

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 1951 of 2022

With

CRR 1071 of 2018

With

CRR 2406 of 2015

Sri Ritwik Kumar Banerjee

-vs.-

Sri Surajit Chanda.

Mr. Arunangshu Chakraborty,
Mr. Avijit Kr. Bera,
Ms. Zeba Rashid,
Ms. Shaika Amrin.

...For the Petitioner.

Mr. Syed Shahid Imam,
Md. Khairul,
Mohd. Shahbaaz Khan.

...For the Opposite Party.

Reserved on : 14.03.2024.

Judgment on : 16.04.2024.

Tirthankar Ghosh, J:-

The present batch of revisional applications were preferred challenging the proceedings being C-04/2015, wherein process was issued under Section

500/211 of the Indian Penal Code and is pending before the learned Judicial Magistrate, 1st Class, 6th Court, Sealdah including all the orders passed therein.

The three revisional applications arise out of the same case being C-04/2015 which was initially filed before the Learned ACJM, Sealdah and subsequently transferred to the Learned Judicial Magistrate, 1st Class, 6th Court, Sealdah. The first revisional application being CRR 2406 of 2015 was filed challenging the proceedings as well as the order dated 07.03.2015, by which the learned Magistrate was pleased to take cognizance of the offence. The second revisional application being CRR 1071 of 2018 was also filed challenging the proceeding including the order dated 29.03.2018, by which the learned Magistrate was reluctant to stall the proceedings, as there was no interim order of stay and fixed date for examination under Section 251 of the Code of Criminal Procedure. The third application being CRR 1951 of 2021 was also filed for quashing of the proceedings including the order dated 18.05.2022 wherein the learned Magistrate fixed date for examination under Section 251 of Cr.P.C. inspite of the earlier revisional applications pending before the High Court. As, the subject matter of the three revisional applications and the prayers advanced therein are same, all of them are take up together and disposed of by a common judgment.

The allegations made in the petition of complaint were to the effect that the complainant is an Assistant Professor (Senior Grade), associated with

Rabindra Bharti University. The accused/petitioner happens to be the Security Officer posted at Rabindra Bharti University. The accused/petitioner lodged a complaint with the Officer-in-charge, Sinthi Police Station alleging that on 29.07.2011 at about 12.00 p.m. a scuffle took place between Sri Basu Dev Nandi, Senior Assistant on one side and Sri Shoubhik Biswas, Sri Shuvijit Das, Sri Biswajit Haldeer, Sri Nilanjan Das, Sri Sommohan Dey and Sri Surajit Chanda and in the said scuffle Basu Dev Nandi was injured and ultimately died. Pursuant to the said complaint Sinthi Police Station case no.96 dated 29.07.2011 was registered for investigation against Shoubhik Biswas, Shuvijit Das, Biswajit Halder, Nilanjan Das, Sommohan Dey and Surajit Chanda (complainant) under Section 304/34 of the Indian Penal Code. After the investigation commenced the complainant along with others were arrested from inside the campus of Rabindra Bharti University on 29.07.2011 and after investigation, the investigating officer of the case filed charge-sheet being no. 101/2011 under Section 304/34 of the Indian Penal Code against Shoubhik Biswas, Shuvijit Das, Biswajit Halder, Nilanjan Das, Sommohan Dey and Surajit Chanda on 22.09.2011. The complainant was granted bail in CRM No. 7945 of 2011 on 19.09.2011 by the Hon'ble High Court, Calcutta and was released on 21.09.2011. The complainant alleges that he was in custody for 52 days which tarnished his image and reputation in the eyes of his relatives, neighbours, colleagues, peers, students and the non-teaching staff of Rabindra Bharti University while he was completely innocent of the alleged offences. During the trial, in the Court of learned Additional Sessions Judge, Sealdah the

