

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 269 of 2022

Monika Kalra

Vs.

The State of West Bengal & Anr.

For the Petitioner	:	Mr. Syed Shahid Imam Mr. Syed Shabahat Hussain Md. Khairul Mr. Shatadru lahiri Mr. Sanjay Gupta Mr. Farhan Ghaffar Mr. Shantam Gulati Mr. Shaswata Tripathi
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For the State	:	Mr. Madhusudan Sur, Ld. APP Mr. Dipankar Paramanick
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Heard on	:	09.12.2024
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Judgment on	:	13.01.2025
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Dr. Ajoy Kumar Mukherjee , J.:

1. Petitioner herein being aggrieved by the proceeding in GR Case no. 1406 of 2018 presently pending before the court of Judicial Magistrate 7th Court, Howrah, has preferred the present Application contending that the charge levelled in the impugned charge sheet in connection with said

proceeding are bereft of any material particulars and as such the same has not been substantiated against the petitioner, though she has been arraigned as an accused in the said proceeding.

2. One officer of Liluah Fire Station lodged a written complaint with the officer-in-charge of the Belur police station alleging *interalia* that on 14.03.2018 at about 12.00 noon a large section of people led by the petitioner herein, claiming herself, to be the daughter of the owner of the premises suddenly entered in the fire station premises forcefully by breaking the window, wall etc. and forcibly took fire station belongings including gears appliances computer and other valuable articles in two trucks bearing registration No.WB 61 A 2215 and WB 11 B 9928 with display board 'on court duty' and 'police' respectively. Further allegation in the complaint is that on being initially restrained during vandalisation, the petitioner claimed that they are doing all these things as per the order of the court, and thereafter she pasted a hand written order on the wall of the fire Station. It is also alleged that on further scrutiny it revealed that the said trucks displaying 'on court duty' and 'police' were not arranged from the concerned department of the court but were being personally arranged. Thereafter, the fire Station officers sought for police help and then the local people and well wishers assembled and brought the Fire station belongings down from the trucks and station gradually normalized at 4.10 p.m. Accordingly, the complainant prayed for starting legal proceeding accordingly.

3. It is submitted on behalf of the petitioner that several civil proceedings were continuing in between the father of the petitioner and the Fire services

authority concerning land lord tenant dispute. Ultimately eviction decree was passed in favour of father of the petitioner/landlord against which First Appeal was preferred and thereafter second appeal also preferred before this High Court which was renumbered as SA 461 of 2008 and the said second appeal filed by the tenant /Fire service authority got dismissed. Thereafter, execution proceeding in accordance with law was proceeded by the father of the petitioner and by an order dated 15.02.2018 executing Court was pleased to direct the baliff to execute the decree and to take delivery of possession on 14.03.2018.

4. It is further case of the petitioner that petitioner's father on 13.03.2018 filed an application under section 144 (2) Cr.P.C. before the Executive Magistrate, Howrah praying for an order upon the opposite parties restraining them from illegally trespassing into the suit premises and further restraining them from making any obstruction at the time of taking possession of the schedule property by the bailiff. In compliance with the order dated 15.02.2018, the bailiff reached the suit premises on 14.03.2018 and informed the officials of the fire brigade present therein about the order of the Id. Court and requested them to remove their belongings from the suit premises and to hand over vacant possession but the employees present therein insisted that they would first speak to their higher authority and in a surreptitious manner, the employees started accumulating in groups in an around the premises..

5. Thereafter one of the employees requested the court bailiff to arrange for two trucks so that the belongings inside the suit property could be removed. Pursuant to that, the decree holder arranged two trucks. The

employees started loading their articles on the trucks. When both the trucks finished loading and the bailiff about to leave the said premises, it was then when some local miscreants threatened the bailiff to refrain from taking possession and assaulted the decree holder and persons present on behalf of the decree holder. Thereafter some miscreants unloaded all the goods from the truck in presence of the fire brigade staff and again took materials/articles inside the suit premises. Thereafter petitioner was served with a notice under section 41A of the Code on 17.03.2018, informing that instant proceeding has been initiated against the petitioner and the petitioner was directed to appear before the concerned officer.

6. Being aggrieved by the said proceeding the petitioner contented that petitioners obtained eviction decree against the fire brigade authority in respect of the premises in question where they were tenanted. Subsequently in Title Execution Case No. 20 of 2004, the executing court was pleased to direct the bailiff to execute the decree and to take delivery of possession of subject premises on 14.03.2018. In Misc Petition no. 360 of 2018 initiated under section 144 of Cr.P.C, a restrain order also passed against the fire brigade authorities but the bailiff was restrained by the employees of Liluah fire station and other local Hoodlums, when he went to take possession of the subject premises in compliance of the said order of the executing court.

