

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1819 of 2017
With
CRAN 1/2017 (Old CRAN 4753/2017)

Sri Protip Mukherjee
Versus
State of West Bengal & Another

For the Petitioner : Mr. Souradeep Dutta, Adv.
Mr. Himadree Ghosh, Adv.

For the State : Ms. Faria Hossain, Adv.
Ms. Mamata Jana, Adv.

Heard on : 04.12.2024

Judgment on : 22.01.2025

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed by the petitioner/accused under Section 482 of the Code of Criminal Procedure, 1973 seeking for quashing of the proceeding in connection with the First Information Report being Jadavpur Police Station Case No. 200 of 2017 dated 05.05.2017 under Sections 341/323 of the Indian Penal Code, 1860 (corresponding to ACGR Case No. 2213/17) and same is pending before the Court of the Learned Additional Chief Judicial Magistrate, Alipore.

2. The brief facts are relevant for the purpose of disposal of this case, are as under:

3. On the basis of a written complaint lodged by de-facto complainant/opposite party no. 2, an FIR was registered being Jadavpur Police Station Case No. 200 of 2017 dated 05.05.2017 under Sections 341/323 of the Indian Penal Code, 1860 against the present petitioner and initiated investigation.

4. The opposite party no. 2 has alleged, *inter alia*, in her complaint that on the date of the incident i.e. on 05.05.2017, the present petitioner had switched on the pump at about 10.30 AM, as there was no water, despite her protests. At about 10.40 AM, as her daughter went to turn off the pump, the petitioner allegedly pushed

her against the wall. It was further alleged that the said daughter of the opposite party no. 2 was pushed with an iron gate.

5. It was also alleged that on 27th June, 2016, she got the pump repaired after paying charges of Rs. 3,300/- but one Sudakshina has not paid any share of such repair and also not willing to pay. Sudakshina also fused the common meter once earlier when the opposite party no. 2 had gotten the pump repaired and made it in working condition. The opposite party no. 2 also alleged that she has been distributing water to everyone, even though Sudakshina pays nothing for the same. It was also alleged that Sudakshina had given a blow to the daughter of the opposite party no. 2.

6. On the other hand, the contention of the petitioner is that the complaint is totally false, fabricated, concocted and misleading one and strongly denied by the petitioner. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONER:

7. Learned counsel appearing on behalf of the petitioner strenuously argued and submitted that whatever allegations levelled against the petitioner, are out and out false. In the premises, there exists a protracted dispute between the de-facto complainant's family

and the remaining residents of the concerned premises over stopping of water supply and related civic amenities and for that reason, the other residents of the building had been compelled to lodge several complaints against the de-facto complainant and her family.

8. It was further submitted that on manifold occasions since 2010, the residents of the building has been forced to resort to the police, the Municipal Councillor and other public authorities to protect themselves against the unspeakable mayhem caused by the opposite party no. 2 and her daughter. The opposite party no. 2 and her daughter repeatedly litter the common spaces with garbage, pilfer the common water tank and frequently assault the other residents as well as the caretakers of the building. The petitioner and his sister and even her son have time and again been physically assaulted by the opposite party no. 2 and her daughters and there have been complaints to the police as well as medical reports across various dates to substantiate the facts.

9. Implication of the petitioner in the complaint is only to harass and humiliate the petitioner and is totally abuse of process of law as such, same is required to be quashed.

10. It was further submitted that at the initial stage, this Hon'ble Court has heard the matter and stayed the proceeding when prima

facie case found that there is need of hearing the case upon giving opportunity to the other side.

11. None appeared on behalf of the opposite party no. 2.

SUBMISSION ON BEHALF OF THE STATE:

12. Learned counsel appearing on behalf of the State produced the case diary and further submitted that charge sheet has already been submitted against the present petitioner. During investigation, a prima facie case was found against the present petitioner. Therefore, the charge sheet was submitted under Sections 341/323 of the Indian Penal Code, 1860 against only one person i.e. petitioner herein.

DISCUSSION AND FINDINGS BY THIS COURT:

13. Heard the arguments and submissions of the parties and upon perusal of the record as well as case diary, this Court finds initially a case was started on the basis of complaint lodged by the de-facto complainant/opposite party no. 2 under Sections 341/323 of the Indian Penal Code, 1860. It further appears from the complaint that there was a dispute with regard to supply of water in the premises where both parties reside and the same is regular phenomena. The allegation against the petitioner is that the

petitioner has pushed her daughter over the issue of stopping water supply at the above noted date, time and place and also pushed with an iron gate.

14. Upon careful perusal of the statements recorded under Section 161 of the CrPC of the residents, where the incident occurred, this Court does not find any supporting statements regarding the assault or pushing. Even, no medical documents are available in the case diary. Actual case emerges from the allegation of the de-facto complainant that no charges of repairing of water pump of the premises paid/shared by Sudakshina, who is sister of the present petitioner. None payment of share of the charges of repairing of water pump does not come within the purview of criminal act. Accordingly, allegations are vague and general. The proceeding, if not be quashed, it would be a sheer abuse of process of law. Even for the sake of argument, if this proceeding be continued, conviction of accused is bleak and remote and for securing the ends of justice, the entire proceeding is deserved to be quashed under the inherent power granted under Section 482 of the CrPC.

15. We should not forget at this moment the well-settled law declared by the Hon'ble Supreme Court in the case of **State of**

Haryana & Ors. vs. Bhajanlal & Ors.¹ which has laid down the basic points for consideration pursuant to which a complaint may be entertained in accordance with law before a Court of law. The Hon'ble Court has narrated down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure, 1973 may be espoused. Relevant portion thereof may beneficially be quoted herein below: -

“102. This Court in the backdrop of interpretation of various relevant provisions of CrPC 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to 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

¹ AIR 1992 SUPREME COURT 604 : 1992 Supp. (1) Supreme Court Cases 335

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 Act concerned (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 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.”

16. In the light of above discussions made by this Court and in view of observation made by the Hon’ble Supreme Court in the above cited judgment, this Court fully satisfies that this case falls in the Categories mentioned in 3, 5 and 7 above.

17. Accordingly, **CRR No. 1819 of 2017** is **allowed**. Connected application being **CRAN 1 of 2017 (Old CRAN 4753 of 2017)** is also, thus, disposed of.

18. Consequently, proceeding in connection with the First Information Report being Jadavpur Police Station Case No. 200 of 2017 dated 05.05.2017 under Sections 341/323 of the Indian Penal

Code, 1860 (corresponding to ACGR Case No. 2213/17) now pending before the Court of the Learned Additional Chief Judicial Magistrate, Alipore is hereby quashed.

19. Let a copy of this Judgment be sent to the Learned Trial Court for information.

20. Case Diary is to be returned to the learned counsel appearing on behalf of the State.

21. Interim order, if any, stands vacated.

22. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)