prosecution cited 12 witnesses in order to prove its case and the present accused was called in as prosecution witness no.1. During his cross-examination the accused admitted that the complainant herein was in the examination process and was engaged in Viva-Voce test on the date and time of alleged incident. The accused further admitted in his evidence-in-chief that the complainant herein reached the alleged place of occurrence after the alleged incident. The complainant thereafter contended that from the deposition of the accused/petitioner it is transparent that he was well aware of the fact of non-involvement of the complainant herein since inception of the alleged incident but still then he chose to name the complainant in the alleged incident vide letter dated 29.07.2011 addressed to the Officer-in-charge, Sinthi Police Station. However, after examination and cross-examination of 12 witnesses and after completion of the procedure under Section 313 of the Code of Criminal Procedure the complainant vide judgment and order dated 06.08.2013 was acquitted of the charges. The complainant therefore alleged that Sinthi Police Station case no. 96 dated 29.07.2011 was initiated against him by the accused Ritwik Kumar Banerjee which falls under the jurisdiction of the learned Court as the trial of the above mentioned case was conducted by the said Court as place of occurrence was Rabindra Bharti University Campus within the jurisdiction of Sinthi Police Station and as such the Court at Sealdah had jurisdiction to take cognizance of the offence complained of. It was also divulged that earlier the petitioner preferred a complaint before the learned Judicial Magistrate, Alipore considering that accused was residing at Patuli but

the same was returned by the learned Magistrate on the ground that the Court had no jurisdiction to take cognizance of the offence and further observed in the order dated 25.11.2014 that as the place of occurrence is Rabindra Bharti University Campus which falls under Sinthi Police Station it would be the Court at Sealdah which would have the jurisdiction to adjudicate the alleged offences. Finally it has been alleged that the accused Ritwik Banerjee knowingly, wilfully and deliberately named the complainant Surajit Chandra thereby implicating him in a false case which has resulted in his irreparable loss before the society. As alleged the complainant suffered tremendous mental and physical trauma and harassment which also resulted in the reputation of the complainant being lowered in the society and so he contended that the accused has committed offences under Section 500/211 of the Indian Penal Code and prayed for issuance of process.

On the basis of the aforesaid complaint learned ACJM, Sealdah was pleased to take cognizance of the offence and transferred the case to the learned Judicial Magistrate, 6th Court, Sealdah. The learned Judicial Magistrate, 6th Court, Sealdah was pleased to fix date for examination of the complainant under Section 200 of the Code of Criminal Procedure and on assessment of the oral deposition of the complainant and the documents so relied upon was pleased to issue process under Section 500 read with Section 211 of the Indian Penal Code against the present petitioner.

I have considered the letter of complaint which was addressed by the present petitioner to the Officer-in-charge, Sinthi Police Station and was registered for investigation as Sinthi PS Case no. 96 of 2011 for the purposes of the present case. The contents of the said letter of complaint dated 29.07.2011 is set out as follows:

“This is to report to you that today at about 12 noon a scuffle between Sri Basu Dev Nandi, Senior Assistant and Sri Shoubhik Biswas, Sri Shuvojit Das, Sri Biswajit Halder, Sri Nilanjan Das, Sri Sommohan Dey visual students of Visual Arts Dept. of this University and Sh. Surajit Chanda who was also involved in this scuffle, and in this Sri Nandi was injured, immediately the attending doctor of our medical unit Sh. Kalyan Sankar Poddar was called, it is learnt from Sh. Poddar that there was no symptoms of life when he checked Sh. Nandi.....”

Mr. Chakraborty learned Advocate appearing for the petitioner mainly stressed on two issues firstly, regarding bar under Section 195 (b)(i) and (iii) of the Cr.P.C. as well as Section 468 of Cr.P.C. and submitted that the learned Magistrate without any application of mind took cognizance of the offence as well as issued process. Learned Advocate submitted that the present complainant had no authority to initiate proceedings under Section 211 of the Code of Criminal Procedure and also emphasized that so far as the prescribed punishment is concerned under the law for offences relating to defamation the period is two years and as such the bar of limitation under the provision of the Code of Criminal Procedure is attracted and consequently without any condonation under the relevant provisions the learned Magistrate neither had

the authority to take cognizance of the offence nor the authority to issue process against the present petitioner.