7. The petitioner contended that the genesis of the impugned proceeding is an alleged dispute by and between the petitioners her associates with the employee of Liluah fire station in course of executing decree of eviction passed by a court of law against the said authority. The

entire incident allegedly happened in presence of court staff and baliff who were to execute the order passed by executing Court. As such there cannot be any material to implicate the petitioner in commission of the alleged offence.

8. It is further submitted on behalf of the petitioner that on true and proper appreciation of the materials on record specially the report dated 15th March 2018 as submitted by the process server in connection with Title Execution case no. 20 of 2004, it clearly indicates that petitioner in compliance with the order passed by the Court want to take possession of the suit premises in respect of which they obtained decree. The complainant/opposite party and his associates initially agreed to vacate the premises but all of a sudden, challenging the authority of court of law denied to vacate the land and created hindrance in execution of the decree passed by a competent court of law.

9. Petitioner further submits that the report of the process server dated 15th March 2018 which is maintained and prepared by a public authority in course of his official duty reveals the truth and the court while considering the prayer for quashing the proceeding can look into such document which is unimpeachable in character. Such uncontroverted report, if perused in its proper prospective, the allegation against the petitioner can not stand and it will be travesty of justice if petitioner is not relieved from the criminal prosecution and asked to face the ordeal of trial.

10. Petitioner further submits that the charge sheet also does not disclose any injury report of any of the employees of the fire station who had been allegedly made witness in the charge sheet. Learned Magistrate

without appreciating the discretion available to him took cognizance of the alleged offences under section 190 of the Code. The decision for taking cognizance under section 190 has to be exercised in judicious manner and he is not bound by the opinion formed by the investigating agency. The impugned order of taking cognizance of the alleged offence is bereft of any reasoning from which any inference can be drawn that the concerned magistrate had applied judicial mind at the time of taking cognizance of the alleged offence. Infact he has acted in a most mechanical and arbitrary manner in taking cognizence of alleged offence.

11. He further contended that upon considering of the materials collected by the investigating agency, it reveals that there cannot be any case of committing offence punishable under section 447/341 of the IPC, because the petitioner and her associates entered into the premises with the baliff/process server of the court for executing the order passed by the court in Title Execution case no. 20 of 2004. The investigating agency also submitted charge sheet against the petitioner for commission of the alleged offence under seciton 353 of the Code without appreciating that there is no allegation against the petitioner that she is in any manner disrupted complainant/opposite party and their associates from discharging their public duty. On the contrary, it is the complainant/opposite party and his associates who actually hindered and or caused impediment in executing the order passed by the court.

12. He further argued that the allegation of forceful entry/trespassing in a fire station, which is a public premises and deployed in serving public at large is an improbable allegation. The allegation of ransacking a public

office cannot be solely based on oral assertions. There has to be seizure of some independent materials worthy of credit to substantiate the allegation, which is missing in the instant case.

13. In such view of the matter petitioner submits that the impugned proceeding including the first information report does not disclose any offence alleged to have committed by the petitioner and further continuance of the said proceeding would be an abuse of process of court and the same will also degenerate itself into a weapon of harassment which is contrary to the tenor of the law of the land and accordingly prayed for quashing the said proceeding.

14. Learned counsel for the petitioner in support of his contention has relied upon the following judgments:-

- (i) ***Mohammad Wajid and Another Vs. State of U.P. and Others*** reported in **2023 SCC online SC 951.**
- (ii) ***Mukul Agarwal and others Vs. State of Uttar Pradesh and another*** reported in **(2020) 3 SCC 402.**
- (iii) ***State of Haryana and others Vs. Bhajan Lal and others*** reported in **1992 Supp (1) SCC 335.**
- (iv) ***Vineet Kumar and others Vs. State of Uttar Pradesh and another,*** reported in **(2017) 13 SCC 359**
- (v) ***Rajib Ranjan and others. Vs. R. Vijay kumar*** reported in **(2015) 1 SCC 513.**

15. Learned counsel appearing on behalf of the State placed the case diary and submitted that though after the aforesaid incident, the petitioner obtained vacant possession of the premises in question by executing the

decree but so far as the alleged incident in connection with the FIR is concerned there are sufficient materials in the case diary against the present petitioner and it would not be prudent to quash the criminal proceeding at its threshold invoking jurisdiction of this court under section 482 of the Code of Criminal Procedure.

16. I have considered submissions made by both the parties.

17. Before going to further details let me reproduce the FIR lodged by the private opposite party herein

“On 14/03/18 at about 12 noon a large section of people led by a lady named Manika Kalra claimed herself daughter of Sri Shyam Sunder Kalra owner of the premises of Liluah Fire Station suddenly forced entered in the Fire Station and ransacking the Fire Station premises by breaking the window, wall etc. and forcefully taking Fire Station belongings gears and appliances, computer and other valuable articles inside 2(Two) Nos. of truck bearing Registration No. WB-61A-2215 & WB11B9928 with signboard display “On Court Duty” & “Police” respectively.

