

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1106 of 2022

Biswajit Dutta

VS.

The State of West Bengal & Anr.

For the Petitioner : Mr. Kamalesh Chandra Saha,
Mr. Samannya Saha,
Mr. Mishuk Saha.

For the State : Mr. Debasish Roy, Ld. PP
Mr. Bitasok Banerjee,
Ms. Puspita Saha.

For the Opposite Party No. 2 : Mr. Sabyasachi Banerjee, Sr. Adv.
Mr. Anirban Dutta,
Mr. Sachetan Ghosh.

Hearing concluded on : 20.01.2025

Judgment on : 27.01.2025

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the First Information Report as well as the entire proceeding in Baguiati P.S. Case No. 227 of 2021 dated 08.05.2021 under Sections 420 /408 /477A /403 /468 /120B /34 of the Indian Penal Code being G.R. No. 1593 of 2021.
2. The allegations in the written complaint leading to the proceedings in the present case is that the complainant in the present case initiated three cases one after another against the accused persons being (i) Baguiati P.S. Case No. 194 of 2021, (ii) **Baguiati P.S. Case No. 227 of 2021 (against the present petitioner)** and (iii) Baguiati P.S. Case No. 456 of 2021 on the self-same allegations and self same cause of action.
3. The three cases ended in a **common charge-sheet** being charge sheet no. 76 of 2023.
4. The specific allegations against the petitioner herein, in the charge-sheet submitted is that he furnished a photocopy of income tax return for the assessment year 2021 & 2022 and also gave a statement in respect of his account.
5. The petitioner herein and his family members have duly co-operated with the Investigating Agency.

6. The first written complaint being Baguiati P.S. Case No.

194/2021 contains the following allegations:-

*“.....In the regular course of business one Accounts manager **Mrs. Mohua Sardar** daughter of Shri Bhim Sen Sardar residing at 14/3 S.N. Roy Road, Kolkata 700038 is working in the company from 01/04/2010. Mrs. Mohua Sardar was delegated inter-alia with the job role of collection of cash payments from two automobile workshops of the Company, situated at Gouripur near Airport and another one at Chetla, Kolkata. **Her designation was accounts manager.** Her nature of job was clerical in nature. A Copy of the appointment letter and latest pay slip is collectively annexed herewith and marked as Annexure A/1. After a few years of her service in the accounts department, Ms. Mohua Sardar sometimes in the year 2012 recommended her cousin namely Akash Barui, for the position of accounts executive, in the accounts department of the company. Upon such recommendation by Ms. Mohua Sardar, Accounts Department confirmed the employment of Akash Barui as accounts executive in the same accounts department. The copy of the appointment letter and pay slip of Akash Barui is also annexed herewith and marked as Annexure A/2. **Again sometimes in 2016 Mohua Sardar and Akash Barui recommended and requested for another Cashier under them and thus recommended the name of one Biswajit Dutta. That said***

Biswajit Dutta joined the company as Head cashier with effect from 01st Aug 2016. The Copy of the appointment letter and pay slip of Biswajit Dutta is annexed herewith and marked as Annexure A/3. With the passing of time the business started growing phenomenally and daily supervision of the owners of the company gradually petered out. One Vikas Mohta joined the complainant company accounts department on 01/11/2017 who was directly taking reporting of this Mohua and Akash among other employees and Vikas Mohta. **The role of Vikas Mohta was that of an agent. He was not directly employed under the complainant company.** Mr. Vikas Mohta was employed to do the supervisory accounting works on behalf of the Directors of the company. He was also entrusted to represent the complainant company before banks and other regulatory authority. Hence Mr. Vikas Mohta was "AGENT" of the company, within the meaning of section 182 of Indian Contract Act, 1872. Since 2018-19 this group of employees were running the accounts department at their own and without any active supervision of the owners of the company. Since they were working for quite some time, owners also trusted them with the complete accounting works of the Company. **Recently Mohua Sardar was caught for some accounts falsification and she confessed before the management of the company. After admission of her wrongdoings Mohua Sardar returned**

around 80 Lacs in a couple of instances.

