

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

Present:

The Hon'ble Justice Bibhas Ranjan De

CRR 136 of 2021

Sukumar Roy

Vs

The State of West Bengal

For the Petitioner :Mr. Jagriti Mishr

Mr. Raj Kumar Mitra

For Respondent no. 5 :Mr. Amit Lal Chakravorty,

Mr. Bapi Sarkar,

Mr. Chayan Moni Bhowal

For the State :Mr. Aditi Shankar Chakraborty, Ld. App

Mr. Nilay Chakraborty,

Heard on :13th & 19th February,2024

Judgment on **:22nd February,2024**

Bibhas Ranjan De, J.

1. This application under Section 482 of the Code of Criminal Procedure (for short Cr.P.C.) has been filed with a prayer for quashing of the proceeding of G.R. Case no. 2820 of 2021 corresponding to Siliguri Police Station Case no. 738 of 2021 dated 06.07.2021 under Sections 341/323/ 506/ 379 of the Indian Penal Code (for short IPC), pending before the Court of Ld. Additional Chief Judicial Magistrate, Siliguri.

Background:-

2. The petitioner was a tenant under Bikash Chanda @ Subal Chanda (since deceased), father of Sri. Subrata Chanda respondent no. 5 herein in respect of a shop room being Municipal Holding No. 341/465, under Ward No. 11 of Siliguri Municipal Corporation on payment of monthly rental of Rs. 500/-.
3. On 31.08.1995 said Bikash Chanda agree to sell the shop room of same measurement after constructing new building therein at a settled price of Rs. 1,000/-(Rupees One Thousand) per sq. ft. Petitioner paid Rs. 2,00,000/- (Rupees Two Lakh) at the time of execution of the said agreement dated 31.08.1995. Subsequently, on 30.11.1995 petitioner again paid to the tune of Rs. 1,00,000/-

(Rupees One Lakh) but said Bikash Chanda failed and neglected either to construct the building or to execute the deed of sale in favour of the petitioner in terms of the said agreement dated 31.08.1995, though the petitioner was ready to pay the balance consideration.

- 4.** Petitioner had filed a suit being Title Suit No. 25 of 2003 for specific performance of contract against said Bikash Chanda and his wife Hema Chanda. The said suit was compromised on the ground that a multi-storied building would be constructed and the petitioner shall get a room on payment of balance consideration of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand).
- 5.** On 03.08.2007 there was a tripartite agreement between petitioner, Bikash Chanda @ Subal Chanda and his wife Hema Chanda and developer Dwarika Prasad Golan. Accordingly, structural construction was almost completed in terms of said agreement.
- 6.** In the mean time, said developer Dwarika Prasad Golan died in the year 2016 and Bikash Chanda @ Subal Chanda also died. Petitioner demanded possession of the room from respondent no. 5 herein and his mother Hema Chanda but no result was yielded

and the petitioner had to file a Case No. 91 of 2016 before District Consumer Disputes Redressal Forum at Siliguri.

7. On 03.07.2021 respondent no. 5 and his mother made an attempt to disposses the petitioner from the said incomplete shop room and on being protested respondent no. 5 and his associates physically assaulted the petitioner by fists and blows. Then petitioner filed an application under Section 144 Cr.P.C. in the Court of Ld. Special Executive Magistrate, Siliguri wherein direction was given to the inspector in-charge Siliguri police Station to maintain breach of peace.
8. On 12.07.2021 petitioner received one notice under Section 41A of Cr.P.C. and the petitioner met with the concerned Police Officer at Panitanki T.O.P, on 16.07.2021. Subsequently, the petitioner surrendered before the Court of Ld. Additional Chief Judicial Magistrate and obtained bail in the case involved in this revision application.

