

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 3702 of 2011
With
CRAN 1 of 2012 (Old No. CRAN 421 of 2012)**

**Susen Krishna Howladar
-Vs-
The State of West Bengal and Anr.**

For the Petitioner	: Mr. Sourav Chatterjee Mr. Debapratim Guha
For the State	: Mr. Narayan Prasad Agarwala Mr. Pratick Bose
For the Opposite Party No.2	: Mr. Subhasish Bhattacharyya
Heard on	: .27.09.2023, 13.10.2023
Judgment on	: 10.01.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed by the petitioner praying for quashing of the proceedings being G.R. Case No. 444 of 2010 pending before the Learned Additional Chief Judicial Magistrate, Uluberia, Howrah arising out of Uluberia Police Station Case No. 173/2010 dated 19.03.2010 under Sections 341/323/427/506/34 of the Indian Penal Code and all orders passed therein including the order dated 14.6.2011 passed by the Learned Additional Chief Judicial Magistrate, Uluberia, Howrah thereby taking cognizance of offences

punishable under Sections 341/323/427/506/34 of the Indian Penal Code against the petitioner in connection with the aforesaid case.

2. The petitioner contended as follows:-

- i. The petitioner had been an Assistant Teacher attached to Somruk Shital Chandra Institution, Howrah and had joined the same on or about October, 2006. The petitioner had joined such service upon completion of his Bachelor of Arts and Bachelor of Education Degree Courses. The petitioner had been a teacher of Political Sciences.
- ii. The Opposite Party no. 2 had been the Teacher-in-Charge of the said Somruk Shital Chandra Institution (hereinafter referred to as the said institution).
- iii. The petitioner along with other teachers of the said institution had been protesting against the illegal activities of the Opposite Party No. 2 and his cohorts to the detriment of the Opposite Party No. 2 and his men.
- iv. Various representations addressed to several administrative and police authorities seeking their intervention against the illegal activities of the Opposite Party No. 2 and his cohorts yielded no results.
- v. On 16.02.2010, due to the nefarious and violent acts of the Opposite Party No.2 and his cohorts, the petitioner was compelled to lodge a written complaint before the Officer-in-Charge, Uluberia Police Station and pursuant thereto, Uluberia Police Station Case no. 83/2010 dated 16.02.2010 under Sections 447/448/341/323/325/354/506/34 of the

Indian Penal Code was registered for investigation against the Opposite Party No.2 and others.

- vi. Registration of the said Uluberia Police Station Case No. 83/2010 dated 16.2.2010 at the behest of the petitioner enraged the Opposite Party No.2 and his cohorts and they prejudice the petitioner in various ways and means.
- vii. On 19.03.2010 between 10:50 a.m. and 11 a.m. when the petitioner went to the office of Headmaster of the said institution to sign on the daily attendance register of teachers, certain outsiders were observed to be talking to the Opposite Party No.2. When one of the said outsiders prevented the petitioner from signing on the daily attendance register of teachers, the petitioner raised a protest. This infuriated the Opposite Party No.2 and he throttled the neck of the petitioner with an intention of killing him. Thereafter, the petitioner was assaulted with fists and blows and when one of his colleagues tried to rescue him, he too was assaulted and resultantly, sustained injuries. Thereafter, the other colleagues of the petitioner rescued him from the clutches of the Opposite Party No.2 and his cohorts. Subsequently, the petitioner was medically treated for the injuries suffered by him due to the attack and assault perpetrated upon him by the Opposite Party No.2 and his cohorts.
- viii. Over such attack and assault, the petitioner lodged a written complaint before the Officer-in-Charge, Uluberia Police Station and as such, Uluberia Police Station Case No. 171/2010 dated 19.3.2010 under Sections

341/323/325/427/506/34 of the Indian Penal Code was started against the Opposite Party No.2 and his cohorts.

- ix. As a counterblast, the Opposite Party No.2 lodged a written complaint with the Officer-in-Charge, Uluberia Police Station and as such the impugned case being Uluberia Police Station Case No. 173/2010 dated 19.3.2010 under Sections 341/323/325/427/506/34 of the Indian Penal Code was initiated against the petitioner and others.
- x. Upon conclusion of a purported investigation, the Investigating Agency submitted a Charge Sheet being Charge Sheet No. 307/2011 dated 31.3.2011 under Sections 341/323/427/506/34 of the Indian Penal Code against the petitioner and 4 others.
- xi. The aforesaid Charge Sheet was filed before the Learned Additional Chief Judicial Magistrate, Uluberia, Howrah and by the impugned order dated 14.6.2011, the Learned Magistrate took cognizance of offence punishable under Sections 341/323/427/506/34 of the Indian Penal Code against the petitioner and 4 others.
- xii. The petitioner has been implicated in the instant case without any legal basis whatsoever.
- xiii. The impugned proceedings had been a counterblast to the said Uluberia Police Station Case No. 171/2010 dated 19.3.2010 which was registered for investigation at the behest of the petitioner. The impugned criminal proceedings have been initiated in gross abuse and/or misuse of the

process of criminal law, as and by way of an afterthought and to create a shield for the Opposite Party No.2 and his cohorts.

