

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 3870 of 2011
With
CRAN 8 of 2024**

**Jai Kumar Goyal
-Vs-
The State of West Bengal and Anr.**

For the Petitioner : Mr. Sourav Chatterjee
Mr. Suryaneel Das
Mr. Aditya Mondal
Mr. Chiranjit Pal

For the State : Mr. Binay Kumar Panda
Mr. Subham Kanti Bhakat

For the Opposite Party : Mr. Neelesh Choudhury
No.2

Heard on : 08.02.2024, 01.05.2024, 10.05.2024,
13.09.2024

Judgment on : 09.12.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioners for quashing of the proceedings of G.R. No.1862 of 2008 under Section 354 of the Indian Penal Code pending before the Learned Metropolitan Magistrate, 12th Court, Calcutta, arising out of Shakespeare Sarani Police Station Case

No.189/2008 dated 15.07.2008 and all orders passed therein including order dated 19.09.2011 thereby taking cognizance of the offences.

2. The petitioner was one of the Director of B.R.G. Iron and Steel Co. Pvt. Ltd., having its registered office at 41, Shakespeare Sarani, Kolkata-700071. The said company was one of the largest manufacturer of stainless steel.
3. The petitioner had been falsely implicated in the instant case being Shakespeare Sarani Police Station Case No.189/2008 dated 15.07.2008 under Section 354 of the Indian Penal Code which was initiated on the basis of a written complaint of the opposite party no.2, inter alia, alleging as follows:-

“that the opposite party no.2 joined at the office of the petitioner at Duckback House as a Data Entry Operator. On 15th July, 2008, the petitioner herein being the Director called the opposite party no.2 in his cabin, that suddenly the petitioner touched her hand and other parts of her body; that immediately the opposite party no.2 came out of the cabin of the petitioner; that the opposite party no.2 intimated to her brother and her mother and she intimated the matter to the police station.”

4. On completion of investigation, charge-sheet vide Charge-sheet No.124/2008 dated 05th September, 2008 under Section 354 of the Indian Penal Code, 1860 was initiated against the petitioner.
5. Being aggrieved by and/or dissatisfied with the impugned proceedings of G.R. No.1862 of 2008 under Section 354 of the Indian Penal Code pending before the Learned Metropolitan Magistrate, 12th Court, Calcutta, arising

out of Shakespeare Sarani Police Station Case No.189/2008 dated 15.07.2008 and all orders passed therein including order dated 19.09.2011 thereby taking cognizance of the offences, the petitioner filed the present revision petition.

6. The Learned Advocate for the petitioner submitted as follows:-

- i. In the present case the entire order-sheet of taking cognizance clearly reflected that the Learned Magistrate in the Court below did not at all apply his independent judicial mind in order to proceed to a certain direction and merely abided by the conclusion of the Investigating Officer which itself was totally arbitrary and vitiated and hence the petitioner submitted that taking cognizance by Learned Chief Judicial Magistrate was not at all warranted in law.
- ii. The impugned order was utterly divorced from the mandatory requirements of Rule 183 of the Criminal Rules and Orders which revealed that the same was neither in the handwriting nor under the dictation of the Learned Magistrate.
- iii. Taking cognizance in a criminal offence was a serious matter which touched upon the liberty of an individual. The order of the Magistrate taking cognizance must reflect that he had applied his judicial mind to the facts of the case and the law applicable thereto. He had to examine the nature of allegations made in the First Information Report, the materials collected during the investigation in support thereof and that would be sufficient to prima facie establish the culpability of the accused person in the

instant case. It was not that the Magistrate was a silent spectator at the time of taking cognizance. The Magistrate had to carefully scrutinize the materials collected during the investigation to examine if any offence was prima facie committed by all or any of the accused. But the order dated 15th September, 2008 of taking cognizance was de hors any judicial application of mind and made it a fit case for this Hon'ble Court to quash the entire proceeding and order taking cognizance dated 15th September, 2008.

7. Considered the rival contentions of the Learned Advocate representing the State.
8. The Learned Advocate representing the State has submitted a certified copy of the case diary. The materials of the case diary reflected the statement of the complainant-opposite party no.2's mother who inter alia stated that the complainant/opposite party the victim had been shocked and perplexed by the malicious conduct of the petitioner and on her exit from the cabin of the petitioner narrated her harrowing experience to employees of the company particularly the female employees who did not react. The victim thereafter informed the incident to her cousin brother on telephone. Subsequently the victim and her cousin brother lodged the complaint at the nearby police station. The cousin brother of the victim also narrated to have been lived at the molestation of his victim sister, however, to his utter dismay, found the female employees to be silent. The statements of the aforesaid persons are contrary to the statement of the victim in the written complaint.

9. The victim did not express her agony and trauma to the employees present in the office. Though the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure cannot act as a Trial Court, however, can definitely consider the materials in the case diary in order to assess the existence of a prima facie case.
10. Apart from the narrative of the victim and her relatives who were not present at the place of occurrence in absence of any credible eye-witness or any of the persons present in the office at the time of the incident, the presence of the victim at the office becomes doubtful. Moreover, the Investigating Officer noted in the case diary as follows:-

“Examined some employees of said concerned but nobody could be able to tell anything about the incident”.
11. If the victim had expressed her outraging of modesty to the officials present, anyone of them at least could have come forth to depose as to whether such incident had occurred or not. Moreover, the victim did not mention the names of the employees present at the relevant time of incident. The charge-sheet filed against the petitioner failed to establish a prima facie cognizable case.
12. To allow to continue with the instant revisional proceedings would result in abuse of the process of law.
13. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***¹ the Hon’ble Supreme Court observed as follows :

¹ 1992 SCC(Cri) 426

“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 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.”

14. In view of the above discussions, the proceedings of G.R. No.1862 of 2008 under Section 354 of the Indian Penal Code pending before the Learned Metropolitan Magistrate, 12th Court, Calcutta, arising out of Shakespeare Sarani Police Station Case No.189/2008 dated 15.07.2008 and all orders passed therein including order dated 19.09.2011 is quashed.
15. Under such facts and circumstances, the criminal revisional application being CRR 3870 of 2011 is allowed.
16. Accordingly, CRR 3870 of 2011 along with CRAN 8 2024 is disposed of.
17. Case diary, if any, be returned forthwith.
18. There is no order as to costs.
19. 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.

20. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)