO annexed with the revision application no. 2477 of 2016 shows that said written complaint was received at Police Station on 12.06.2015 at 19.55 hours.

20. The cases relied on behalf of the petitioner/accused dealt with different facts which are not identical with that of ours and therefore principle enunciated in those cases is not applicable in the case at hand.

21. In the aforesaid view of the matter, I find no reason to exercise inherent jurisdiction under Section 482 of CrPC to quash the proceedings in connection with Criminal Revision Nos. 2476 of 2016 and 2477 of 2016.

- 22.** As a sequel, both the revision applications being no. 2476 of 2016 and 2477 of 2016 stand dismissed without costs.
- 23.** Pending applications, if there be any, stand disposed of.
- 24.** Case diary be returned.
- 25.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 26.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]