

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 3351 of 2022

Sabyasachi Mondal & Ors.

Versus

The State of West Bengal & Ors.

For the petitioner	:	Mr. Sabir Ahmed Mr. Suman Chakraborty Mr. Dhiman Banerjee Mr. Quazi Ezaz Ahmed
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For the opposite party no.2	:	Mr. Sandipan Maity Mr. R.K. Sain
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For the State		Ms. Sreyashree Biswas Ms. Puspita Saha
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Heard on	:	09.12.2024
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Judgment on	:	20.12.2024
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Dr. Ajoy Kumar Mukherjee , J.:

1. This application pertains to a prayer for quashing of the proceeding being GR Case No. 744 of 2017 presently pending before judicial Magistrate Arambagh Hooghly. In the complaint the opposite party no.2 being the wife

of Chittaranjan Jana alleged that on 22.03.2017 at about 7 to 7.30 a.m. the FIR named accused persons entered into the backside of his house with some unknown person and started digging for making a drain and when the complainant and her husband raised objection, the accused persons abused them with filthy languages. Petitioners/accused Aditi Mondal and Snigdha Ghosh caught hold of her hair and assaulted her with fist and blows and when her husband tried to resist them, the other two accused persons Sabyasachi and Anupam assaulted her husband with fist and blows and accused Sabyasachi due to previous grudge tore off her blouse and attempted to outrage her modesty. Accused Anupam took away a gold chain and also assaulted her. When she raised alarm, the local people gathered at the spot. Thereafter, the accused persons left the place after threatening them with dire consequences. On the basis of the complaint lodged by the complainant, Goghat police station case no. 167 of 2017 under sections 447/323/325/354B/379/307/34 of the Indian Penal Code was started for investigation.

2. After investigation charge sheet has been submitted under sections 447/323/506/34 of the IPC and learned Magistrate had taken cognizance of the offence under those sections by an order dated 24.08.2017.

3. Being aggrieved by that proceeding Mr. Ahmed, learned Counsel appearing on behalf of the petitioner submits that from the contents of FIR, it is crystal clear that in order to wreak vengeance, the opposite party no. 2 has come up with the present false and frivolous allegation and attempted to rope the petitioners in order to compel them to face a rigorous criminal trial. It is apparent from the record that the alleged incident took

place on 22nd March, 2017 and immediate after occurrence at the first instance the husband of the opposite party no.2 namely Chittranjan Jana filed an Application under section 144 of Cr.P.C. where the allegation was of abuse and not even assault.

4. Mr. Ahmed further submits that during course of investigation when the statement of witnesses were recorded under section 161 of the Code, no one has supported the prosecution case and had disclosed that there was quarrel with regard to making a drain, which corroborates and supports the first complain lodged by said Chittaranjan Jana by way of initiating proceeding under section 144 Cr.P.C. He further submits that the medical evidence which has been relied by the prosecution also does not support the incident narrated by the opposite party no.2. In fact the opposite party no. 2 and her husband have contradicted themselves in the application under section 144 of the Code with that of the complaint which was registered as FIR. Accordingly Mr. Ahmed Submits that the attempt of the opposite party no. 2 in exaggerating the fact and implicating the petitioner with the alleged commission of offence indicates that the complaint is an outcome of wreaking vengeance and it is also clear that no such incident took place except quarrel over making a drain.

5. He further submits that the petitioner herein Aditi Mondal lodged a complaint against husband of the opposite party no.1 and the husband of opposite party no. 2, herein, being Goghat police station case no. 168 of 2017 dated 06.04.2017 and in the said complaint it was specifically contended that the petitioners herein were manhandled by the opposite party no. 1 and her husband.

6. Mr. Ahmed being aggrieved by the order dated 05.08.2022 made further argument that on the basis of a prayer made by learned Public prosecutor, the court below has illegally converted a summons triable case into a warrant triable case after examination in chief of PW1. He further argued that the public prosecutor cannot file application under section 259 of the Code and without following the process of law. The Magistrate took cognizance of the offence on the basis of the police report and materials collected during the course of investigation and charge sheet submitted under section 447/323/506/34 IPC, which is a summons triable case and the court below without cross examination of PW1 in connection with disclosure of additional fact by PW1, cannot take decision for conversion of the trial procedure. He further submits that subsequent conversion of the proceeding on the basis of application of the ld. Public prosecutor under section 259 of the code is hit by section 362 of the Code.

7. That apart the allegation made in the written complaint was made after 14 days of the incident. The opposite party no. 2 has come up with unclean hands and only with the intention to harass the petitioners and also with intent to spite the petitioners due to personal grudge. In such view of the matter the petitioners have prayed for quashing of entire proceeding including the order dated 05.08.2022 passed by the court below.

8. Mr. Maity learned counsel appearing on behalf of the opposite party submits that the injury report clearly indicates that the opposite party no.2/complainant sustained injury due to physical assault inflicted by the accused persons. Infact the charge sheet in the instant proceeding has

been submitted by the investigating authority without recording his statement under section 164 of the Code and without informing the opposite party no. 2 herein /defacto complainant.

