

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

PRESENT:

THE HON'BLE DR.JUSTICE AJOY KUMAR MUKHERJEE

CRR 2428 of 2017

**Anirban Chattopadhyay & Ors.
Vs.
Krishnendu Nararyan Chowdhury**

For the petitioners : Mr. Sandipan Ganguly
Mr. Somopriya Chowdhury
Mr. Soumitra Dutta
Mr. Matri Prasad Das

Heard on : 22.04.2025

Judgment on : 20.05.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioners herein have sought for quashing of a complaint case being case no. 382C/2017 initiated by opposite party herein under section 500/501/34 of the Indian Penal Code (in short IPC) which relates to a publication carried in a widely circulated Bengali daily on 19th December, 2016, covering a news article relating to complainant/opposite party herein.

2. The allegations levelled by the opposite party/complainant is to the effect that vide aforesaid publication under the headline '*Abhijukto Krishnendu Nararyan*' (Krishnendu Narayan has been made as accused), in

which it was reported that a complaint has been lodged by house owners of a house at ward no. 10 Imam Bara Lane, Malda English Bazar Municipality, against the opposite party herein and his associates for threatening and resisting construction of roof at the house of said persons on a demand of Rs. 19,00,000/-. The petitioner no. 1 and 2 are the editor and the publishers of the said newspaper and petitioner no.3 is the reporter.

3. On the basis of the written complaint the court below after taking cognizance and after examining the complainant on affirmation, issued process against the accused persons including the petitioners herein under section 500/501/34 of the IPC, invoking his jurisdiction under section 204 of the Cr.P.C.

4. Being aggrieved by the impugned proceeding Mr. Gangully learned Senior counsel appearing on behalf of the petitioners submits that on perusal of the news report it would reflect that the said news report is an objective piece of reporting which simply states that a complaint has been filed against the opposite party by some residents of ward no. 10 Imambara Lane for demanding Rs. 19,00,000/- to permit them to go on with the construction. It is further submitted that the said news report by itself also states that the response of the opposite party who denied such allegations levelled by the said local residents, the response of the police as well as the version of the concerned family members of the family who had alleged demand of money by the opposite party and his associates, has also been mentioned in the report.

5. Mr. Gangully in this context further argued that from the four corners of the news article and also from the contents of petition of complaint, it is

clear that it does not disclose the ingredients of criminal defamation as defined under section 499 of the IPC. His contention is in the impugned news article nothing can be found which attributes any intention on the part of the petitioners herein to cause harm to the reputation of the opposite party. In fact the news report has only reported regarding the complaint filed against such public servant in relations to his acts, while discharging such public duties.

6. He further argued that news article clearly discloses an objective news report which does not contain any opinion by the newspaper but simply covers news of public importance where there is an allegation levelled in writing by some of the residents of ward no.10, Imam bara Lane against the opposite party and where the response of the opposite party has also been reported in the news report and as such it cannot amount to defamation.

7. Accordingly he argued that an article published in good faith falls within the fundamental right of freedom of speech and expression, enshrined under Article 19 (1) (a) of the Constitution of India and cannot warrant prosecution for defamation. In this context learned Counsel for the petitioner further argued that the opposite party /complainant himself had admitted in his initial deposition that a complaint has been lodged against him before the police authorities at English Bazar Police Station for demanding Rs. 19,00,000/-

8. Mr. Gangully further argued that the order issuing process by the magistrate without compliance of section 202 of Cr.P.C is bad in law as the petitioners/accused persons reside beyond the territorial jurisdiction of learned Chief Judicial Magistrate, Malda, which is also reflected from the

petition of complaint itself. Accordingly under the mandatory provision laid down in the amended section 202 of the Code of Criminal Procedure, the court below ought to have made an enquiry before issuing process against the petitioners. In the instant case magistrate did not conduct any such enquiry under section 202 of the Code and issued outright process against the petitioners only on the basis of petition of complaint and the initial deposition recorded under section 200 of the Cr.P.C., and for which the impugned proceeding also liable to be quashed. In this context he also relied upon the judgment reported in ***Udai Shankar Awasthi Vs. State of U.P*** reported in **(2013) 2 SCC 435** and ***Vijay Dhanuka Vs. Najima Mamtaj*** reported in **(2014) 14 SCC 638**. He further argued referring the case of ***Greaves Cotton Limited & others*** reported in **2023 SCC OnLine Cal 454** that where a *prima facie* case is not made out, mere non-compliance of section 202 of Cr.P.C would never deter the High Court from exercising its power under section 482 Cr.P.C in such cases, where accused persons are asked to face a criminal trial without any substantive cause of action being made out.