On the other hand Mr. Imam, learned Advocate appearing for the complainant opposite party submitted that it is a fact that because of complaint of the petitioner in connection with Sinthi PS case no. 96 of 2011 the complainant/opposite party was falsely implicated therein and as such not only he had to face the ordeal of the criminal trial but also he being a Professor his reputation amongst his relations, friends, well-wishers were lowered in the eye of the society. According to the learned Advocate for the petitioner he had to face charges under Sections 304/34 of the Indian Penal Code which is bound to send not only a wrong message but society at large would consider him to be an offender who participated in ending the life of B. Nandi. Additionally it was submitted that the deposition as stated above of the petitioner would go to show that he was well aware that the complainant was not there in the vicinity but yet he was implicated in connection with Sinthi PS Case no. 96/11.

The grievance of the complainant as is reflected from the petition of complaint relate to his arrest pursuant to the information filed by the accused/petitioner as security officer with the Officer-in-charge of Sinthi Police Station. As according to the complainant he was arrested in connection with Sinthi Police Station case no. 96 dated 29.07.2011 and released on 21.09.2011 after having suffered 52 days of custody which tarnished his image, reputation

in the eyes of his relatives, neighbours, colleagues , peers, students and the non-teaching staff of the Ravindra Bharti University. It would not be out of place to state that in this case the accused/petitioner was security officer and an individual namely, Basudev Nandy died, as a result of a scuffle which took place within the campus of the university. As a security officer he was obliged under the law to inform the incident to the lawful authority which is the police, as the incident which took place called for interference by the police authorities. In respect of the said information the case being Sinthi Police case no. 96 dated 29.07.2011 was registered for investigation, now so far as the investigation is concerned one has to appreciate that as per the settled proposition of law arrest is a part of the investigation. The same would be transparent from the judgment of the Hon'ble Supreme Court in H. N. Rishbud –Vs. – State (Delhi Admn.) reported in (1954) 2 SCC 934, paragraph 8 of the said judgment is relevant which is set out as follows:

“8. Thus, under the Code investigation consists generally of the following steps:

- (1) Proceeding to the spot,*
- (2) Ascertainment of the facts and circumstances of the case,*
- (3) Discovery and arrest of the suspected offender,*
- (4) Collection of evidence relating to the commission of the offence which may consist of*
 - (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,*
 - (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and*

(5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173.

The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in Section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551.”

The other grievance of the complainant is that the accused was well aware regarding the factum of the petitioner not being present over there and in spite of the same he was named and as such he has been implicated in connection with the instant case, to that effect the complainant has relied upon an answer in the cross-examination. One has to take into account when an initial information is lodged with the police authorities, particularly where the death of an individual has taken place the security officer is duty bound to divulge the same and intimate the police authorities. The police authorities after conducting a thorough investigation filed the charge-sheet or their report under Section 173 of the Code of Criminal Procedure. It is possible that during the time of trial while answering in cross-examination the petitioner may have

come to know a different set of facts, but it must be also taken into account that prior to the stage of cross-examination the learned Magistrate had taken cognizance on the charge-sheet which was filed by the police authorities, the case was committed to the Court of Sessions and charges were framed against the complainant and at each of the stages there was judicial application of mind and there is nothing on record to show that there was any ill intention of the present petitioner to falsely implicate the complainant. In *Iveco Magirus Brandschutztechnik GMBH –Vs. – Nirmal Kishore Bhartiya and Anr.* reported in (2024) 2 SCC 86 it has been held as follows:

