

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 4302 of 2022

Sk. Raihan Ali & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Sabir Ahmed,
Mr. Suman Biswas,
Mr. Dhiman Banerjee.

For the State : Mr. Faria Hossain,
Mr. Anand Kesari.

For the Opposite Party No. 2 : None.

Hearing concluded on : 28.03.2024

Judgment on : 30.04.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being G.R. Case No. 89 of 2022 arising out of Uluberia Police Station Case No. 13 of 2022 dated 15.01.2022 under Sections 341/323/354/506/34 of the Indian Penal Code, 1860, now pending before the court of the Learned Additional Chief Judicial Magistrate at Uluberia Howrah and the subsequent charge-sheet submitted, being Charge-Sheet No. 190 of 2022 dated 05.09.2022 under Sections 341/323/354/506/34 of the Indian Penal Code, 1860.
2. The petitioner no.1 herein is the father of the petitioner no.2 and posted at the Dhulagarh Sub-Traffic Guard under Dhulagarh Traffic, Howrah Police Commissionerate and the petitioner no. 2 is a student by profession.
3. The petitioners state that after purchasing a plot of land, the wife of the petitioner no.1 and the mother of the petitioner no.2 became the absolute owner in respect of the same and are enjoying its right, title and interest since the date of purchase.
4. **The petitioners state that:-**

After purchasing a plot of land and after mutation, a boundary wall was proposed to be erected around the said land purchased by the wife of the petitioner no.1, but on 05.11.2021 some female persons, namely Sarbari Sultana, Sabana Khatun and Rojmina Khatun, along with other

female persons, all on a sudden, came to the plot of the wife of the petitioner no.1 and obstructed the work of boundary construction going on over the plot of the wife of the petitioner no.1. The wife of the petitioner no.1 made endeavour to make them understand that she constructed the boundary wall on her own purchased plot of land and she is in possession of the requisite and relevant documents in order to prove her ownership over the said plot of land, but instead of such endeavour of the wife of the petitioner no.1, the said female hooligans of the locality forcibly stopped the construction work going on over the plot of land of the wife of the petitioner no.1. The said female hooligans also abused and threatened the wife of the petitioner no. 1 that if the construction work continued, she will have to face the consequences.

5. The petitioners state that the wife of the petitioner no.1 duly communicated, such act of the local female hooligans before the Inspector-in-Charge, Uluberia Police Station by a letter dated 05.11.2021, so that she can protect her own life and property in accordance with law. But the police authorities did not take any appropriate steps.
6. That as the police authorities did not take any step against such hooliganism of the local female persons, the wife of the petitioner no.1 filed an application under Section 144 of the Code of Criminal Procedure, 1973 before the learned Sub-Divisional Executive Magistrate at Uluberia, Howrah against Sarbari Sultana, Rojmina

Khatun, Nafisa Khatun, Farha Khatun, Sabana Khatun and others and the same was registered as Misc. Case No. 702 of 2021 thereby praying for passing order to protect her physical possession over the plot of land owned and possessed by the wife of the petitioner no.1.

7. On the said date itself, i.e. on 08.11.2021, the learned Sub-Divisional Executive Magistrate at Uluberia, Howrah was pleased to direct the Inspector-in-Charge, Uluberia Police Station and the concerned Block Land and Land Reforms Officer, Uluberia-1 regarding the possession over the said land and **submit an inquiry report** along with authenticated LOR. Uluberia Police Station was also directed to ensure that no illegal activity takes place and that peace and tranquility is maintained at the locality.
8. The wife of the petitioner no.1 has also filed a suit for declaration and injunction before the Learned Civil Judge (Junior Division), 1st Court at Uluberia, Howrah on 09.11.2021 against Sarbari Sultana, Rojmina Khatun, Asif Iqbal and Haroj Ali khan on the allegations that they are causing disturbance to the peaceful possession of the wife of the petitioner no.1 over the said land and tried to change the nature and character of the suit property denying the legal rights of the wife of the petitioner no.1. The defendants in the said suit tried to acquire the right, title, interest and possession over the land owned and possessed by the wife of the petitioner no.1. Now, they are trying to dispossess

the wife of the petitioner no.1 from the said plot of land by illegal means.

9. The wife of the petitioner no.1 has also filed an application thereby seeking to pass an ad-interim order of injunction over the suit property so that no person could illegally change the nature and character of the suit property and the same was registered as **Title suit No. 497 of 2021.**
10. Considering the urgency and submission made on behalf of the wife of the petitioner no.1/plaintiff therein **the Learned Civil Judge (Junior Division), 1st Court at Uluberia, Howrah by an order dated 10.11.2021 restrained the defendants of the said suit from disturbing the peaceful possession of schedule property in favour of the wife of the petitioner no.1 till 08.12.2021.**
11. In spite of having the valid order passed by the Learned Civil Court, the female hooligans under the leader ship of the opposite party no.2 tried to disturb the peaceful possession of the wife of the petitioner no.1 and is always abusing them in filthy language.
12. The wife of the petitioner No.1 has also filed an application under Article 226 of the Constitution of India, aggrieved by the in-action on the part of the concerned Police Authority in-spite of the subsisting the injunction Order passed by the appropriate Civil Court in the suit plot, and the same was registered as W.P.A. No. 253 of 2022.

