IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 1271 of 2015

Ram Niwas Giri & Ors.
Vs.
State of West Bengal & Anr.

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For the Petitioners	:	Mr. D. Bhatacharya Mr. Subhasis Chakraborty Mr. Amit Chowdhury
For the State	:	Mr. Anand Keshari
Heard on	:	17.12.2024
Judgment on	:	08.01.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. Being aggrived by the impugned proceeding arising out of Belur P.S. Case No. 73 of 2015 under section 341/323/468/471/506/34 of IPC, corresponding to GR Case no. 1852 of 2015, present application has been preferred with a prayer to quash the said proceeding.

2. The complainant /opposite party no.2 claimed in the written complaint that he is the director of the company namely Lovely Trademark Pvt. Ltd, holding 500 equity shares in the company, which constitutes 50%

of the total share holding of the company. Said company was incorporated on 08.11.2010 with two directors namely complainant and petitioner no.1 herein Ram Nibas Giri, who started purchasing land in a small part from diferrent sellers at Dankuni Hooghly, and the purchased plot of lands were registered in the name of the said company. It is alleged that the complainant was busy with field work in raising the assets of the company and the other director Ram Nibas Giri was in charge of the day to day office work of the company. Unfortaunately taking advantage of such trust and faith reposed on him by the petitioner, said Ramnibas Giri along with Ashoke Kumar Giri and Shivji singh who are petitioner no.2 & 3 herein misappropriated the funds and property of the said company for their own use by means of tampering books and accounts of the said company. It is further alleged in the FIR that said Ram Nibas Giri appointed said Ashoke Kr. Giri and Shivji Singh as the directors of the said company without taking consent from the complainant and they in connivance with each other have forged the digital signature of the complainant and has used the same in a fraudulent manner in order to execute Form 23AC for the year 2012-2013 filed before the Registrar of Companies. It is specifically alleged in the complaint that on 30.12.2014 the complainant went to the office of the company for discussing the issue with the accused persons, however he was resisted from entering into the office premises of the company by the said accused persons for which he suffered bodily pain. Moreover the accused have threatened the complainant with dire consequecnes in the event the complainant makes any attempt to enter into the office premises of the said company.

3. On the basis of said FIR lodged by opposite party no.2 herein, aforesaid Belur P.S. Case no. 73 of 2015 was started. Being aggrieved by the said proceeding petitioners herein contended that on bare perusal of the record it is apparent that the said allegations as has been attempted to be levelled against the petitioners, do not constitute any offence under section 323 or 341 of the Indian Penal Code. Section 506 of IPC has been forcibly brought, which is bereft of any ingredients. Similarly, the alelgations under section 468 of the Code is prima facie absent in the instant proceeding.

4. Mr. Bhattacharya on behalf of the petitoner further argued that it has been alleged that the petitioner in connivance with each other have forged the digital signature of the complainant and have used the same in a fraudulent manner in order to execute Form 23AC for the year 2012-2013. On the basis of material available to the prosecution, the State submitted that complainant had revoked the digital signature on 4th July, 2014, which is much later to the allegation in submission of Form 23AC for the year 2012-2013. He further contended that it is not the case of the State that a separate digital signature was procured by the petitioners but it has been sought to aruge that the digital signature of the complainant was misused by the petitioners. In this context he further contended that it has not been alleged in the complaint nor it has been argued by the State that the petitioner has created the digital signature of the complainant. Infact the defination of forgery is not made out in the written complaint though the intention to cause damage or injury to the public or to any person is an element which has to be established before a fabricated document can be held to be false document or forgery and in this context he relied upon the judgment of ***Tulsi Ram etc Vs. State of U.P*,** reported in **AIR 1963 SC 666**. Since the basic ingredients of section 468 is missing in the complaint the petitioner argued that the proceeding cannot continue under that provision. Similarly, the essential ingredient of section 471 of the IPC is also conspicusoly absent in the present complaint as there is no allegation that the petitoiners have used any forged document as genuine.

5. Now so far as, allegation under section 341 is concerned, Mr. Bhattacharya on behalf of petitioners argued that in the letter of complaint allegations have been made that the complainant was restrained from entering into the registered office of the company but it does not speak about the nature of obstruction and the means adopted by the obstructor. In fact, the complainant being one of the direcotors of the company does not have any unfettered right to entire into the registered office of the company. The directors have a right to enter into the registered offic of the company only for the purpose of Board Meeting or for the inspection of documents as mentioned in section 128 of the Companies Act, 2013. Here it is not the case of the complainant that he was resisted when he went to the registered office for the Board Meeting or for the inspection of the documents. Accordingly the basic ingredients to constitute offence under section 341 is also conspicuously absent in the present proceeding.

