

**IN THE CIRCUIT BENCH CALCUTTA HIGH COURT
AT JALPAIGURI
(Criminal Revisional Jurisdiction)
Appellate Side**

Present:

The Hon'ble Justice Bibhas Ranjan De

C.R.R. 90 of 2024

In

CRAN 2 of 2024

Dr. Shib Shankar Sastri

Vs.

State of West Bengal & Anr.

For the Petitioner :Mr. Rajdeep Majumder, Adv.

Mr. Pritam Ray, Adv.

Ms. Radhika Agarwal, Adv.

For the State :Mr. Nilay Chakraborty, Ld. A.P.P.

Mr. Ujjwal Luksom, Adv.

Heard on :31.07.2024

Judgment on : 20.08.2024

Bibhas Ranjan De, J.

1. This revision application has been filed with a prayer for quashing the proceeding arising out of Matigara Police Station Case No. 112/2024 dated 17.02.2024 under Sections 341/323/506/34 of the Indian Penal Code (for short IPC) corresponding to G.R. Case No. 569 of 2024 pending before the Court of Ld. Additional Chief Judicial Magistrate at Siliguri.
2. Proceeding was initiated by a written complaint submitted by one Ratan Kumar Sharma/opposite party no. 2 herein addressed to the Inspector-in-charge, Matigara Police Station, Siliguri alleging *inter alia* that there was a civil dispute between the petitioner and the opposite party no. 2/ defacto complainant. It was alleged that on 16.02.2024 at about 8.30 p.m. 3/4 associates of the petitioner restrained the complainant/opposite party no. 2 herein by blocking him from all sides and suddenly thereafter one of his associates physically assaulted the opposite party no. 2 and after catching hold his collar, dragged him to their car and pushed him inside the car and started threatening him of dire consequences if he failed to pay Rs. 10 lakhs to the petitioner

within 48 hours. Opposite party no. 2 started screaming for help and ultimately he was thrown out of the car.

3. On receipt of the said complaint Matigara Police Station case no. 112/24 dated 17.02.2024 under Sections 341/323/506/34 of IPC was started for investigation.
4. The instant revision application was filed with a prayer for quashing the aforesaid proceeding along with a prayer seeking stay of the investigation. Prayer was allowed by the Co-Ordinate Bench of this Court by the order dated 05.04.2024 promulgating an order of stay on the proceeding and that order was further extended by the subsequent Bench of this Court on 04.07.2024.

Argument Advanced:-

5. Ld. Counsel, Mr. Rajdeep Majumder, appearing on behalf of the petitioner has drawn my attention to the FIR which put the law in motion in this case and submitted that the FIR was lodged on 17.02.2024 before the Matigara Police Station for an incident alleged to have been committed by the associates of the petitioner on 16.02.2024.
6. Mr. Majumder has submitted that the proceeding was initiated under Sections 341/323/506/34 of the IPC against the petitioner and 3/4 of his associates as it appears from the

formal FIR filled up under Section 154 of Code of Criminal Procedure (for short CrPC). Mr. Majumder submitted that on the alleged date of incident petitioner was not present at the alleged place of occurrence in terms of written complaint submitted by the de facto complaint /opposite party no. 2 herein in the Matigara Police Station.

7. Mr. Majumder has further submitted that there was civil dispute between the parties and petitioner of this case filed one complaint before the Matigara Police Station on 29.01.2024 and case was ultimately registered on 15.02.2024 at the intervention of Superintendent of Police. It is submitted that the subsequent complaint lodged by the opposite party no. 2 on 17.02.2024 is nothing but a counter blast.

8. Mr. Majumder has further tried to convince this Court that the written complaint of this case did not disclose any ingredients of wrongful restraint prescribed in Section 339 of the IPC. In support of his contention, Mr. Majumder relied on a case of ***Emperor vs. Rama Lala reported in 1912 SCC OnLine Bom*** 5.

9. Before parting with, Mr. Majumder submitted that the FIR of this case is totally frivolous and instituted with the ulterior motive. In support of his contention, he relied on a case of

***Salib alias Shalu alias Salim vs. State of U.P. and others
reported in 2023 SCC OnLine SC 947.***

10. Per Contra, Ld. Counsel, Mr. Nilay Chakraborty, appearing on behalf of the State has submitted that investigation is still going on and there may be an opportunity to make a prayer for adding the provision of Section 120B of the IPC in terms of the allegation made in the FIR. It is submitted by Mr. Chakraborty that tenor of the FIR clearly manifests that associates of the petitioner committed the offence alleged in this case.

