

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 4187 OF 2022

Lakshmi Kanta Roy Chowdhury
Vs.
The State of West Bengal & Anr.

For the petitioners : Mr. Sankha Subhra Ray.

For the State : Ms. Sreyashi Biswas,
Ms. Puspita Saha.

For the Opposite Party : None.
No. 2

Hearing concluded on : 03.12.2024

Judgment on : 18.12.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the impugned criminal proceeding being GR case no.997 of 2020 arising out of Hare Street PS case no.198 of 2020

dated 04.09.2020 under Section 404 of the Indian Penal Code, 1860 as well as Chargesheet No.39 of 2022 dated 20.04.2022 filed before the Chief Metropolitan Magistrate, Kolkata.

2. The present revisional application has been preferred by the son-in-law of the opposite party no.2. It is the case of the petitioner that the opposite party no.2 has lodged a complaint before the officer-in-charge, Bank Fraud Section, Detective Department, Lal Bazar, subsequent to the demise of her daughter, Rina Roy Chowdhury on 09.04.2020. The said complaint was registered under Section 404 of IPC by the Hare Street police station, being case no.198 dated 04.09.2020. Thereafter an investigation was initiated against the petitioner by the Bank Fraud Section, Detective Department, Lal Bazar.
3. The allegations against the petitioner in the complaint registered by the opposite party no.2 is as follows:-

“....that my elder daughter Late Rina Roy Chowdhury, wife of Lakshmikanta Roy Chowdhury has passed away on 09.04.2020. She was suffering from cancer for the last few years. She was a police personnel and joined her service in the year 1989. At the time of her death, she held the position of Additional Officer-in-Charge, women grievance cell, D.D. Deptt. Lalbazar. Her husband, Lakshmikanta Roy Chowdhury is a Sub-Inspector and presently posted at SCO, Kolkata Police.

I am now 75 years old and have a handicapped son. My financial condition is not very stable. After joining her services, she financially supported us till her death. Now the situation has changed and my physical health has deteriorated. Lakshmi Kanta Roychowdhury has denied to support us financially and he is not willing to keep any contact with us. He has been continuously withdrawing money from my daughter's salary A/c and did not inform the bank till date. Even though I requested him to handover my daughter's possessions many times, he has refused to do so. I used to stay at my daughter's flat when she was alive, but now Lakshmi Kanta Roy Chowdhury does not allow me to stay in the flat even when the owner of the flat is my daughter. Another reason for not allowing me to stay in the flat is because he had a second marriage on 07.08.2020. My fixed deposit certificates were with my daughter, but now it is under the custody of Lakshmikanta Roy Chowdhury and he has refused to give me back the certificates. All the gold ornaments of me and my family are in the locker which is in the joint name of Rina Roychowdhury and Lakshmikanta Roychowdhury. He is also refusing to return all these ornaments to me. The ornaments, bed and all other furniture gifted to my daughter by me during her marriage, I claim to have those back but he refuses to do so. She also has 2 nos LIC policies."

- 4. It appears from the allegations** that the dispute is in respect of assets of the deceased daughter of the de facto complainant.

Admittedly, the flat stands in the joint names of the petitioner and his late wife, who was the daughter of the de facto complainant. It prima facie appears that the petitioner herein is the legal heir of the deceased daughter of the de facto complainant. The properties herein are not the properties inherited by the daughter of the de facto complainant.

5. Sections 14 of the Hindu Succession Act, lays down:-

14. Property of a female Hindu to be her absolute property.—

(1)Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2)Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

6. Sections 15 of the Hindu Succession Act, lays down:-

15. General rules of succession in the case of female Hindus.—

(1)The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—
(a)firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b)secondly, upon the heirs of the husband;

(c)thirdly, upon the mother and father;

(d)fourthly, upon the heirs of the father; and

(e)lastly, upon the heirs of the mother.

(2)Notwithstanding anything contained in sub-section (1),—

(a)any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b)any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

7. The present case has been initiated under Section 404 of IPC.

8. Section 404 of IPC, lays down:-

“404. Dishonest misappropriation of property possessed by deceased person at the time of his death.—Whoever dishonestly misappropriates or converts to his own use property, knowing that such

property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine, and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Ingredients of offence.- The essential ingredients of the offence under sec. 404 are as follows:

- (1) Certain property was in possession of the deceased at the time of his death;*
- (2) Such property did not pass on to the person legally entitled thereto as heir or legal representative of the deceased or otherwise;*
- (3) Accused was aware of that fact;*
- (4) Accused misappropriated or converted the said property to his own use;*
- (5) Accused did it dishonestly, and while a clerk or servant of the deceased, did so to invite greater punishment."*

- 9. It, thus appears that the dispute between the parties is regarding the assets of the deceased daughter of the de facto complainant, who admittedly at the time of her death was the lawfully wedded wife of the petitioner. The properties which are in dispute, were either in the joint names of the petitioner and the deceased daughter of the de facto complainant or the absolute property of the deceased wife of the petitioner, but not inherited.**

10. **The dispute in the present case will be governed under Sections 14 and 15 of the Hindu Successions Act and as such there is no prima facie case of any dishonest misappropriation on the part of the petitioner.**
11. From the materials in the case diary placed in this case, this Court finds that there are no materials to prima facie make out a case against the petitioner in respect of the offence alleged. The dispute if any is also civil in nature.
12. In ***Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)***, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

'7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 which is to the following effect :

‘102. (7) Where a criminal proceeding is manifestly attended with mala fides 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.’ Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible

extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :

“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.”

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.**

13. The present case falls under category 1, 3 and 7 of **Para 102 of Bhajan Lal (Supra).**

14. CRR 4187 of 2022 is allowed.

15. The proceeding being GR case no.997 of 2020 arising out of Hare Street PS case no.198 of 2020 dated 04.09.2020 under Section 404 of the Indian Penal Code, 1860 as well as Chargesheet No.39 of 2022 dated 20.04.2022 filed before the Chief Metropolitan Magistrate, Kolkata, **is quashed in respect of the petitioner namely Lakshmi Kanta Roy Chowdhury.**
16. All connected application, if any, stands disposed of.
17. Interim order, if any, stands vacated.
18. Let a copy of the Judgment be sent to the learned trial court at once.
19. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]