6. So far as, allegation under section 323 and 506 of the IPC are concerned it appears that there is no medical report in support of the allegation. Moreover, in the FIR it has only been stated that the complainant was assaulted. The word “assault” has been defined under section 351 of the IPC which does not denote 'hurt' and therefore the offence under section 323 is also not made out in the present context. Similarly the mere allegation that the accused had abused the complainant without having any allegation to have an act of threatening of causing an injury, to the person, reputation or property to the persons threatened and that the threat with intent to cause alarm to the person threatened, the allegation does not satisfy the ingredients of section 506 IPC.

7. Mr. Bhattacharya further argued that in the written complaint, it is alleged that the resistance was made on 30.12.2014, but the FIR was lodged on 14.03.2015 and no explanation has been offered for such delay, which stands as a good ground for quashing the proceeding. He further argued that the present FIR is a counter blast to an FIR lodged by the petitioner no.2 against the complainant, being Belur P.S. Case no. 190 of 2014 dated 08.07.2014 for alleged commission of offence punishable under sections 406/420/468/506/34 IPC. He further submitted that in view of judgment passed by Apex court in ***Anand Kumar Mohatta and another Vs. NCT of Delhi,*** reported in **AIR 2019 SC 210,** it is now settled principle of law that the quashing of FIR is permissible even if charge sheet is filed. In such view of the matter continuance of further proceeding against the present petitioners any further will be an abuse of process of the court and as such the petitioners have prayed for quashing the impugned proceeding.

8. Inspite of service, private opposite party no. 2 is not represented.

9. Mr. Keshari learned Counsel appearing on behalf of the State submits that the investigation has culminated into a charge sheet which prima facie establishes the commission of cognizable offence by the petitioners and as such this is not a fit Case where the proceeding can be quashed at its threshold, invoking jurisdiction under section 482 of the Code of Criminal Procedure.

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

11. In **Bhajanlal's Case** reported in **1992 (Supp) 1 SCC 335,** the Supreme Court has laid down certain circumstances where the court may be justified in exercising jurisdicion under section 482 of the Code for quashing of a criminal proceeding. These are where the FIR does not prima facie constitutue any offence, does not disclose a cognizable offence justifying investigation by the police, where the allegations 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 accuseed, where there is an express legal bar engrafted in any of the provisions of the Code and/or where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instititated with an ulterior motive of wreaking vengeance on the accused and with a view to spite him due to private and persongal grudge.

12. In the light of abovementioned touchstone, let me consider the FIR of the instant proceeding. The defacto complainant in his FIR dated 2nd March, 2015 made certain allegations which may be broadly divided into following categories:-

(a) Petitioners namely Ram Nibas Giri, Ashoke Kumar Giri, Shivji Singh in connivance with each other have forged the digital signature of the defacto complainant and have used the same in a fraudulent manner in order to execute Form 23 AC for the year 2012-2013 filed before the Registrar of Companies.

(b) On 30.12.2014, the defacto complainant went to the office of the company for discussing certain issues mentioned in the complaint but the defacto complainant was resisted from entering into the office premises of the company by the petitioners and their men and agent.

(c) It is further alelged that the defacto complainant was assaulted by the petitioners and for which the complainant suffered bodily pain.

(d) The petitioners have threatened the complainant with dire consequnces in the event, the complainant make any attempt to enter into the office premises of the said company.

13. It is not in dispute in the present context that the defacto complainant is the Director of the company namely Lovely Trademark Pvt. Ltd., who holds 500 equity shares in the company, which constitutes 50% of the total share holding of the company. Now so far as the allegation levelled by the complainant under section 341 of IPC is concerned petitioner's specific case is that over the dispute of appointment of directorship and other issues, the parties approach before Company Law Board, Kolkata branch being CP No. 120 of 2014 where the Board passed an order of status quo and as such the defacto complainant did not have any right to go to the office of the company at the relevant point of time. Ld. Counsel for the petitioners further argued that the Directors of a company have a right to enter into the registered office of the company only for the purpose of Board Meeting or for the insepction of documents as mentioned in section 128 of the Companies Act, 2013. He further contended that it is not the case of the complainant that he was resisted when he went to registered office to attend any Board Meeting or for the inspection of documents. Moreover, the mode of resistance is also absent in the complaint and as such the basic ingredients to constitute offence under section 341 have not been established from the complaint.