9. Mr. Sourav Chatterjee learned counsel appearing on behalf of the opposite parties argued that the complaint allegedly lodged by some of the local residents against opposite party herein cannot be taken into account while considering the application under section 482 of the Code as annexure to the petition showing that a complaint has been lodged previously, cannot be termed as evidence without being tested and proved.

10. In this context he relied upon judgment of ***State of M.P. Vs. Awadh Kishore Gupta and others*** reported in **(2004) 1 SCC 691**. He further

argued that defences that may be available or facts/aspects which if established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At this stage the only question relevant is whether the averments in the complaint spell out the ingredients of the criminal offence or not and since the newspaper reporting discloses offence against the accused persons and when trial court on being satisfied has issued process, the High Court should not quash the proceeding by exercising his jurisdiction under section 482 of the Code. In this context he relied upon ***Kamal Shivaji Pokarnekar Vs. State of Maharashtra and others*** reported in **(2019) 14 SCC 350** and ***Mohd. Allauddin Khan Vs. State of Bihar and others*** reported in **(2019) 6 SCC 107**.

11. Mr. Chatterjee further contended that the power conferred under section 482 should be exercised with circumspection, to do real and substantial justice and to prevent abuse of the process of the court and it can be exercised only where complaint does not disclose any offence, which is not the case in the present context. To support such contentions he relied upon the judgment of ***C.B.I Vs. Ravi Shankar Srivastava*** reported in **(2006) 7 SCC 188** and the case of ***C.B.I Vs. Ravi Arvind Khanna*** reported in **(2019) 10 SCC 686**.

12. Mr. Chatterjee further argued that from the complaint and from the initial deposition, it is clear that the allegations levelled against the petitioners are required to be proved before court of law in order to ascertain whether offence under section 500 and 501 of IPC was made out or not and at this stage High Court is not supposed to examine the entire issue as to whether the offence under those sections is made out or not at pre-trial

stage. In this context he relied upon the judgment of ***State of M.P Vs. Yogendra Singh & Another*** reported in **(2020) 12 SCC 588** and ***Kaptan Singh Vs. State of U.P*** reported in **(2021) 9 SCC 535**.

13. Referring the judgment of ***Mohd Abdulla Khan Vs. Prakash K.*** reported in **(2018) 1 SCC 615**, learned Counsel for the opposite party contended, the contents of any news item carried in newspaper if defamatory as defined under section 499 IPC, the mere printing of such material, knowing and having reasons to believe that such matter is defamatory, itself constitutes a distinct offence under section 501 of IPC. Referring the judgment reported in **2022 SCC OnLine SC 1491** and **(2024) 2 SCC 86**, Mr. Chatterjee further contended that where the offence of defamation is claimed by the accused to have not been committed based on any of the exceptions and a prayer for quashing is made on the basis of materials which were not before the magistrate, the High Court cannot go further and enlarge the scope of enquiry, if the accused seeks to rely on material, which were not there before the magistrate and it is based on the proposition that what the magistrate could not do, the High Court may not do.

14. He further contended that though the High Court's power under section 482 is always there to do real and substantial justice but where magistrate issued process recording due satisfaction, such order can only be interfered, if on a reading of complaint, the substance of the statements on oath of the complainant and documentary evidence as produced, no offence has been made out and allowing the proceeding to continue would be a mere abuse of the legal process.

15. Accordingly Mr. Chatterjee argued that though learned Counsel appearing on behalf of the petitioner argued much that the newspaper reporting was made on “*good faith*” or for the “*public good*” but they are always a question of fact. The petitioners will have to show that the belief in his impugned reporting had a rational basis and was not just a blind simple belief, where the element of due care and attention plays an important role. The persons alleging good faith has to establish as a fact that he made enquiry before he made the imputation and he has to give reasons to indicate that he acted with due care and attention and was satisfied that the imputation was true and all these can be judged only during trial. In this context he relied upon the judgment of ***Sukra Mahto Vs. Basdeo Kumar Mahto and Another*** reported in **(1971) 1 SCC 885**. Since all these are questions of fact and matter of evidence, it cannot be adjudicated while dealing with application under section 482 of the Code. In this context reliance has also been placed upon judgment of ***Chaman Lal Vs. State of Punjab*** reported in **(1970) 1 SCC 590** and ***Jeffrey J. Diermeier & Another Vs. State of West Bengal*** reported in **(2010) 6 SCC 243**.