“54. *Undoubtedly, the decisions of this Court proceed on two lines. While there are several decisions where this Court has consistently laid down the law in one particular line that it is for the Magistrate to consider the Exceptions to Section 499IPC for extension of benefit thereof at the trial when a defence is pleaded by the party seeking to avail the same and upon the burden of proof being discharged by him and that such Magistrate while deciding the question purely from the point of view of the complainant may not advert to the possible defence of the accused at the time of exercising power under Section 202, the other line of decisions seem to proceed on the premise that there is no bar in considering the Exceptions if the accused, even without appearing before the Magistrate in response to the summoning order, lays a challenge thereto under Section 482CrPC and satisfies the relevant High Court, by referring to the complaint itself and the statements of the complainant and his witness, that the facts alleged (even if deemed to be true) do not constitute an offence and hence, there was no sufficient ground for proceeding. In fact, Aroon Purie [Aroon Purie v. State (NCT of Delhi), (2023) 15 SCC 443 : 2022*

SCC OnLine SC 1491] has observed that there is no rigid principle that the Exceptions can only be considered at the pre-trial stage; in other words, at the stage of consideration of a petition for quashing, it can be so extended in a given case, and the Court would be empowered to quash the proceedings if extension of such benefit is justified on facts.”

In *Kishore Balkrishna Nand –Vs. – State of Maharashtra* reported in (2023) 8 SCC 358 it has been observed by the Hon’ble Supreme Court in Paragraphs 2, 16 and 17 which are as follows:

“2. *This is an appeal at the instance of the original accused summoned for the offence of defamation punishable under Section 500 of the Penal Code, 1860 (for short “IPC”) and is directed against the order passed by the High Court of Judicature at Bombay, Nagpur Bench, dated 3-2-2010 [Kishor v. State of Maharashtra, 2010 SCC OnLine Bom 2406] in Criminal Writ Petition No. 676 of 2009, by which the High Court rejected the writ petition filed by the appellant Kishore Balkrishna Nand and thereby declined to quash the order of issue of process by the Magistrate for the offence of defamation.*

12. *Section 499IPC reads, thus:*

“499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.”

13. *Eighth Exception to Section 499, to which reliance has been placed by the learned counsel, reads as under:*

“Eighth Exception.—Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation

against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.”

14. *The word “good faith” has been defined in Section 52IPC to mean:*

“52. “Good faith”.—Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.”

15. *We are of the view that no case is made out to put the appellant to trial for the alleged offence. There is no defamation as such.*

16. *Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. Even otherwise by perusing the allegations made in the complaint, we are satisfied that no case for defamation has been made out.”*

Having considered the aforesaid judgments and the stage at which the petitioner approached this Court, I am of the view that while exercising jurisdiction under Section 482 of the Code of Criminal Procedure the High Court is empowered to take into account the exceptions to Section 499 of the Indian Penal Code. It has been stated above in Exception Eight to Section 499 of the Indian Penal Code, that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation. Taking the same into account in the background of the present facts of the case I find that the accused/petitioner being the security officer (obviously he is responsible for security of the university) and he has reported to the Inspector-in-charge, Sinthi Police Station (who is the lawful authority), so he cannot be hauled up

for defamation. Consequently, Sinthi Police Station conducted a complete investigation and arrived at its finding.

Taking into account the role of the present petitioner, I am of the view that the act and conduct of the petitioner falls within Exception Eight to Section 499 of the Indian Penal Code and as such the petitioner cannot be foisted with any criminal case for committing offence relating to defamation.

So far as the allegations and the order of the learned Magistrate taking cognizance of the offence under Section 211 of the Indian Penal Code is concerned the same is barred under the provisions of Section 195(1)(b)(i) of the Code of Criminal Procedure as it has been categorically stated that for offence relating to the said section no Court shall take cognizance except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

Consequently the continuation of the proceedings being C-04/2015 under Section 500 read with Section 211 of the Indian Penal Code before the Learned Judicial Magistrate, 1st Class, 6th Court, Sealdah including all the orders passed therein are hereby quashed.

Thus, all the revisional applications being CRR 1951 of 2022, CRR 1071 of 2018 and CRR 2406 of 2015 are allowed.

Pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities. .

(Tirthankar Ghosh, J.)