On initial restrained during vandalizing the aforesaid lady has claimed they doing all as per the order of the Hon’ble Court in presence of Court Officer and simultaneously she pasted and hand write order on the wall of Fire Station.

On further scrutiny of the order and validity regarding the allotment of the said trucks displaying “On Court Duty” & “Police” respectively it has been come to the notice from the verbal statement of the Court Officer that neither of the said vehicle were allotted from the concern department rather the said brought personally arrange the trucks and displaying the Signboard.

Accordingly the undersigned seeking help of Senior Officer and Police Senior Officers both our department and Police were present in the spot.

Thereafter gradually the local people/well wisher were assembled and brought the Fire Station belongings down from the Truck and Police allowed personnel to enter in the Fire Station and situation gradually normalized at about 4:10 P.

Now you are therefore requested to start legal proceedings accordingly.”

18. The Apex court in ***Bhajanlal and another Vs. State of Haryana*** reported in **1992 supp (1) SCC 335** have laid down certain category of cases by way of illustration wherein power under section 482 of the Code could be exercised either to prevent abuse of the process of any court or

otherwise to secure the ends of justice in paragraph 102 of the Judgment ,
which 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 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. In the light of aforesaid guidelines laid down by the Apex Court to deal with such situation, let me now consider the same in the context of present proceeding. From the FIR as quoted above, it is clear that specific allegation has been attributed against the petitioner alleging that she forcefully entered in the fire station and had ransacked the Fire station premises and also forcefully took Fire Station belongings, gears and appliances, and other valuable articles. It is further alleged that during vandalization, the petitioner falsely stated that she had done all the alleged misdeeds as per direction of the court and she had illegally displayed on

the vehicles the writings “on court duty” and “police”, though the court never allotted such vehicles and the petitioner on her own initiative arranged the truck and displayed the sign boards. During investigation police has examined more than 15 witnesses who all supported the case made out in the written complaint against the present petitioner. During investigation police also made search and seizure as per seizure list and after completion of investigation has submitted charge sheet against three accused persons. Petitioner specifically stated in her application that out of the three charge sheeted accused persons, two of them have already pleaded guilty and learned Court below convicted them with fine, in default to suffer imprisonment for five days.

20. In the FIR as quoted above the name of the petitioner has been clearly mentioned and the language of the FIR if taken to be correct, it cannot be said that no offence alleged to have been constituted against the petitioner. The investigation in this case is completed and the report under section 173 of the Cr.P.C., has been submitted before the court below. Accordingly in my view this is not such a case which warrant interference under section 482 of the Code at this stage. I am also of the view that in a matter of this nature it would have been more appropriate for the petitioner to have availed the remedies provided under the Code at the appropriate stage and not to have invoke the courts jurisdiction under section 482 of the Code.

21. As decided in the ***Bhjanlal’s case (Supra)*** the proceeding is liable to be quashed *inter alia* where the allegations made in the FIR, 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 or where the allegations made in the FIR do not disclose a cognizable offence justifying an investigation or where the uncontroverted allegations made in the FIR and the evidence collected in support of the same do not disclose commission of any offence and make out a case against the accused/petitioner or where the allegations made in the FIR are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

22. It is well settled that at the stage when the High Court considers a petition for quashing criminal proceeding under section 482 of the Cr.P.C., the allegations in the FIR must be read as they stand. In the present context on the face of the allegations, commission of cognizable offence by the petitioner has been made out. Therefore, the High Court would not be justified in exercising of its jurisdiction to quash the proceeding. This is also because at this stage the High Court is not supposed to look into the correctness of the allegations made in the FIR. Ex facie the allegations made in the FIR discloses commission of offence by the petitioner and the petitioner is FIR named. Whether the petitioner has committed the offence or not has to be decided upon trial in the criminal proceeding.

23. It is settled law that while exercising jurisdiction under section 482 of Cr.P.C. the High Court should not ordinarily embark upon an inquiry into whether there is reliable evidence or not. In fact the jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of section 482 of the Code. Since the

allegations made in the FIR and materials collected during investigation disclose commission of cognizable offence by the petitioner, it cannot be said that the continuance of further proceeding before the court below would be an abuse of process of the court.

24. In view of aforesaid discussion, I am of the view that this is not a fit case where the criminal proceeding can be quashed invoking jurisdiction of this Court under section 482 of the Code.

25. In such view of the matter **CRR 269 of 2022** stands dismissed. However, this dismissal order will not preclude the petitioner from ventilating all her grievances made herein at the time of framing charge or at any appropriate subsequent stage before the court below.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)