

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3520 of 2011

Chandra Sekhar Pun

-Vs-

The State of West Bengal

For the Petitioner : Mr. Bhaskar Deb
Mr. Mukesh Kumar Gupta

For the State : Mr. Avishek Sinha

Heard on : 24.11.2023, 08.02.2024, 05.04.2024,
06.08.2024

Judgment on : 05.11.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner praying against an order dated 15.02.2011 passed by the Learned Chief Metropolitan Magistrate, Calcutta for taking cognizance of the G.R. Case No.1718 of 2010, arising out of New Market Police Station Case No.275/10 dated 13.05.2010 under Section 341/506(ii)/114 of the Indian Penal Code, pending before the Learned 6th Metropolitan Magistrate, Calcutta and an order dated 31.05.2011 passed by the Learned 6th Metropolitan Magistrate issuing notice to the de-facto complainant in G.R. Case No.1718 of 2010, arising out of New Market Police Station Case No. 275/10 dated 13.05.2010 under Section

341/506(ii)/114 of the Indian Penal Code and quashing of the notice dated 31.05.2011 issued by the said Learned 6th Metropolitan Magistrate, Calcutta, directing the petitioner to appear before the said Learned Court in connection of the charges under Sections 182/211 of the Indian Penal Code.

2. Petitioner's contentions revealed in the instant application are as follows:-

On the basis of a written complaint lodged by the petitioner at New Market Police Station on 13.05.2010, New Market Police Station Case No.275 dated 13.05.2010 had been initiated under Sections 341/506(ii)/114 of the Indian Penal Code against one Shambhu Prasad Shaw and other unknown accused persons. On completion of the investigation, it appeared the said Shambhu Prasad Shaw died prior to the date of incident. The investigating agency filed the charge sheet in its 'Final Form' and on the prayer of the investigating officer, the Learned Magistrate, by the order impugned dated 15.02.2011, took cognizance of the said prayer to implicate the petitioner and the de facto complainant under Section 182 of the Indian Penal Code.

3. Subsequent to the complaint being filed by the petitioner F.I.R. had been drawn and investigation was concluded by New Market Police Station.

4. During the process of investigation, the investigating agency seized a copy of the death certificate of said Shambhu Prasad Shaw (vide. Seizure List dated. 24.05.2010) depicting his date of death to be 23.04.2000, charge-sheet in its 'Final Form' being No. 10/11 Dated 12.02.2010 in connection of the said case was filed in the Learned Court of the Chief Metropolitan Magistrate, Calcutta.

5. On or about 19.06.2010 the petitioner was served with a notice under Section 91 of the Code Of Criminal Procedure by the investigating officer, asking him the details of the 'unknown antisocials' as mentioned in the said letter of complaint dated 13.05.2010 along with an explanation as to why the petitioner lodged the complaint against a dead person. The petitioner thereafter enquired about said Shambhu Prasad Shaw and learnt the same to have expired long before the said date of incident and the said complaint been lodged.
6. The petitioner further contended that the predecessors-in-interest of the petitioner jointly purchased the premises No.2, Madge Lane, Kolkata during their life time from the erstwhile owners of the said premises who had provided a list of tenants occupying the said premises. Accordingly, predecessors-in-interest of the petitioner recognized the occupancy of those tenants at the said premises, including said Shambhu Prasad Shaw on whose account rent was paid up to the month of May, 2009 previously to the predecessor and thereafter to the petitioner and the other co-owners of the premises and accordingly the petitioner was unaware as to whether said Shambhu Prasad Shaw died or was alive as he was not the resident therein. After the death of the predecessors-in-interest, the petitioner along with his cousin brothers jointly became the owners of the said premises. By a deed of partition dated March 2, 2007 the said premises was divided into two parts. The petitioner was allotted the northern portion of the said premises in which Shambhu Prasad Shaw (since deceased) use to carry on his business. The petitioner had never seen said Shambhu Prasad Shaw as he did not

physically pay the rents to the petitioner directly. The said Shambhu Prasad Shaw was a tenant in respect of one almirah shop at the southern side of the main entrance of the said premises. The legal heirs of Shambhu Prasad Shaw did not report to the petitioner about his demise. The petitioner used to see one young boy running the said shop without paying any rent. The petitioner never claimed any rent from him owing to a dispute amongst the co-owners. However, witnessing one man associated with certain anti-socials trying to set-up another almirah at the main entrance of the said premises, the petitioner immediately objected thereto. At the time of incident, certain associates called out the name of "Shambhu da" giving an impression to the petitioner that at the instance of "Shambhu da", illegal attempts were made to install another almirah and accordingly the petitioner lodged the complaint in writing.

7. Petitioner further stated that by another notice dated 24.09.2010, under Section 91 of the Code of Criminal Procedure the investigating officer again asked the petitioner about the particulars of the accused persons to which the petitioner replied by his letter dated 01.10.2010.
8. The petitioner again by his letter dated 02.02.2011 explained the situation and the ignorance of facts by the petitioner to the Officer in Charge of the concerned Police Station with a copy to the Deputy Commissioner of Police (Central), Kolkata.
9. Learned Advocate for the petitioner submitted as follows: –
 - i. The petitioner was under impression that the tenant/miscreant was Shambhu Prasad Shaw, who was operating a business under the

tenancy of the petitioner, as such tenancy was created by the erstwhile owner of the premises. The petitioner became its co-owner subsequently. Therefore, identifying another person as 'Shambhu Prasad Shaw' could be termed as 'mistake of fact' and nothing else. However, such fact, much prior to file the charge-sheet, viz. on August 03, 2010, October 01, 2010 and February 02, 2011 was intimated to the investigating agency as well as the superior police officers.

