

16.05.2024

Sl. No.:19

Court No.30
BM

CRR 3178 of 2022

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IA No: CRAN 5 of 2024

Amaresh Mondal

Vs.

The State of West Bengal & Anr.

Mr. Mayukh Mukherjee
Ms. Gargi Goswami
Mr. Sarthak Mondal

... for the petitioner

Mr. Rudradipta Nandy
Ms. Sonali Das

... for the State

- 1.** Affidavit of service filed be kept with the record.
- 2.** The present revision has been preferred praying for quashing of the proceeding being G.R No.165/2012, arising out of Kotwali Police Station case No.44 of 2012 dated 16.01.2012, charge sheet no.844/2015 dated 27.06.2015 pending before the learned Chief Judicial Magistrate at Nadia, alleging commission of offence under Sections 323/325/326/341/34 of the Indian Penal Code.
- 3.** The petitioner states that the complainant herein/opposite party no.2 namely Gopal Chandra Biswas lodged a complaint against the accused person/petitioner herein after being released from Krishnagar Correctional Home.
- 4.** It is stated that the complainant was a BSF employee. During his employment, the wife of the complainant/opposite party no.2 left her matrimonial home and thereafter she started residing at her parental home. That his wife called him to her parental home for soliciting the issues, five years back and as such the complainant decided to visit his in laws home on dated 02.04.2011.

5. On that day, the complainant was allegedly attacked by some unknown miscreants along with his father-in-law namely Samaresh Mondal.

6. Thereafter the complainant was allegedly beaten up by the accused person with iron rod on his head by the alleged accused persons. After that the complainant fell down and he suffered huge blood loss. Some police personnels rescued him and thereafter he was admitted to Shakti Nagar General Hospital. Six stitches were given.

7. The complainant was admitted for seven days. The incident went on for two hours.

8. The petitioner states that there has been a delay in lodging of the FIR as the offence was allegedly committed on 02.04.2021 and the FIR was filed on 16.01.2012. **There has been a delay of more than a year.**

9. That after the enquiry and investigation the police has filed the charge sheet being no. 844 of 2015 dated 27.06.2015 under Sections 341/323/325/326/34 of the Indian Penal Code.

10. Hence, the revision.

11. Heard the learned counsel for the petitioners and the State.

12. As the opposite party no.2 could not be served, service through the State was directed but the opposite party no.2 could not be traced out by the concerned Police Station.

13. On hearing the learned counsel for the State and on perusal of the materials in the case diary it appears, that there is not a single medical paper on record to even prima facie substantiate the case of the complainant.

14. The petitioner herein is the brother-in-law of the complainant.

15. There is thus no material on record to even prima facie make out a case as to the offences alleged against the petitioner.

16. 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.**”

17. The present case falls **under clause 7 of Para 102 of *Bhajan Lal (Supra)*.**

18. CRR 3178 of 2022 is thus allowed.

19. The proceeding being G.R No.165/2012, arising out of Kotwali Police Station case No.44 of 2012 dated 16.01.2012, charge sheet no.844/2015 dated 27.06.2015 pending before the learned Chief Judicial Magistrate at Nadia, alleging commission of offence under Sections 323/325/326/341/34 of the Indian Penal Code, **is hereby quashed, in respect of the petitioner.**

20. All applications connected thereto stand disposed of.

21. Interim order, if any, stands vacated.

22. Let a copy of the order be sent to the learned trial court for compliance.

23. Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)