3. The Learned Advocate for the petitioner submitted that :

- i. The petitioner has been implicated in the instant case without any legal basis whatsoever.
- ii. The impugned proceedings is a counterblast to the said Uluberia Police Station Case No. 171/2010 dated 19.3.2010 which was registered for investigation at the behest of the petitioner. The impugned criminal proceedings have been initiated in gross abuse and/or misuse of the process of criminal law, as and by way of an afterthought and to create a shield for the Opposite Party No.2 and his cohorts.
- iii. Even if the allegations in the impugned First Information Report and the materials in the Charge Sheet are believed to be true and are taken to their entirety, no case is made out against the present petitioner under Sections 341/323/427/506/34 of the Indian Penal Code.
- iv. The instant proceeding has been degenerated into an instrument of harassment and oppression and in the interests of Justice the same is liable to be quashed.
- v. No case under Sections 341/323/427/506/34 of the Indian Penal Code has been made out against the petitioner herein.

- vi. The continuation of the impugned proceedings shall amount to an abuse of the process of the court and it is expedient in the interest of justice that the impugned proceedings and all orders passed therein including the impugned order dated 14.6.2011 be quashed and/or set aside in order to prevent the abuse of the process of court or otherwise to secure the ends of justice, invoking its inherent powers under Section 482 of the Code of Criminal Procedure Code.
4. The Learned Advocate for the State has produced the case diaries in connection with Uluberia P.S. Case No. 171/2010 dated 19.03.10 under Sections 341/323/325/427/506/34 of the Indian Penal Code and Uluberia P.S. Case No. 173/2010 dated 19.03.2010 under Sections 341/323/325/427/506/34 of the Indian Penal Code.
5. The Learned Advocate for the State in all fairness submitted that the instant proceedings pending before the Trial Court must be quashed since the police case has been initiated to meet out the grudge against the petitioner by the de-facto complainant.
6. In ***State of Haryana v. Bhajan Lal***¹, the Hon'ble Supreme Court held the following:-

“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

¹ 1992 Supp (1) SCC 335

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.

7. In **Haji Iqbal v. State of U.P.**², the Hon'ble Supreme Court held the following:-

“15. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (Cr.P.C.) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into

² 2023 SCC OnLine SC 946

account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

16. In *State of Andhra Pradesh v. Golconda Linga Swamy*, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:—

“5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. **When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.**

6. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where

inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death....."

(Emphasis supplied)

17. *In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court of Judicature at Allahabad is hereby set aside. The criminal proceedings arising from FIR No. 0007 of 2023 dated 10.01.2023 registered at Police Station Mirzapur, Saharanpur, State of U.P. are hereby quashed.”*

8. The case diaries along with the respective memo of evidence submitted by the Learned Advocate for the State which had been taken on record did display a dispute with the involvement of both the parties being the teachers of an institution engaging into a brawl exhibiting animosity inimical towards either of the parties disregarding their solemn status of respectability, which was allegedly loathsome and unacceptable. Both the groups of respectable and responsible members of the society entrusted with the arduous and onerous duty of creating the character of the children, imparting knowledge to them, to raise them in future as independent adults, were oblivious and embroiled themselves in rage, anger, atrocities, pernicious and detrimental to the institution and its cause. The mutual disrespect, annoyance, intolerance, irrational and illogical act provoked them to unabashedly institute a case and a counter-case against either of the errant parties, in connection with the alleged offence within the precincts of the institution. Nonetheless, the charge-sheet submitted in connection with Uluberia P.S. Case No. 173/2010 dated 19.03.2010 under Sections 341/323/325/427/506/34 of the Indian Penal Code was submitted with a “nil” seizure and without any injury report. However, with regard to Uluberia P.S. Case No. 171/2010 dated 19.03.10 under Sections

341/323/325/427/506/34 of the Indian Penal Code registered on the same date by the present petitioner revealed the existence of an injury report, whereby supposedly the present petitioner suffered injury.

9. The present police case in question had been instituted to subserve the purpose of enmity.
10. Under such facts and circumstances, the proceedings being G.R. Case No. 444 of 2010 pending before the Learned Additional Chief Judicial Magistrate, Uluberia, Howrah arising out of Uluberia Police Station Case No. 173/2010 dated 19.03.2010 under Sections 341/323/427/506/34 of the Indian Penal Code and all orders passed therein including the order dated 14.6.2011 passed by the Learned Additional Chief Judicial Magistrate, Uluberia, Howrah thereby taking cognizance of offences punishable under Sections 341/323/427/506/34 of the Indian Penal Code against the petitioner is quashed.
11. Accordingly, the instant criminal revisional application being CRR 3702 of 2011 stands disposed of. Connected application, if there be any, also stands disposed of.
12. There is no order as to cost.
13. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
14. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)