Deeply shocked in such a mishap the owners undertaken a thorough audit by an independent agency. This exercise unearthed a huge quantum of misappropriation done by all the above named persons. We can make a pretty good estimate on the inputs given by the auditors, that a sum of Rs. Four Crores in the ball park. The retainership agreement and other employment related details of Vikas Mohta also annexed herewith and marked as Annexure A/4.....”

7. Subsequently the other cases on the self-same cause of action has been initiated in respect of the petitioner herein and other accused persons.
8. In ***Ruchi Agarwal vs Amit Kumar Agrawal & Ors., (2005) 3 SCC 299, decided on November 5, 2004***, the Supreme Court held:-

“8. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the abovementioned terms in it, the same was obtained by the respondent husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her stridhan properties. We find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent husband has given her a consent divorce which she wanted, thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of

the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 CrPC proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. **Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant.** In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

9. In view of the abovesaid subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash the proceedings arising from criminal case Cr. No. 224 of 2003 registered in Police Station Bilaspur (District Rampur) filed under Sections 498-A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly. The appeal is disposed of.”

9. In **Sanjeev Kapoor Vs Chandana Kapoor, AIR 2020 SC 1064, on 19 February, 2020**, the Supreme Court held:-

“17. Learned counsel for the appellant has also referred to judgment of this Court in *Mahua Biswas(Smt.) vs. Swagata Biswas* and another, (1998) 2 SCC 359. In the above case, in the proceedings under Section 125 Cr.P.C. parties

compromised and started living together but later fell apart. An objection was raised by the husband that order of maintenance could not be revived with which High Court agreed. This Court revived the maintenance application by allowing the appeal. In paragraph 3 following was held:

“3. The matter can be viewed from either angle. It can be viewed that there was a genuine effort by the wife to rehabilitate herself in her matrimonial home but in vain. The previous orders of maintenance in a manner of speaking could at best be taken to have been suspended but not wiped out altogether. The other view can be that the maintenance order stood exhausted and thus she be left to fight a new litigation on a fresh cause of action. Out of the two courses, we would prefer to adopt the first one, for if we were to resort to the second option, it would lead to injustice. In a given case the wife may then be reluctant to settle with her husband lest she lose the order of maintenance secured on his neglect or refusal. Her husband on the other side, would jump to impromptu devices to demolish the maintenance order in duping the wife to a temporary reconciliation. Thus, in order to do complete justice between the parties, we would in the facts and circumstances activate the wife’s claim to maintenance and put her in the same position as before. Evidently, she has obtained a maintenance order at a figure which was taken into account by the Court of the C.J.M. Taking that into account, we order the husband to pay to his wife and the daughter a sum of Rs 1000 each, effective from 1-10-1997. The sum of Rs 12,000 which was earlier ordered by this Court to be paid to the wife and her daughter as arrears of maintenance shall be taken to have been duly paid upto 30-9-1997, irrespective of the rate of maintenance. This streamlines the dispute between the parties. It is made clear that it is open to the

parties to claim such other relief as may be due to him/her by raising a matrimonial dispute before the matrimonial court.”

10. 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.***

11. The present case falls under category 1, 3 and 7 of Para 102 of ***Bhajan Lal (Supra)***.
12. Admittedly, the proceedings in **Baguihati P.S. Case No. 194 of 2021 has been quashed** in respect of all the other accused persons including the principal accused Mohua Sardar, on the basis of **an amicable settlement between the parties. It appears that the principal accused and the other accused persons against whom the allegations were specific have all been discharged from the case, on the proceedings against them being quashed.**
13. Considering the fact that **the initial complaint contained no allegation against the present accused person and also the fact that there is no specific allegation against the petitioner herein and there also being no materials on record including the case diary** to substantiate the offences alleged against the petitioner herein, this Court finds that the proceedings against the present petitioner is liable to be

quashed in the interest of justice to prevent abuse of the process of law.

14. CRR 1106 of 2022 is thus allowed.

15. The proceeding in Baguiati P.S. Case No. 227 of 2021 dated 08.05.2021 under Section 420 /408 /477A /403 /468 /120B /34 of the Indian Penal Code being G.R. No. 1593 of 2021, **is hereby quashed in respect of the petitioner namely Biswajit Dutta.**

16. All connected applications, if any, stands disposed of.

17. Interim order, if any, stands vacated.

18. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

19. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]