Brief facts of the proceeding under challenged:-

9. On 06.07.2021 written complaint was lodged before the officer in-charge of Pani Tanki out post by the respondent no. 5 herein against the petitioner alleging, *inter alia*, that the respondent no. 5 and his mother had to revoke the power of attorney given to the

developer for promoting a building owned by the respondent no. 5 and his mother, due to death of the promoter, Sri. Dwarika Prasad Golan and the respondent no, 5 resumed construction work on the said land on and from 25.06.2021. But, suddenly the petitioner started creating disturbance and on 06.07.2021 threatened the labors to stop construction work. Being informed respondent no. 5 interfered in the matter. Petitioner threatened him with dire consequences and assaulted him with fists and blows after catching hold of his collar. It was further alleged that petitioner demanded possession of the rooms within seven (7) days otherwise respondent no. 5 would be killed.

10. On receipt of the said complaint a specific case was registered as Siliguri Police Station Case No. 738/21 dated 06.07.2021 under Section 341/323/506/379 of the IPC. After completion of investigation charge sheet was submitted under Section 341/323/506 of the IPC.

Argument advanced:-

11. Ld. Counsel, Mr. Jagriti Mishra, appearing on behalf of the petitioner has submitted that there is long standing civil dispute between the parties and petitioner has paid a substantial amount of money for the said shop room which was not handed over and

the defacto complainant has suppressed the previous civil disputes and given a colour of criminal action to a purely civil dispute.

12. In support of his contention. Mr. Mishra has relied on the following cases:-

- ***Chandrapal Singh and others vs. Maharaj Singh and another*** reported in **1982 0 AIR (SC) 1238 1982 1 SCC 466**
- ***Abhishek Saxena vs. The State of Uttar Pradesh and Anr.*** reported in **2023 SCC OnLine SC 1711**

13. Ld. Counsel, Mr. Amit Lal Chakravorty, appearing on behalf of the Respondent no. 5 has contended that Police has already investigated into the offence alleged in this case and charge sheet has been submitted. It is submitted that the allegation made in the FIR has no bearing either with the civil suit or consumer case. It is submitted that pendency of the civil suit cannot be the only touch stone for quashing a criminal proceeding without taking allegations made in the FIR into consideration.

14. In support of his contention, Mr. Chakravorty, relied on the following cases:-

- ***Neeharika Infrastructure Private Limited Vs. State of Maharashtra and others*** reported in ***(2021) 19 Supreme Court Cases 401***
- ***Lalmuni Devi Vs. State of Bihar*** reported in ***2001 (2) SCC 17***
- ***State of Andhra Pradesh Vs. Coloconda Linga Swamy and another*** reported in ***2004 (6) SCC 522***

15. Per contra, Ld. Counsel Mr. Nilay Chakraborty, appearing on behalf of the State has submitted that allegation made in the FIR was investigated by the Police and after collection of evidence charge sheet was submitted. Mr. Chakraborty has further submitted that FIR disclosed a cognizable offence and plain reading of FIR does not justify a case for wreaking vengeance or false allegation though admittedly there is a civil dispute between the parties.

16. In support of his contention, Mr. Chakraborty, has relied on the following cases:-

- ***P. Swaroopa Rani vs. M. Hari Narayana*** reported in ***(AIR 2008) SC 1884***
- ***M.S. Sheriff vs. The State of Madras an others*** reported in ***(SIR 1954 SC 379)***

- ***Syed Askari Hadi Ali Augustine Imam and Ors. vs. State (Delhi Admn) and Ors.*** reported in ***(AIR 2009 Sc 3232)***
- ***N. Gurucharnam vs. The State of Andhra Pradesh*** reported in ***(2013 CriLJ 1061)***
- ***M. Krishnan Vs. Vijay Singh & Anr,*** reported in ***(2001) 8 SCC 645***

Decision with reasons:-

17. I have gone through the cases relied on behalf of the petitioner and I find the facts dealt with in ***Chandrapal Singh*** (supra) and ***Abhishek Saxena*** (supra) are not at all identical with that of ours where allegation of assault was made by the petitioner on the date and time when he demanded possession of the shop room as per agreement executed by and between the petitioner and predecessor in interest of opposite party no.2.

