

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

Present:

**Justice Bibhas Ranjan De**

**C.R.R. 3443 of 2023**

**(Assigned)**

**Tuhin Kumar Biswas @ Bumba**

**Vs.**

**State of West Bengal & Anr**

For the Petitioner

:Mr. Somnath Ghoshal, Adv.

Ms. Subha Senapati, Adv.

Ms. Riya Kundu, Adv.

For the State

:Mr. Sudip Ghosh, Adv.

Mr. Bitasok Banerjee, Adv.

Heard on

: 27.09.2023, 04.12.223, 22.01.2024

**Judgment on**

**:30<sup>th</sup> January, 2024**

**Bibhas Ranjan De, J.**

1. The proceeding in connection with G.R. Case no. 223 of 2020 corresponding to Bidhannagar (North) Police Station Case no. 50 of 2020 dated 19.03.2020 under Section 341/354C/506 of Indian Penal Code (for short IPC), pending before Learned Judicial Magistrate, Bidhannagar is challenged in this revision application with a prayer for setting aside of the order dated 29.08.2023 in connection with G.R. Case no. 223 of 2020 passed by Learned Judicial Magistrate, Bidhannagar.

**Brief Facts:-**

2. A case was registered against the petitioner herein pursuant to a written complaint lodged by one Mamta Agarwal, the opposite party no. 2 herein alleging commission of offences punishable under Sections 341/354C/506 of the IPC and such complaint was registered as First Information Report (FIR) on 19.03.2020 which was registered as Bidhannagar (North ) Police Station Case No. 50 of 2020 dated 19.03.2020 alleging inter alia that the complainant/ opposite party no. 2 herein is a tenant of Mr. Amalendu Biswas who is one of the owners of the property situated at CF-231, Sector I, Salt Lake, Kolkata 700064. The property is jointly owned by one Amalendu Biswas and Bimalendu Biswas. The said Bimalendu

Biswas is the brother of said Amalendu Biswas and also the father of the petitioner. On 18.03.2020 the opposite party no. 2 along with her friend and some associates tried to enter the said house where she was restrained by the petitioner in aggressive mode and also threatened her associates and tried to intimidate the opposite party no. 2 by clicking her pictures and making videos of the opposite party no. 2 without her consent on his mobile phone. By doing so the petitioner allegedly intruded into the privacy of the complainant and outraged her modesty. Feeling threatened she lodged a written complaint mentioned hereinabove.

**Argument:-**

3. Learned Counsel, Mr. Somnath Ghoshal, appearing on behalf of the petitioner has drawn my attention to the order dated 29.11.2018 passed by Learned Civil Judge, (Senior Division), 2<sup>nd</sup> Court, Barasat, North 24 Paraganas in connection with Title Suit No. 20 of 2018 annexed here with as P-3 and submitted that father of the petitioner filed one suit for declaration and injunction in respect of a portion of the property wherefrom the father of the petitioner was forcefully dispossessed. In that Civil Suit on prayer of the plaintiff/father

of the petitioner herein, obtained interim order of injunction passed by the Learned Judge:-

*“ ... Both the parties should maintain a joint possession in the suit property. Both parties are hereby restrained from disturbing the joint possession of the other in the suit property and from alienating the suit property or creating third party interest in the suit party till disposal of the suit...”*

4. Mr. Ghoshal has further submitted that Amalendu Biswas, a party to the civil suit, tried to create third party interest in violation of interim order of injunction passed in Title Suit no. 20 of 2018. According to Mr. Ghoshal the proceeding was maliciously instituted with an ulterior motive for wreaking vengeance on the father of the petitioner who is the plaintiff of the title suit being no. 20 of 2018.
5. Mr. Ghosal has further contended that the written complaint leading to the instant criminal proceeding does not disclose commission of any offence alleged in the case.
6. In opposition to that, Learned Counsel, Mr. Sudip Ghosh, appearing on behalf of the State has argued that there are sufficient materials in the written complaint to suggest for continuation of a proceeding under Sections 341/354C/506 of IPC.

**Decision with reasons:-**

7. Admittedly, there is a civil dispute between two brothers and the petitioner is the son of one. It is also found from the record that one interim order of injunction was promulgated by the Leaned Civil Judge (Sr. Division), Barasat directing both the parties to restrain from disturbing the joint possession of the other in the suit property and from alienating the suit property or creating third party interest in the suit property till disposal of the suit.
8. It is needless to mention that enmity between the parties cuts both way either by filing a case with true allegation or another with false allegation. Pendency of the Civil Suit between the parties, in my opinion, does not necessarily lead to a presumption of initiation of a false criminal proceeding.
9. This proceeding was not initiated at the instance of any of the parties to the title suit but one Mamta Agarwal/ opposite party no. 2 herein lodged the complaint claiming herself as a tenant under Mr. Amalendu Biswas, defendant of the title suit.
10. It is settled position of law that while exercising power under Section 482 of the Code of Criminal Procedure, the High Court is not required to conduct a mini trial. What is required to be considered at that stage is only the nature of accusation

and allegation in the FIR and whether the allegations in the FIR prima facie disclose commission of a cognizable offence or not.

- 11.** Allegation made in the written complaint, in my opinion, did not disclose any offence under Section 354C which runs as follows:-

*“[354C. Voyeurism.--Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.*

*Explanation 1--For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.*

*Explanation 2."Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.]”*

**12.** From the bare reading of the aforesaid provision, it is clearly intelligible that the allegation of clicking pictures and making videos made in the written complaint cannot be said to be an offence within the meaning of Section 354C of IPC.

**13.** In a recent case of State of ***Maharashtra and another Vs. Dr. Maroti*** reported in ***(2023) 4 SCC 298*** it was held in paragraph 21 :-

*“ 21. If FIR and the materials collected disclose a cognizable offence and the final report filed under Section 173(2) , Cr.P.C. on completion of investigation based on it would reveal that the ingredients to constitute an offence under the POCSO Act and a prima facie case against the persons named therein as accused, the truthfulness, sufficiency or admissibility of the evidence are not matters falling within the purview of exercise of power under Section 482 Cr.P.C. and undoubtedly they are matters to be done by the Trial Court at the time of trial. This position is evident from the decisions referred supra.”*

**14.** With regard to truthfulness, sufficiency or admissibility of the charge under Section 341/506 of the IPC made in the FIR, it cannot be said to be a matter falling within the domain of exercising jurisdiction under Section 227 of the Code of Criminal Procedure at the time of consideration of a prayer for discharge.

**15.** On careful scrutiny of the order impugned, I find no reason to interfere with the order whereby Ld. Magistrate

refused to discharge the accused and fixed a date for framing of charge and hearing of the petition.

- 16.** Thus, the revision application being no. CRR 3443 of 2023 is hereby dismissed. Ld. Trial Court is directed to frame charge, keeping an eye on the observation made by this Court after giving an opportunity of hearing to both the parties.
- 17.** Case Diary be returned.
- 18.** Interim order, if there be, any stands vacated.
- 19.** Pending applications, if there be, any stands disposed of accordingly.
- 20.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 21.** 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.]**