14. Needless to say that in order to constitute an offence under section 341 which deals with punishment for wrongful restraint, three essential ingredients are required to be established:-

- **(i)** Accused obstructed the person
- **(ii)** He did it voluntarily
- **(iii)** It prevented such person from preceding that direction in which he had the right to proceed.

15. As I have stated above that it is not in dispute that the defacto complainant is a director of the company and holds 50% of the total share holding of the company. It is alleged that on the particular date i.e. on 30.12.2014, when he went to the office of the company he had no right to proceed to that direction as Company Law Board had already passed an order of status quo. On persual of the concerned order of status quo, it appears that by the said order the respondents were directed to maintain status quo with regard to the composition with the Board of Directors of the Company till the next date of hearing. Accordingly Company Law Board has not passed any order of status quo restraining the complainant from entering into the office of the company. During the course of hearing learned Counsel for the petitioners have also referred an FIR, being no. 190 of 2014 dated 08.07.2014 lodged by one of the petitioners herein Shivji Singh against the complainant herein, which also goes to show that there is a serious dispute among the parties regarding submission of faithful account and entrustment to look after with regard to the affairs of the company.

16. Now whether the complainant on 30.12.2014 had attempted to go to the office of the company for the purpose of any board meeting or for the purpose of inspection of documents or that he was authorised to go on that date or not can only be decided in the course of trial. The averments made in the complaint prima facie discloses that the complainant had a right to proceed to the office of the company and on that particular date he was resisted from entering into the office premises of the company by the petitioners/ accused persons and their men an agent, which prima facie satisfies the ingredient of wrongful restraint mentioned in section 339 of the IPC.

17. Regarding other allegations of assault made by the complainant, petitioners' contention is that in the case diary there does not exist any medical report and the allegation in the complaint only referes to 'assault' which has been defined in section 351 of the Code, but which does not denote 'hurt' and as such the offence under section 323 IPC has not been made out.

18. Here also the specific allegation levelled in the complaint is that the complainant was assaulted and for which he sufferred bodily pain and the accused persons further threatened him with dire consequences in the event he makes any attempt to enter into the office premises of the said company. Now to constitute offence under section 323, one of the essential ingredients is that accused voluntarily caused bodily pain to the victim and the other is that accused did so with intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim. The word “hurt” is defined in section 319 of the IPC which states that whoever causes bodily pain, disease or infirmity to any person is said to cause “hurt”. In view of above whether the term used by the complainant in the complaint amounts to an offence under section 323 of the Code or not can only be decided after a full fledged trial and it can hardly be said at this stage that as the complainant has used the term ‘assault’ in the complaint, it does not constitute offence under section 323 of the IPC. This is also because the legal principle that a First Information Report (FIR) is not an encyclopaedia is well established in Indian Jurisprudence. This means that an FIR does not need to contain every details of an incident, but it should provide enough information to start an investigation.

19. Beside this there are other allegations of forging digital signature of the petitoner in fradulent manner in order to execute Form 23AC for the year 2012-2013 and also allegation of threatening the complainant with dire consequences.

20. At this stage when I am dealing with an application under section 482 of the Code seeking for quashment of the proceeding, I am not inclined to look into the correctness of the abovementioned allegations made in the FIR. Ex facie, the allegations in the FIR disclose an offence. Whether the persons named in the FIR have committed the offence or not has to be decided upon trial in the criminal proceeding. The High Court is supposed to interfere in a criminal proceedings in exercise of the power under section 482 of the Cr.P.C. in rare and exceptional cases to give effect to the provisions of law or to prevent abuse of the process of any court or otherwise to secure the ends of justice. In fact it is settled law that a criminal proceeding can be said to be an abuse of the process of the court, when the allegations in the FIR do not at all disclose any offence or there are material on records from which the court can reasonably arrive at a finding that the proceeding are in the abuse of the process of the court.

21. It is also 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 allegtions in the FIR must be read as they stand and it is only if on the face of the allegations, that no offence as alleged has been made out that the court may be justified in exercising its jurisdiction to quash.

22. In the FIR all the three petitioners have been named. The language of the FIR has already been quoted. If these allegations are taken to be correct it cannot be said that no offence has been disclosed.

23. Having considered the facts and the law, in my view this is not such a case which warrants interference by this High Court invoking jurisdiction under Section 482 of the Code to qush the criminal proceeding.

24. In such view of the matter **CRR 1271 of 2015** stands dismissed. 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.)