

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2936 of 2017

Sk. Monuar Ali

Versus

The State of West Bengal & Another

For the Petitioner : Mr. Amarendra Chakraborty, Adv.

For the Opposite Party No. 2 : None

For the State : None

Heard on : 07.10.2024

Judgment on : 06.11.2024

Ajay Kumar Gupta, J:

1. This Criminal Revisional application has been filed by the petitioner/accused under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the Charge Sheet being No. 197 of 2017 dated 28.03.2017 under Sections 341/325/354B/506/34 of the Indian Penal Code, 1860 filed in connection with Duttapukur Police Station Case No. 03 of 2017 dated 01.01.2017 corresponding to G.R. Case No. 12 of 2017 pending before the Learned Chief Judicial Magistrate, Barasat, 24, Parganas (North) contending therein that the petitioner is innocent. He has been falsely implicated into this case due to village rivalry and the incident narrated by the de-facto complainant is false and fabricated.

2. The brief facts of the instant case for the purpose of disposal of this case are as under:

2a. One Halima Bibi, Opposite Party No. 2 herein, Savapati, Barasat Panchayat Samity was hoisting Party Flag at AITMC at Chakbarbaria, Noapara Police Station, Duttapukur under Khilkapur Paschim Gram Panchayat on 01.01.2017 in between 9 hrs to 9.30 hrs. At the same time, Party Flag hoisting was also organised by Hazi Manowar Ali, Pradhan Khilkapur Gram Panchayat, just 20 feet away from the former location. An altercation took place between Mst. Halima Bibi and Manowar Ali on the issue of flag hoisting. It is

alleged that the Petitioner along with other co-accused suddenly at the instance of the Petitioner herein had outraged the modesty of Halima Bibi and her follower, Md. Jamaluddin. He was assaulted by one Rahul Amin. He was hospitalized due to sustain of injuries on his person.

2b. On the basis of said complaint, a case was registered being Duttapukur Police Station Case No. 03 of 2017 dated 01.01.2017 under Sections 341/325/354B/506/34 of the Indian Penal Code, 1860 against the co-accused and the Petitioner herein. The said case was assigned for investigation to the Investigating Officer.

2c. After conclusion of investigation, a Charge Sheet being No. 197 of 2017 dated 28.03.2017 under Sections 341/325/354B/506/34 of the Indian Penal Code, 1860 filed in connection with Duttapukur Police Station Case No. 03 of 2017 dated 01.01.2017 before the Learned Court below.

2d. According to the Petitioner, the complaint is vague and harassing in nature to the accused persons. Complaint was allegedly motivated with political rivalry but the Investigating Officer, without proper investigation, submitted the Charge Sheet, which is liable to be quashed for ends of justice. No ingredients have been disclosed in the complaint for allegations of the offences punishable under any of

the Sections i.e. 341/325/354B/506/34 of the Indian Penal Code, 1860. Bereft of ingredients, the entire proceeding is nothing but an abuse of process of law.

2e. Under the above facts and circumstances, Petitioner has preferred this Criminal Revisional application with a prayer for quashing of the proceeding pending before the Learned Magistrate and same has come up before this Bench for its disposal.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. Learned counsel appearing on behalf of the Petitioner vehemently argued and submitted that the allegation of the de-facto complainant is concocted and false and after thought to implicate the Petitioner falsely into this case due to political rivalry. The allegation narrated by the de-facto complainant is totally absurd and false since she has stated an altercation took place between Savapati Mst. Halima Bibi and Gram Panchayat Prodhan, Hazi Manowar Ali when she raised objection on the issue of flag hosting. Suddenly, Rahul Amin @ Babu, Ziarul Haque @ Fattar, Jinnat Ali, Islam Ali Samser Ali and Nazrul Islam at the instance of Hazi Manowar Ali assaulted Halima Bibi and Md. Jamaluddin and also outraged her modesty though the entire allegation against the Petitioner is totally false. Petitioner has no role in any way in the aforesaid incident.

4. It is further submitted that Charge Sheet has been submitted under Sections 341/325/354B/506/34 of the Indian Penal Code, 1860 against other accused persons although Charge Sheet was submitted against the Petitioner only under Section 506 of the Indian Penal Code, 1860. Accordingly, the instant case is totally false and frivolous and is lodged only to harass the Petitioner. Petitioner was not at all involved in the said incident. Accordingly, the proceeding is liable to be quashed otherwise Petitioner would suffer greatly and prejudice to such false allegation.