- ii. Investigation was not directed to ascertain as to whether any incident occurred on May 13, 2010. The investigating agency directed its purported investigation as to why the petitioner lodged a complaint against a dead person.
- iii. The repeated explanations of the petitioner much prior of filing of Report under Section 173 of the Code of Criminal Procedure, that by mistake of fact, supported by cogent and acceptable reason, he inadvertently complained against said Shambhu Prasad Shaw, since deceased, for no reason, far less from any justifiable reason, was not accepted and "Final Report as False" was submitted with prayer to draw proceeding under Sections 182/211 of the Indian Penal Code. This act on the part of the investigating agency cannot be termed as expedient rather it reflects a retaliatory reaction against a victim.
- iv. Section 79 of the Indian Penal Code provides that nothing is an offence which is done by any person who is justified by law, or who by reason of mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it. The petitioner,

for the reasons aforesaid, was under impression that the offence had been committed by one 'Shambhu Prasad Shaw'. He was represented as such and within the common parlance the petitioner was compelled him to believe that the person, who was committing such offence, was none but 'Shambhu Prasad Shaw'. For this reason, in good faith, the petitioner initially lodged complaint stating the name of said 'Shambhu Prasad Shaw' while he had no knowledge that said Shambhu died by that time. Applying the test of the Section 79 of the Indian Penal Code, it is respectfully submitted that, the petitioner is entitled to such general exceptions as envisaged in Chapter IV of the Code.

- v. Section 182 of the Indian Penal Code provides inter alia that false information, with intent to cause public servant to use his lawful power to the injury of another person. The words 'injury' and 'annoyance' as has been depicted in the Section unambiguously suggests in respect of 'any person' and here 'any person' should have been taken as a living person least on the rudiments that no aspersion was given to defame his character. Further, no such allegation has come forth either. So also Section 211 of the Indian penal Code provides false charge of offence made with intent to cause injury to any person. Here also, it is, with all humilities submitted that, 'any person' should have been considered as a living being because of the fact that no attempt was made to harm the reputation of such person. Therefore, the petitioner should have been exonerated

from the charges levelled against him and as such the proceeding is liable to be quashed.

Therefore it was humbly submitted that the G.R. Case No.1718 of 2010, arising out of New Market Police Station Case No.275/10 dated May 13, 2010 wherein cognizance under Section 182/211 of the Indian Penal Code was taken against the de facto complainant, the petitioner herein, now pending before the learned 6th Metropolitan Magistrate, Calcutta should be quashed.

10. The Learned Advocate for the State that the petitioner acted upon misconception of facts, however, the investigating agency was baffled at his demeanor and therefore, the proceedings must continue against the petitioner.
11. The petitioner stated to have informed the investigating agency prior to the submission of the charge-sheet that inadvertently the name of the Shambhu Prasad Shaw was mentioned by him since he had been a tenant under the erstwhile land owner. The petitioner acted upon a misconception of facts being unaware of the death of the tenant namely Shambhu Prasad Shaw.
12. Section 182 of the Indian Penal Code states as follows:-

“Section 182. False information, with intent to cause public servant to use his lawful power to the injury of another person. - Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

13. Section 211 of the Indian Penal Code states as follows:-

“Section 211. False charge of offence made with intent to injure. - *Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;*
and if such criminal proceeding be instituted on a false charge of an offence punishable with death, ¹ [imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

14. Section 79 of the Indian Penal Code states as follows:-

“Section 79. Exemption from liability of intermediary in certain cases. - *1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.*

(2) The provisions of sub-section (1) shall apply if--

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not--

(i) initiate the transmission,

(ii) select the receiver of the transmission, and

(iii) select or modify the information contained in the transmission;

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if--

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation. -- For the purposes of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary."

15. The elements to constitute offence under Sections 182 and Section 211 of the Indian Penal Code are primarily absent and the petitioner is entitled to the benefit as the explanation as enumerated in Section 79 of the Indian Penal Code.

16. In view of the above discussions, the order dated 15.02.2011 passed by the Learned Chief Metropolitan Magistrate, Calcutta whereby taking cognizance against the de-facto complainant in G.R. Case No.1718 of 2010, arising out of New Market Police Station Case No.275/10 dated 13.05.2010 under Sections 341/506(ii)/114 of the Indian Penal Code, pending before the Learned 6th Metropolitan Magistrate, Calcutta and an order dated 31.05.2011 passed by the Learned 6th Metropolitan Magistrate issuing notice to the said de-facto complainant in G.R. Case No.1718 of 2010, arising out of New Market Police Station Case No. 275/10 dated 13.05.2010 under Section 341/506(ii)/114 of the Indian Penal Code and quashing of the notice dated 31.05.2011 issued by the said Learned 6th Metropolitan Magistrate, Calcutta are quashed.
17. Under such circumstances, the instant criminal revisional application being CRR 3520 of 2011 is allowed.
18. Accordingly, the criminal revisional application being CRR 3520 of 2011 is disposed of.
19. There is no order as to costs.
20. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
21. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)