

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1350 of 2020

With

CRAN 1 of 2020

Bhaskar Roy Choudhury

Vs

Sukanya Biswas & Anr.

For the Petitioner : Mr. Sabyasachi Chatterjee,
Mr. Akashdeep Mukherjee,
Ms. Indrani Roy,
Mr. Ankan Das.
Mr. Soumyadeep Nag,
Ms. Soumali Das.

For the Opposite Party No.1 : Mr. Santanu Talukdar,
Mr. Subhadeep Ghosh.

For the State : Mr. Pravas Bhattacharya,
Mr. M.F.A. Begg.

Hearing concluded on : 31.01.2024

Judgment on : 26.02.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings in G.R. No. 8042 of 2019 corresponding to New Barrackpore P.S. Case No. 462/2019 dated 27/11/2019 under Sections 420/406 of the Indian Penal Code, 1860 now pending before the Court of the Learned Additional Chief Judicial Magistrate at Barrackpore.
2. **The allegations in the written Complaint filed by Opposite No. 1 are:-**

"I Mrs. Sukanya Biswas, wife of Sammilan Biswas residing in 66, Deshbandhu Road, Post & Police Station – New Barrackpore, District – 24 Parganas(N), has been cheated by Mr. Bhaskar Roy Choudhury the son of Late Baidyanath Roy Choudhury, residing presently at 179, Kalibari Road (Extension), Post and Police Station – New Barrackpore, Kolkata 700 131. His designation is Asst. Personal Officer Eastern Railway Department (personnel).

Mr. Bhaskar Roy Choudhury being a family friend of my husband since July, 2018, visited my residence and thereby developed cordial relation. Taking advantage of this family relation he said he is in great trouble regarding some personal matters so I helped him by going to a co-operative and he took a sum of 1 lac from Sangita Paul. Thereafter he told me as well as my daughter and promised to give an appoint in Indian Railway as soon as she reaches the age of eighteen years.

He is now denying that he has taken such the said amount.

*In addition he visited me to take a **gold loan of 1,22,000** from Muthut Finance, Sajirhat Branch, where he signed as a witness being a Government Servant dated on 12.01.2018.*

*Mr. Bhaskar Roy Choudhury is now denying to accept the sum of which prompted to back up the cordial relationship and pay the above noted sum on several occasions. Despite of embezzling the above **noted sum of 3 lacs from my husband Sammilan Biswas he had sent a legal notice detailed from his lawyer Mr. Chiradip Dhar stating to defend some false and fictitious and concordant allegations.***”

3. Supplementary affidavits filed by the petitioner are on record. It appears that the legal notice sent by the petitioner relates to the duplicate keys of his car, which was in the custody of the Complainant. The keys were given when the petitioner was using the Complainant's garage, but though he shifted his car, the keys were not being returned.
4. It is admitted in the said notice that the petitioner had taken a sum of rupees three lakhs through Cheque in 2019 and also issued one cheque in 2021 of the said amount to repay the amount.
5. In the said notice dated 14.11.2019, the petitioner was willing to repay the said amount in 2019 itself, in return of the said cheque of the year 2021.
6. The car keys were to be returned by the complainant and the sum of Rs. 3,00,000/- to be repaid by the petitioner as per convenience of the Complainant. Statement of Accounts of the petitioner shows that the said amount has been repaid.
7. **The Complainant/Opposite party has admitted the said repayment** but has stated that even then the petitioner has prima facie committed the offences alleged.
8. The State has placed the case diary along with a Memo of Evidence.

9. There is absolutely no materials on record to show that the said amount which has admittedly been repaid, had been taken on the assurance of providing a railway job to the complainant's daughter when she attains 18 years of age.
10. None of the witnesses have stated about any such assurance in their statement.
11. The offences alleged are under Sections 420/406 of the Indian Penal Code.
12. The dispute in the present case is clearly civil in nature.
13. **The Supreme Court in several precedents has discouraged such proceedings initiated by the complainant only to harass the other party.** Some of the rulings are as follows:-
 - a) *M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006 (Para 8, 9, 10).*
 - b) *Birla Corporation Ltd. vs Adventz Investments and holdings, (Criminal Appeal No. 877 of 2019) (Para 86).*
 - c) *Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021) (Para 37, 41, 42).*
 - d) *R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022 (Para 17).*

e) **Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023 (Para 21, 24).**

f) **Sarabjit Kaur vs State of Punjab and Anr., (2023) 5 SCC 360.**

14. 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.”

15. The present case falls under category 7 of Para 102 of ***Bhajan Lal (Supra)***.

16. The Supreme Court in ***Randheer Singh Vs. State of Uttar Pradesh & Ors., (2021) 14 SCC 626***, held:-

“33. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.

34. *The given set of facts may make out a civil wrong as also a criminal offence. Only because a civil remedy is available may not be a ground to quash criminal proceedings. But as observed above, in this case, no criminal offence has been made out in the FIR read with the Charge-Sheet so far as this Appellant is concerned. The other accused Rajan Kumar has died.”*

- 17.** In ***Jay Shri & Anr. Vs State of Rajasthan, Criminal Appeal No. of 2024 (arising out of SLP (Crl.) No. 14423 of 2023), on January 19, 2024,*** the Supreme Court while allowing a prayer for anticipatory bail held:-

“.....Prima facie, in our opinion, mere breach of contract does not amount to an offence under Section 420 or Section 406 of the Indian Penal Code, 1860, unless fraudulent or dishonest intention is shown right at the beginning of the transaction. This Court has time and again cautioned about converting purely civil disputes into criminal cases. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.....”

- 18.** **The dispute between the parties, who were known to each other relates to the use of garage, return of car keys and a sum of money admittedly taken by the petitioner but also repaid.**
- 19.** Thus the ingredients required to even prima facie constitute the offences alleged against the petitioner are not on record and permitting the case to proceed towards trial will clearly be an abuse of the process of law.
- 20.** **CRR 1350 of 2020 is allowed.**
- 21.** The proceedings in G.R. No. 8042 of 2019 corresponding to New Barrackpore P.S. Case No. 462/2019 dated 27/11/2019 under Sections 420/406 of the Indian Penal Code, 1860 now pending before the Court of

the Learned Additional Chief Judicial Magistrate at Barrackpore, **is hereby quashed in respect of the petitioner namely Bhaskar Roy Choudhury.**

- 22.** All connected applications, if any, stand disposed of.
- 23.** Interim order, if any, stands vacated.
- 24.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 25.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)