- 13.** That the said Writ Petition came up for hearing and after hearing the learned counsels appearing on behalf of the parties, the Court was pleased to dispose of the Writ Petition directing the police Authorities to continue keeping vigil and maintain peace.
- 14.** The petitioners state that on 15.01.2022 under the leadership of the opposite party no.2, the female hooligans all of a sudden attacked the house of the petitioners and put a padlock on the front gate of the house of the petitioners. The said female hooligans also threatened the wife of the petitioner no.1 as well as the petitioners to implicate them in a false criminal case.
- 15.** That the opposite party no.2 on 15.01.2022 as a counter blast, has filed an application under Section 154 of the Code of Criminal Procedure, 1973 with the Inspector-in-Charge, Uluberia Police Station thereby alleging that the opposite party no.2 and the other female members were abused in filthy language by the petitioners and they were also threatened with dire consequences. Accordingly, Uluberia Police Station Case No. 13 of 2022 dated 15.01.2022 under Sections 341/323/354/506/34 of the Indian Penal Code, 1860 has been registered for investigation against the petitioners.
- 16.** The Investigating Agency attached to the Uluberia Police Station conducted an investigation in connection with the said case and after completion of the purported investigation filed a charge-sheet, being Charge-Sheet No. 190 of 2022 dated 05.09.2022 under Sections

341/323/354/506/34 of the Indian Penal Code, 1860 against the petitioners.

17. Hence the revision.
18. In spite of due service, there is no representation on behalf of the opposite party no.2/complainant.
19. **From the materials on record it is evident that there exists a property dispute between the parties. The petitioners claim to be the owner of the property and for the protection of the same have filed proceedings under Section 144 Cr.P.C. and also a Civil Suit in which there is an order of injunction restraining the opposite parties herein.**
20. The Statements recorded under Sections 161 Cr.P.C. in the case diary speak about being assaulted, a free fight, threat to kill and abuse in filthy language by the petitioners/accuseds herein. There prima facie is materials to show a case under Section 354 of IPC.
21. The **Supreme Court** in the case of ***Tarkeshwar Sahu vs State of Bihar (Now Jharkhand), Appeal (Crl.) 1036 of 2005, on 29.09.2006***, laid down the ingredients required to prove charge under Section 354 IPC. The **Bench of Justice S. B. Sinha and Justice Dalveer Bhandari**, held:-

“Section 354 IPC reads as under:-

"354. Assault or criminal force to woman with intent to outrage her modesty.- Whoever assaults or uses criminal force to any woman, intending to

outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

So far as the offence under Section 354 IPC is concerned, intention to outrage the modesty of the woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence.

The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex.

'Modesty' is given as "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

The ultimate test *for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman. A person slapping on the posterior of a woman in full public glare would amount to outraging her modesty for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady.*

The word 'modesty' is not to be interpreted with reference to the particular victim of the act, but as an attribute associated with female human beings as a class. It is a virtue which attaches to a female on account of her sex.

We deem it appropriate to reproduce the cases of various Courts indicating circumstances in which

the Court convicted the accused under Section 354 IPC.

In State of Kerala v. Hamsa, it was stated as under:-

"What the legislature had in mind when it used the word modesty in Sections 354 and 509 of the Penal Code was protection of an attribute which is peculiar to woman, as a virtue which attaches to a female on account of her sex. Modesty is the attribute of female sex and she possesses it irrespective of her age. The two offences were created not only in the interest of the woman concerned, but in the interest of public morality as well. The question of infringing the modesty of a woman would of course depend upon the customs and habits of the people. Acts which are outrageous to morality would be outrageous to modesty of women. No particular yardstick of universal application can be made for measuring the amplitude of modesty of woman, as it may vary from country to country or society to society."

A well known author Kenny in his book "Outlines of Criminal Law" has dealt with the aspect of indecent assault upon a female. The relevant passage reads as under:-

"In England by the Sexual Offences Act, 1956, an indecent assault upon a female (of any age) is made a misdemeanour and on a charge for indecent assault upon a child or young person under the age of sixteen it is no defence that she (or he) consented to the act of indecency."

In the case of State of Punjab v. Major Singh, a three-Judge Bench of this Court considered the question whether modesty of a female child of 7 months can also be outraged. The majority view was in affirmative. Bachawat, J., on behalf of majority, opined as under: "The offence punishable under section 354 is an assault on or use of criminal force to a woman the intention of outraging her modesty or with the knowledge of the likelihood

of doing so. The Code does not define, "modesty". What then is a woman's modesty?

The essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under Section 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, nevertheless, the offender is punishable under the section.

A female of tender age stands on a somewhat different footing. Here body is immature, and her sexual powers are dormant. In this case, the victim is a baby seven and half months old. She has not yet developed a sense of shame and has no awareness of sex. Nevertheless from her very birth she possesses the modesty which is the attribute of her sex."

In Kanhu Charan Patra v. State , the Orissa High Court stated as under:-

"The accused entered the house and broke open the door which two girls of growing age had closed from inside and molested them but they could do nothing more as the girls made good their escape. On being prosecuted it was held that the act of accused was of grave nature and they had committed the same in a dare devil manner. As such, their conviction u/s 354/34 was held proper."

The High Court of Delhi in the case of Jai Chand v. State observed as under:-

"The accused in another case had forcibly laid the prosecutrix on the bed and broken her pyzama's string but made no attempt to undress himself and when prosecutrix pushed him away, he did make no efforts to grab her again. It was held that it was not attempt to rape but only outraging of the modesty of a woman and conviction u/s 354 was proper."

In Raja v. State of Rajasthan , it was stated as under:-

"The accused took the minor to solitary place but could not commit rape. The conviction of accused was altered from Section 376/511 to one u/s 354."

The Court in State of Karnataka v. Khaleel stated as follows:

"The parents reached the sugarcane field when accused was in process of attempting molestation and immediately he ran away from the place. There was no evidence in support of allegation of rape and accused was acquitted of charge u/s 376 but he was held liable for conviction under section 354/511 IPC."

The Court in Nuna v. Emperor stated as follows:-

"The accused took off a girl's clothes, threw her on the ground and then sat down beside her. He said nothing to her nor did he do anything more. It is held that the accused committed an offence under Section 354 IPC and was not guilty of an attempt to commit rape."

The Court in Bishewhwar Murmu v. State stated as under:-

"The evidence showed that accused caught hold hand of informant/victim and when one of the prosecution witnesses came there hearing alarm of victim, offence u/s 376/511 was not made out and conviction was converted into one u/s 354 for outraging modesty of victim."

The Court in Keshab Padhan v. State of Orissa stated as under:-

"The test of outrage of modesty is whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In the instant case, the girl was 15 years of age and in the midnight while she was coming back with her mother the sudden appearance of the petitioner from a lane and dragging her towards that side sufficiently established the ingredients of Section 354."

The Court in Ram Mehar v. State of Haryana stated as under:-

"The accused caught hold of the prosecutrix, lifted her and then took her to a bajra field where he felled her down and tried to open her salwar but could not do so as in order to make the accused powerless the prosecutrix had injured him by giving a blow of the sickle. The accused failed to give his blood sample with the result it could be presumed that his innocence was doubtful. Ocular evidence of prosecutrix was also corroborated by other evidence. It was held that conviction of accused u/s 354, 376/511 was proper but taking the lenient view only two years RI and a fine of Rs.1000/- was imposed on him."

In the case of Rameshwar v. State of Haryana , the Court observed as follows:-

"Whether a certain act amounts to an attempt to commit a particular offence is a question of fact dependant on the nature of the offence and the steps necessary to take in order to commit it. The difference between mere preparation and actual attempt to commit an offence consists chiefly in the greater degree of determination. For an offence of an attempt to commit rape, the prosecution must establish that it has gone beyond the stage of preparation."

The Court in Shokut v. State of Rajasthan stated as follows:-

"The accused took the prosecutrix nurse for the purpose of attending a patient but on way he tried to molest her and beat her also. The accused was held guilty u/s 354/366 IPC as he by deceitful means had taken the prosecutrix from her house and had then outraged her modesty."

22. So the ultimate test to ascertain if the modesty of a woman has been outraged, is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman.

23. There is neither any allegations nor any ingredients to even prima facie support the allegation under Section 354 of IPC against the petitioners herein.

24. 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.**”*

- 25.** The present case falls under **clause 7 of Para 102 of *Bhajan Lal (Supra)***, there being no ingredients to prima facie make out a case in respect of the offences alleged against the petitioners herein.
- 26. CRR 4302 of 2022 is thus allowed.**
- 27.** The proceedings being G.R. Case No. 89 of 2022 arising out of Uluberia Police Station Case No. 13 of 2022 dated 15.01.2022 under Sections 341/323/354/506/34 of the Indian Penal Code, 1860, now pending before the court of the Learned Additional Chief Judicial Magistrate at Uluberia Howrah and subsequently charge-sheet has been submitted, being Charge-Sheet No. 190 of 2022 dated 05.09.2022 under Sections 341/323/354/506/34 of the Indian Penal Code, 1860, **is hereby quashed in respect of the petitioners.**
- 28.** All connected applications, if any, stand disposed of.
- 29.** Interim order, if any, stands vacated.
- 30.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 31.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)