18. And to add to that, ***Abhishek Saxena*** (supra) dealt with a case where FIR was lodged after three(3) months and in ***Chandrapal Singh*** (supra) Hon'ble Apex Court dealt with case of giving false evidence.

19. Ld. Counsel appearing on behalf of the petitioner has tried to make this Court understand that the Civil Suits are pending

between the parties and the instant criminal proceeding was initiated for wreaking vengeance.

20. The ratio of the decisions of the cases relied on behalf of the opposite parties is that mere pendency of the civil proceedings cannot give rise to a presumption of false implication in a criminal proceeding and Court will quash the criminal proceeding in exercise of the inherent power only in a case where complaint does not disclose any offence or is frivolous, vexation or oppressive and exercise of power under Section 482 of the Code is the exception not the rule.

21. In this situation, I cannot restrained myself from relying the landmark decisions of the Hon'ble Apex Court in ***State of Haryana and others vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335***, wherein Hon'ble Apex Court laid down the following Seven(7) parameters as follows in paragraph 102 here 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.”

22. In another landmark judgment of **Amit Kapoor vs. Ramesh Chander and another** reported in **(2012) 9 SCC 460** Hon’ble Apex Court laid down the principles in paragraph 27 quoted below:-

*“**27.** Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:*

***27.1.** Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings,*

particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. *The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*

27.3. *The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*

27.4. *Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.*

27.5. *Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.*

27.6. *The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.*

27.7. *The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.*

27.8. *Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.*

27.9. *Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*

27.10. *It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.*

27.11. *Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.*

27.12. *In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.*

27.13. *Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit*

continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. *Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.*

27.15. *Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.*

[Ref. State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] ; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] ; Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] ; Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] ; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] ; Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703] ; Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] ; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] ; Ganesh Narayan Hegde v. S. Bangarappa [(1995) 4 SCC 41 : 1995 SCC (Cri) 634] ; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] ; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869] ; Shakson Belthissor v. State of Kerala [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412] ; V.V.S.

Rama Sharma v. State of U.P. [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356] ; *Chunduru Siva Ram Krishna v. Peddi Ravindra Babu* [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297] ; *Sheonandan Paswan v. State of Bihar* [(1987) 1 SCC 288 : 1987 SCC (Cri) 82] ; *State of Bihar v. P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] ; *Lalmuni Devi v. State of Bihar* [(2001) 2 SCC 17 : 2001 SCC (Cri) 275] ; *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] ; *Savita v. State of Rajasthan* [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and *S.M. Datta v. State of Gujarat* [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201] .]

27.16. *These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”*

23. In the case at hand, I have gone through the written complaint as well as evidence collected during investigation from the case diary, carefully and I find that allegation made in the complaint, even if they are taken at their face value and accepted in their entirety it appears that there is prima facie materials to constitute an offence under Section 341/323/506 of IPC. At the same time, I do not find that the complaint of this case is otherwise absurd or

inherently improbable or there is no ground for proceeding against the accused.

24. That apart, this Court cannot quash the proceeding where the offence is even broadly satisfied at the initial stage of proceeding as the Court in exercising power under Section 482, is not expected to decide admissibility and reliability of the allegation except an opinion formed *prima facie*.

25. Therefore, the case at hand, in my opinion, does not fall in any of the parameters laid down by the Hon'ble Apex Court in ***Bhajanlal*** (supra) for exercising jurisdiction under Section 482 of Cr.P.C.

26. In the aforesaid view of the matter, I am unable to quash the proceeding in connection with G.R. Case no. 2820 of 2021 corresponding to Siliguri Police Station Case no. 738 of 2021 dated 06.07.2021 under Section 341/323/ 506/ 379 of the Indian Penal Code (for short IPC), pending before the Court of Ld. Additional Chief Judicial Magistrate, Siliguri.

27. As a sequel, the instant revision application being no. CRR 136 of 2021 stands dismissed.

28. Case diary be returned.

29. Interim order, if there be any, stands vacated.

- 30.** Pending applications, if any, also stand disposed of.
- 31.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 32.** 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.]