5. Finally, it was further submitted that Charge Sheet has been submitted under Sections 341/325/354B/506/34 of the Indian Penal Code, 1860 against other 8 accused persons but Charge Sheet was submitted under Section 506 of the Indian Penal Code, 1860 only against the present Petitioner but the Learned Magistrate wrongly took cognizance against all 9 accused including Petitioner herein in connection with all the alleged Sections. Accordingly, the legal Maxim “Sublato Fundamento Cadit Opus” meaning thereby “initial action (Cognizance taken) being bad, all subsequent actions are bad” squarely applies in the present case and only on such score, impugned proceeding being G.R. No. 12/17 is liable to be quashed insofar as the present Petitioner is concerned. A written note of argument is also filed by the Petitioner for consideration.

6. None appears on behalf of the Opposite Parties. No accommodation had been sought for in spite of good service of summons. Accordingly, the matter is taken up for disposal on its own merits.

DISCUSSIONS, ANALYSIS AND CONCLUSION BY THIS COURT:

7. Heard the submission made on behalf of the Petitioner and on perusal of the materials available in the record, it appears on the basis of complaint lodged by the de-facto complainant, a case was registered being Duttapukur Police Station Case No. 03 of 2017 dated 01.01.2017 under Sections 341/325/354B/506/34 of the Indian Penal Code, 1860 against the co-accused and the Petitioner herein.

8. During investigation, the Investigating Officer visited the Place of Occurrence, examined and recorded statements of the local witnesses under Section 161 of the Cr.PC and also collected the injury report of Halima Bibi (Complainant) and Jamaluddin and seized the same. Wherefrom it reveals the incident took place with the de-facto complainant and her followers on the alleged date, time and place and a prima facie case has been established against the accused persons. Accordingly, a Charge Sheet has been submitted under Sections 341/325/354B/506/34 of the Indian Penal Code, 1860 against other 8 accused persons. However, a Charge Sheet

under Section 506 of the Indian Penal Code, 1860 only has been submitted against the present Petitioner, namely, Monuar Ali.

9. It appears from the order dated 21.04.2017 that the Learned Magistrate has taken cognizance under Sections 341/325/354B/506/34 of the Indian Penal Code, 1860 against all 9 accused persons including the present Petitioner without applying his judicious mind. It is apparent on the record that Charge Sheet has been submitted against the present Petitioner under Section 506 of the Indian Penal Code, 1860 only. Other Sections are not applicable in the case of the present Petitioner. Only on such score, the Petitioner prays for quashing of the proceeding.

10. Before considering the prayer of the Petitioner, it would be appropriate to see the materials available in the record with regard to the role of the present Petitioner in the instant case and allegation made by the de-facto complainant. From the written complaint, it reveals that the de-facto complainant narrated that Monuar asked her not to talk with him. She was asked to leave the place and talk with party leaders. Such allegation is no manner a threat or intimidation.

11. Section 506 of the Indian Penal Code, 1860 read as follows:

“Section 506: Punishment for criminal intimidation.- *Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;*

If threat be to cause death or grievous hurt, etc.—*And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”*

For commission of such offence, the following ingredients are required to be fulfilled.

“(1) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;

(2) The accused did so with intent to cause alarm to the victim of offence

(3) The accused did so the cause the victim to perform any act which he was not legally bound to do.”

None of the aforesaid ingredients were found from the allegation made by the de-facto complainant in the written complaint. No Prima facie materials were found against the present Petitioner as such the proceeding against the Petitioner appears to be false and fictitious, which required to be nipped in the bud for the ends of justice otherwise it would be injustice to the Petitioner.

12. In such situation, the case in hand, falls squarely under the Category (1, 2 and 5) as mentioned in the celebrated 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

¹ 1992 Supp (1) Supreme Court Cases 335.

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 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.”

13. In view of the aforesaid facts and circumstances, 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.

14. Accordingly, **C.R.R. 2936 of 2017** is, thus, **allowed**. Connected application, if any, are also, thus, disposed of.

15. Consequently, Charge Sheet being No. 197 of 2017 dated 28.03.2017 under Section 506 of the Indian Penal Code, 1860 filed against the Petitioner in connection with Duttapukur Police Station Case No. 03 of 2017 dated 01.01.2017 corresponding to G.R. Case No. 12 of 2017 pending before the Learned Chief Judicial Magistrate, Barasat, 24, Parganas (North) is hereby quashed insofar as the present Petitioner is concerned.

16. Interim order, if any, stands vacated.

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

18. Parties shall act on the server copies of this judgment uploaded on the official website of this Court.

19. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)