11. In reply, Mr. Majumder has referred to parameter no. 3 of the guidelines laid down in paragraph 102 of the case of ***State of Haryana and others Vs. Bhajan Lal*** reported in ***AIR 1992 SC 604.***

Analysis:-

12. Written complaint alleges an incident dated 16.02.2024 against 4 unknown persons who happen to be the associates of the petitioner. In this revision application petitioner alleged that the written complaint was lodged with an ulterior motive just after filing of one written complaint by the daughter of the petitioner on 30.01.2024 before the Inspector-in-charge of Matigara Police Station which was registered as Matigara

Police Station Case No. 102 of 24 dated 15.02.2024 under Sections 341/323/506/34 of the IPC.

13. Therefore it is apparent that the complaint lodged by the daughter of the petitioner was registered on 15.02.2014 by the Matigara Police Station though they received the same by the Commissioner of Police on 30.01.2024 and it was forwarded on the next day i.e. on 01.02.2024 to the Matigara Police Station but was ultimately registered only on 15.02.2024. Thereafter, opposite party no. 2 of this revision application lodged the complaint in connection with this case on 17.02.2024.

14. Proceeding of this case was stayed by the Co-ordinate Bench on 05.04.2024 leaving a presumption that I.O of this case started investigation on 15.02.2024 till 05.04.2024 i.e. for almost two months. From the case dairy, I find that the I.O recorded few statements of witnesses under Section 161 of Cr.P.C. wherefrom it is found that none of them stated any single word in respect of the incident alleged to have taken place on 16.02.2024. Rather witnesses examined under Section 161 of Cr.P.C. stated about an incident of December 2023.

15. In this circumstances, I would like to reproduce the principle laid down in paragraph 28 of **Salib alias Shalu alias Salim (Supra)** as follows:-

“ 28. 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 (CrPC) 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 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 the case at hand, what I have discussed in forgoing paragraphs boils down to the following attending circumstances:-

16.1. Admittedly, There was long standing civil dispute between the parties.

16.2. Daughter of the petitioner lodged a written complaint addressed to Inspector-in-Charge of Matigara Police Station on 30.01.2024 which was ultimately registered on 15.02.2024, that too at the intervention of Commissioner of the Police.

16.3. Immediately thereafter, i.e. on 17.02.2024 opposite party no. 2 filed one written complaint addressed to Matigara Police Station alleging an incident of 16.02.2024 against 4 unknown associates of the petitioner. In that complaint, it was stated that the petitioner was not present at the scene of occurrence alleged to have taken place on 16.02.2024.

16.4. The evidence collected during investigation for almost two months does not support the incident of 16.02.2024 alleged in the FIR at the instance of complainant/ opposite party no. 2 herein.

17. In the back ground of such attending circumstances particularly the lodging of FIR immediately after registration of the case at the behest of the petitioner before the same Police Station can be said to attract the angle of wrecking vengeance out of private or personal grudge.

18. In the aforesaid view of the matter, parameters laid down by the Hon'ble Apex Court in **Bhajan Lal** (supra) are very much relevant to be reproduced as follows:-

“ 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.”

- 19.** The aforesaid discussion compels this Court to pry into the track of parameter no. 3 of **Bhajan Lal** (supra) and to hold that all attending circumstances along with the allegation made in the FIR does not disclose any offence against the petitioner.

- 20.** It is pertinent to mention here that Trial Court can exercise power under Section 319 of the Cr.P.C. to array any person as an accused if it appears from the evidence that any person not being the accused has committed any offence for which he could be tried together with the accused.
- 21.** In the aforesaid view of the matter, the petitioner cannot be arrayed as an accused for the offence alleged to have been committed on 16.02.2024.
- 22.** As a sequel, the proceeding arising out of Matigara Police Station case 112/2024 dated 17.02.2024 under Sections 341/323/506/34 of IPC corresponding to G.R. Case No. 569 of 2024 pending before the Court of Ld. Additional Chief Judicial Magistrate at Siliguri, stands quashed against the petitioner **only**.
- 23.** The instant revisional application, being no.CRR 90 of 2024 stands allowed.
- 24.** Case diary be returned.
- 25.** Connected applications, if there be any, stands disposed of accordingly.

- 26.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]