

**IN THE HIGH COURT AT CALCUTTA  
IN THE CIRCUIT BENCH AT JALPAIGURI  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Biswaroop Chowdhury**

**CRR 292 of 2023**

***Partha Pratim Dutta @ Parthoprati Dutta @ Nantu & Anr.***

**VERSUS**

***The State of West Bengal & Anr.***

For the petitioner:

Mr. Sourav Ganguly, Adv.  
Mr. Bibek Tarafder, Adv.  
Mr. Gopal Roy, Adv.  
Ms. Rishita Chakraborty  
Mr. Nilay Chakraborty, Ld. APP, Adv.  
Mr. Ujjwal Luksom, Adv.  
Mr. Aniruddha Biswas, Adv.

For the State:

**Last Heard on: November 14, 2024**

**Judgment on: November 29, 2024**

**Biswaroop Chowdhury, J:**

The petitioners before this Court are accused persons, in Kalchini P.S. Case no- 120/2020 dated 1/9/2020 now pending before Learned Additional Sessions Judge and Special Court (under S.C. and S.T. Act) 1<sup>st</sup> Court Jalpaiguri being Special case No- 12/2020.

The prosecution case in brief is that on 1.09.2020, officer in charge Kalchini Police Station received a written complaint made by one Usha Lohara Wife of Suraj Lohara of Rajabhatkhawa Marchantpara P.S. Kalchini District – Alipurduar against 1) Partha Pratim Dutta (Nantu) son of Dipak Dutta 2) Swpana Dutta wife of Partha Pratim Dutta the petitioners herein and one Pinki Bhattacharya wife of Nitai Bhattacharya (Nitu) all belonging to the same locality to the effect that on 30/08/2020 at about 5.00 hrs complainant's son Animesh Lohara who was 17 years of age was found in hanging condition and later on medical officer of Latabari Rural hospital declared him dead. It is alleged by the complainant in her complaint that her son Animesh Lohara had a love affairs with Rupsha Dutta which was not accepted by the accused persons and they insulted Animesh Lohara frequently and even assaulted some time. On 28.08.2020 all the accused persons called Animesh Lohara and admonished him in such a way which let him to commit suicide. On the basis of this complaint Kalchini P.S. case No. 120/2020 dated 1.09.2020 u/s- 305/34 IPC was instituted and investigation taken up. During investigation on the prayer of Investigating Officer Learned Additional Chief Judicial Magistrate Alipurduar was pleased to add Section 3(1)(x) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act 1989 and transferred the case before Learned Special Judge under Schedule Caste and Schedule Tribe Prevention of Atrocities Act 1<sup>st</sup> Court Jalpaiguri. Thereafter the investigation of the case was taken up by SDPO Alipurduar.

On completion of investigation charge sheet was submitted under Section 305/34 IPC read with Section 3(1)(x) of Schedule caste and Schedule Tribe Prevention of Atrocities Act 1989. The petitioners being aggrieved by the charge-sheet submitted and the proceedings in connection with Special case No-12 of 2020 pending before Learned Additional Sessions Judge and Special Court under Schedule Caste and Schedule Tribe Atrocities Act 1989 1<sup>st</sup> Court at Jalpaiguri has come up with the instant application.

It is the contention of the petitioners that the impugned proceedings being malicious vexatious and is liable to be set aside. It is further contended that mere advise or communication with one in order to keep, the daughter from inappropriate relations does not constitute the ground of abetment to commit suicide. It is also contended that it is essential to prove that the accused persons had the intention to provoke the victim to commit suicide in order to attract provisions of section 305 IPC. It is contended that the prosecution has failed to establish prima facie case under Section 305 IPC against the petitioners. The petitioners contend that the Learned Special Court under Schedule Caste and Schedule Tribe (Prevention of Atrocities Act 1989, has failed to appreciate the fact that there is no ingredient to bring the charges under the said Act hence the proceeding being bad in law is liable to be set aside. The petitioners further contend that the inclusion of the charge under Schedule Castes and Schedule Tribe (Prevention of Atrocities Act) was a result of the whimsical investigation of the police officials and in the charge sheet there is no reason to attract the said charge. The petitioner also contends that