9. He further argued that after receiving summons for deposition as witness, the opposite party no.2 narrated the incident before the trial court in camera and on the basis of deposition of opposite party no.2, an application was filed on behalf of the prosecution under section 259 of the code of Criminal Procedure and by the impugned order dated 05.08.2022 the Trial Court was pleased to convert the case into warrant procedure by framing a charge for the offence punishable under section 354(b) of the Indian Penal code.

10. He further submits that the proceeding under section 144 of the Code of Criminal Procedure relates to apprehension of breach of peace at the locale and the de facto complainant's allegation of assault and outraging modesty were not required to be reported in the said proceeding initiated under section 144 of Cr.P.C. He further stated that the Trial Court rightly converted the case into warrant procedure and thereby framed charges lawfully and the question of quashing the proceeding does not arise at all. As such he prayed for dismissal of the present application.

11. From the submissions made on behalf of the parties, two issues are required to be adjudicated in the present context

- (i) Whether by the order impugned the court below was justified in converting summons triable case into a warrant triable case on the basis of a prayer made by the public prosecutor, relying upon examination in chief of PW1.

- (ii)** Whether the instant criminal proceeding is liable to be quashed by the High court, invoking its jurisdiction under section 482 of the Code.

12. Now when the facts of the present case is examined, it is clear that in the present case parties are neighbours to each other and civil dispute regarding making a drain over the property is going on between the parties. The incident alleged to have taken place on 22.03.2017 at about 7.00 to 7.30 a.m but the complaint was lodged on 06.04.2017. On the self-same date of incident the husband of the de facto complainant filed an application under section 144 of the Code of Criminal Procedure where he described that there is dispute with regard to making a drain for passing water but no such incident of physical assault or outraging modesty was reported in the said application under section 144 Cr.P.C., which was filed at the earliest point, immediately after the alleged incident took place.

13. The OPD ticket of Goghat block primary health centre only states that '*physical assault, pain in both hands and legs due to bitten by legs*' and subsequent injury report which came up during course of investigation reflects that the opposite party complainant stated that wife of Anupam Ghosh, wife of Sabyasachi Mondal and mother of Anupam Ghosh, on both hands, chest and from the injury report it reflects that nowhere it has been stated that the complainant was beaten by any male person for the purpose of outraging modesty of the opposite party no.2

14. Thereafter opposite party no.2 exaggerated the fact and developed the allegation in the written complaint which was lodged on 06.04.2017. and therein for the first time she has come up with the case of outraging her

modesty, though the application filed under section 144 does not disclose any such act nor any such allegation of outraging modesty has been surfaced in the medical report. There is no specific allegation of section 354 of the Code and there was no contemporaneous relevant evidence at the time of filing the charge sheet. For want of evidence the investigating officer filed the charge sheet only under section 373/447/506/34 IPC.

15. This is also apparent from the fact that after the registration of the complaint when the investigation started, the statement of opposite party no.2/complainant was recorded by the investigating officer on the self same day i.e. on 06.4. 2017 and on the same day the complainant did not make any statement about any act of offence which may have designed any offence under section 354 of the IPC and her husband was also examined and he also did not disclose any act which can attract the offence of outraging modesty. Other witnesses who were examined under section 161 of the Code only stated that a quarrel and small skirmishes among the parties took place over the issue of making drain for passing rain water.

16. Surprisingly during the course of trial the defacto complainant opposite party no.2 made exaggerated statement before the court and developed a new story on the basis of which learned Public prosecutor filed application under section 259 of the code, which was entertained by the court below.

17. Mr. Ahmed rightly pointed out that ld. Magistrate took cognizance of the offence under section 447/323/506/34 IPC on perusal of the materials collected during investigation and even during the course of investigation it

was not the prosecution case that any offence under section 354 has been committed by the accused persons.

18. Mr. Ahmed is justified in his submission that an accused has the right of fair trial but the complainant/opposite parties had attempted to develop the allegations in every stage since inception and thereby they have prompted Public prosecutor to file the above mentioned application under section 259 of the Code and learned Trial Court without applying judicial mind has allowed the said prayer. In this context Mr. Ahmed further pointed out that the opposite party no.2 herein/complainant also filed a writ application before this High court being WP No. 11297(W) of 2017 over the land dispute and due to several litigations, the complainant has exaggerated his version only to wreak vengeance and to malign the petitioners in the society.

19. Accordingly before passing the order impugned the Magistrate ought to have recorded his subjective satisfaction and not because the witness has exaggerated something deviating from her early stand. In the order impugned dated 05.08.2022 the court below did not consider the abovementioned background of the case and without recording any reason in respect of subjective satisfaction, passed the order impugned, which in my considered opinion is not sustainable in the law.

20. In such view of the matter the order impugned dated 05.08.2022 passed by the court below so far it relates to section 259 of Cr.P.C., is concerned is hereby quashed. However in the facts and circumstances of the case since the trial has already been commenced and materials available in the record does not suggest that no cognizable offence has been

made out during the course of investigation, the prayer for quashing the proceeding stands rejected.

21. CRR 3351 of 2022 accordingly disposed of.

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

(DR. AJOY KUMAR MUKHERJEE, J.)