the impugned charge under Section 3(1)(x) of Schedule Castes and Schedule Tribe Prevention of Atrocity Act is completely irrelevant with the fact of this case.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party no-1 State of West Bengal. Perused the materials in the case diary. Learned Advocate for the petitioner submits that his clients are falsely implicated in the instant case and the allegations made against his clients are not maintainable. Learned Advocate further submits that as a guardian it was the duty of the petitioners to interfere and keep the daughter away from inappropriate relations for which allegation under section 305 IPC cannot be levelled against the petitioners. Learned Advocate also submits that the petitioners were concerned with the future of their daughter for which they tried to make understand both their daughter and the victim thus the allegation under Section 305 of the Indian Penal Code is not maintainable. With regard to allegation under Section 3(1)(x) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act 1989 Learned Advocate submits that there was no act on the part of the petitioners to humiliate or to abuse the son of the opposite party no.2 on his caste or tribal status, nor the petitioners misbehaved with him regarding his caste or tribal status. Learned Advocate further submits that the whole incident has no relation with the tribal status of the son of the opposite party no-2, thus the provisions of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act 1989 are irrelevant in this case. Learned Advocate draws attention to the provision contained in Section 3(1)(x)

of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act 1989 and submits that the materials against the petitioners will go to show that ingredients of Section 3(1)(x) of Schedule Caste and Schedule Tribe (Prevention of Atrocities Act 1989) are not complied.

Learned Advocate relies upon the following Judicial decisions.

Ramesh Chandra Vaishya

Vs

State of Uttar Pradesh and another

Reported in (2023) SCC. Online S.C. 668

Shajan Skaria.

Vs

State of Kerala and Anr.

Reported in 2024 SCC Online S.C. 2249.

Learned Advocate for the opposite party state of West Bengal objects to the prayer of the petitioners and submits that materials in the case diary will go to show involvement of the petitioners.

Before proceeding to decide the issue first of all it is necessary to consider the provision contained in Section 482 of the Code of Criminal Procedure. Section 482 of the Code of Criminal Procedure provides as follows:

S.482. Saving of inherent powers of High Court – Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Guidelines have been laid down in different judicial pronouncements with regard to exercise of Power under Section 482 of the Code of Criminal Procedure.

In the case of State of Karnataka Vs M. Devendrappa and Another reported in (2002) 3 SCC. P-89 the Hon'ble Supreme Court observed as follows:

‘Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent

powers of High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quande lex aliquid aliqui concedit, concedere videtur in sine que ipsa, esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.'

In the case of State of Haryana Vs Bhajan Lal reported in AIR 1992 S.C 604 the Hon'ble Supreme Court had set out the illustrative categories when power under Section 482 CrPC is to be exercised. These are as follows:

- 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 preview 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 Act concerned (under which a Criminal Proceeding is instituted) to the institution and continuance of the proceeding and/or where there is specific provision in the code or the Act concerned 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.

In the case of Rajiv Thapar and others Vs Madan Lal Kapoor reported in (2013) 3 SCC P-330 the Hon'ble Supreme Court observed as follows:

The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to

substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.'

The petitioners have relied upon the decision of the Hon'ble Supreme Court in the matter of Ramesh Chandra Vaishya (supra) where the Hon'ble Court observed as follows:

The first question that calls for an answer is whether it was at a place within public view that the appellant hurled caste related abuses at the complainant with an intent to insult or intimidate with an intent to humiliate him. From the charge-sheet dated 21 st January, 2016 filed by the I.O., it appears that the prosecution would seek to rely on the evidence of three witnesses to drive home the charge against the appellant of committing offences under sections 323 and 504, IPC and 3(1)(x), SC/ST Act. These three witnesses are none other than the complainant, his wife and their son. Neither the first F.I.R. nor the charge-sheet refers to the presence of a fifth individual (a member of the public) at the place of occurrence (apart from the appellant, the

complainant, his wife and their son). Since the utterances, if any, made by the appellant were not “in any place within public view”, the basic ingredient for attracting section 3(1)(x) of the SC/ST Act was missing/absent. We, therefore, hold that at the relevant point of time of the incident (of hurling of caste related abuse at the complainant by the appellant), no member of the public was present.’

The facts relating to the decision in the case of Ramesh Chandra Vaishya is different from the instant case. In the case relied upon by the petitioner there was allegation made by the complainant in the FIR with regard to place of abuse regarding caste, and the witnesses were the complainant his wife and their son and the first FIR is silent about place of occurrence and in the second FIR the place of occurrence is house of the accused person. The case of State of Karnataka V M. Devendrappa (supra) is also not applicable to the facts of the case in the instant case. Although there was no allegation in the FIR with regard to offence under Section 3(1)(x) of schedule Caste and Schedule Tribe, Prevention of Atrocities Act 1989 but the Police Authority upon investigating the case and on the basis of the statement of witnesses, who are neighbours of the victim on obtaining permission from the Learned Magistrate added Section 3(1)(x) of Schedule Caste and Schedule Tribe Prevention of Atrocities Act 1989, and submitted charge-sheet under Section 305/34 IPC and Section 3(1)(x) of Schedule Caste and Schedule Tribe Prevention of Atrocities Act 1989. Thus it cannot be said that the Complainant falsely implicated the petitioners in the case with regard to Section 3(1) (X) of Schedule Caste and Schedule Tribe

Prevention of atrocities Act 1989, with the object of harassing them. Moreover the witnesses have stated that the victim was humiliated and abused in the name of his caste on the road. As road is a public place, at this stage it cannot be observed that the evidence collected by the prosecution state with regard to commission of offence under Section 3(1) (x) of Schedule Caste and Schedule Tribe Prevention of Atrocities Act 1989 is not sufficient to send the case for trial. Moreover this is not a single offence under Schedule Caste and Schedule Tribe Prevention of Atrocities Act 1989 but the accused persons are also alleged to have committed offence under Section 305/34 of the Indian Penal Code. The Prosecution State has interrelated the commission of unlawful act under Schedule Caste and Schedule Tribe prosecution of Atrocities Act 1989 namely Section 3(1)(x) of the said Statute alongwith acts of abetment of suicide of the victim child giving rise to offences both under Section 3(1)(x) of Schedule Caste and Schedule Tribe Prevention of Atrocities Act read with Section 305 of the Indian Penal Code thus it is not offence only under Section 3(1) (X) of Schedule Caste and Schedule Tribe Prevention of Atrocities Act 1989. Now with regard to offence under Section 305 of the Indian Penal Code before proceeding to consider the issue it is necessary to consider the said provision of the Indian Penal Code.

Section 305 of IPC Provides as follows:

S.305. Abetment of suicide of child or insane person-If any person under eighteen years of age any insane person any delirious person, any idiot or any

person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for life or imprisonment for a term exceeding ten years and shall also be liable to fine.

Thus Section 305 IPC deals with abetment of suicide by a minor or a disabled person, and Section 306 IPC is a general provision with regard to commission of suicide.

Upon Comparative reading of the provisions contained in Section 306 IPC and 305 IPC it will appear that maximum punishment provided for offence under Section 306 IPC is ten years but Section 305 IPC provides punishment of death sentence as well as life imprisonment, and punishment not exceeding ten years. Although it is settled law that more severe the punishment is the stricter should be the proof but the question of proof comes into consideration at the time of trial and not at the time of invoking power under section 482 of the Code of Criminal Procedure. Offences are of different categories firstly there are compoundable offences where the Court while considering prayer for invoking power under Section 482 CrPC, upon considering the materials on record and documents of subsequent events is of the view that the complainant or the person affected is compensated by another legal forum, or there are materials to show that the complainant has condoned the accused person of his acts or proceeding of the case will be an abuse of process of law, may quash the case. Secondly there are offences which though not compoundable but the parties

have settled the dispute and the complainant chooses to withdraw the complaint, the Court may invoke power under Section 482 of the Code of Criminal Procedure if the Court is of the view that in the interest of justice such exercise should be done, and further proceeding may amount to abuse of the process of Court and unnecessary harassment to all parties. Thirdly there are offences which shocks the conscience of the society and society awaits the result of investigation and trial of such offences with the hope justice will be done. In such type of offences abundant care and caution should be exercised by Court before deciding to invoke jurisdiction under Section 482 of the Code of Criminal Procedure. Unless Court is fully satisfied about non involvement of accused person such power under Section 482 CrPC should not be exercised. In other words there may be self imposed restriction also with regard to such offences when power is to be exercised under Section 482 CrPC. Although abetment involves a mental process of instigating a person or intentionally aiding that person in doing a thing which is to be proved in trial but the yardstick of abetment in case of suicide of adult person may not be same with regard to abetment of suicide of a child. A child is required to be dealt with care and caution and Article 39(f) of the Constitution of India provides for the welfare of children. Laws are framed for the welfare of the child and for protection of child rights. A child may come in conflict with law but the process of treatment of child in such cases is not the same with that of the adult. In the instant matter upon considering the evidence collected by the prosecution/ State that the victim child was humiliated in the street, it cannot be inferred at

this stage that there are no materials against the petitioners with regard to offence committed under Section 305 of the Indian Penal Code. Normally when a particular offence provides life imprisonment Courts should be slow in invoking Section 482 of the Code of Criminal Procedure unless the materials on record gives an absolute picture that there is no ingredient of the offence alleged or no involvement of accused person. In the instant case offence involved is abetment of suicide of a child as well as offence under Schedule Caste and Schedule Tribe Prevention of Atrocities Act 1989. Schedule Caste and Schedule Tribe Prevention of Atrocities Act 1989 is a special law intended to do justice to members of Schedule Castes and Schedule Tribes thus the case under the said statute should not be quashed even if there are very few materials regarding commission of offence under the said statute.

The normal procedure to ascertain whether a person is guilty of committing any offence is to hold trial after completion of investigation and power under Section 482 CrPC is an exceptional power to be used in exceptional circumstances. In case of heinous offence after exercising abundant caution only when the Court is fully satisfied that ingredients of an offence are totally absent from F.I.R. and other materials in the case diary or from the evidence collected there will be no scope to show the involvement of accused person there may be invoking of power under Section 482 of the Code of Criminal Procedure to quash the case. When an unnatural death takes place in a locality, people can reasonably expect to know the cause of death from police enquiry. Thus when investigation is taken up by police authority

and such investigation results in charge sheet against some persons, society can reasonably expect to know about the involvement of such persons charge-sheeted and the outcome of the criminal trial. Thus only in very exceptional cases of such nature where there is no way to implicate an accused person from the evidence collected by investigation authority and the Court is fully satisfied in this regard power under Section 482 CrPC may be invoked.

Although Learned Advocates by their rival submissions have assisted this Court on the points of law but the nature of offence and materials in the case diary do not inspire this Court to invoke power under Section 482 CrPC to quash the Criminal case against the petitioners. This application thus fails and the same is dismissed. However as the petitioners were pursuing the case before this Court they should be given some time to surrender and the warrant of arrest issued should be kept in abeyance for a short period.

Hence this Revisional Application stands dismissed. Interim Order granted earlier stands vacated. Petitioners are granted ten days time to surrender before the Learned Trial Court. Warrant of arrest issued against the petitioners shall be kept in abeyance for ten days. In the event the petitioners surrender within ten days before Trial Court and applies for bail the same should be considered in accordance with law. It is however made clear that the observation made in this matter hereinabove are only with regard to invoking power under Section 482 CRPC and not with regard to Trial or bail application.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

**(Biswaroop Chowdhury, J.)**