16. He further submits that the judgments relied by the petitioner are not applicable in the present context and it is settled law that the ratio of a decision has to be understood, regard being had to its context and factual exposition. In this context also he relied upon judgment of ***Royal Medical Trust and another Vs. Union of India and another*** reported in **(2017) 16 SCC 605**.

Decision

17. After going through the news report under the heading “*Abhijukto Krishanendu Narayan*” it appears that the report pertains to a complaint that has been lodged by the residents of ward no. 10 Imambari Lane Malda English Bazar Municipality against the opposite party and his associates for threatening and resisting construction of 2nd floor roof at the house of the said persons on a demand of Rs. 19,00,000/-. It further appears that in the present case the opposite party/complainant, Krishnanendu Naryana alone tendered initial deposition under section 200 of the Cr.P.C. In his initial deposition he has also admitted that accused no. 4, 5, 6 and 7 (Present petitinoers are accused no. 1 to 3) lodged a complaint at English Bazar P.S that he demanded Rs. 19,00,000/- from them for giving them permission to construct pakka roof. The petitioners herein also filed supplementary affidavit annexing the written complaint that was lodged by Rehana Pervin, Md. Motiur Rahaman and Md. Jakir Hossain Biswas dated 08.12.2016 and 18.12.2016 wherefrom it appears that the said persons lodged complaint to the Executive Officer English Bazar Municipality and the I/C English Bazar P.S., alleging inter alia that after obtaining building plan, when they were about to start consttution, the then chairman demanded Rs. 19,00,000/- from them and threatened to cancel their mutation and plan and also threatened to disconnect the water connection, if the payment be not made.

18. Therefore it is very much clear that the said news reporting has been made on the basis of said complaint as has been made before the I/c English Bazar P.S and the Executive Officer, English Bazar Municipality by said residents of ward no. 10. Now in order to attract offence under section

499 of the IPC which is punishable under section 500, the following ingredients are required to be satisfied :

- (1) Making or publishing any imputation concerning any person;*
- (2) Such imputation must have been made by words either spoken or intended to be read, or by signs, or by visible representations, and*
- (3) Such imputation must have been made with the intent to harm, or with knowledge or belief that it will harm the reputation of the person concerned.*

To attract offence under section 501 of IPC, complainant is required to establish

- (1) That the news item published by the petitioners is defamatory.*
- (2) The petitioner knew or had reason to believe that the news item is defamatory in character.*

19. From the aforesaid ingredients it is clear that the essential of the offences alleged is that the imputation should have been made for publication with the intention of harming or with the knowledge or with reason to believe that the imputation will harm the reputation of such person even knowing it to be defamatory. So the moot question is whether the new article in question was published in good faith or not. It is quite apparent that what the petitioners herein/accused persons have published in its newspaper is the complaint that has been lodged by the other accused persons before I/c English Bazar P.S and the Executive Officer, English Bazar Municipality. The news report has only reported regarding the aforesaid complaint filed against such public servant in relation to his acts while discharging public duties. Therefore accused persons have reported of an imputation which has already been reported in the nature of an accusation by the other accused persons.

20. In ***Jawaharlal Darda and others Vs. Manoharrao Ganatrao Kapsikar and another*** reported in **(1998) 4 SCC 112** it was held, if the

news item was published about public conduct of public servant who are entrusted for public good, believing the same to be true, it cannot be said that the accused persons who published the news intended to harm the reputation of the complainant. It was also held in that case, where the newspaper published an accurate and true report of the preceding of the assembly then it was published in good faith for public good.

21. Mr. Chatterjee learned counsel appearing on behalf of the complainant/opposite party argued that while considering application under section 482 of the Cr.P.C., the court is not supposed to consider the two complaints dated 08.12.2016 and 18.12.2016, allegedly on the basis of which the news item had been published, as it has no evidentiary value at this stage and not a document of sterling quality and in this context he relied upon **State of Madhya Pradesh Vs. Awadh Kishore Gupta and other** (supra). Learned counsel appearing on behalf of the petitioner Mr. Ganguly contradicted the submission by referring the judgments of **All Cargo Movers (India) Private Limited and others Vs. Dinesh Badarmal Jain and another** reported in **(2007) 14 SCC 776** and **Haji Iqbal @ Bala Through S.P.O.A Vs. State of Uttar Pradesh and others** reported in **2023 SCC OnLine SC 946** and contended that law has completely changed since the judgment of **Awadh Kishor Gupta** (supra) and it is now well settled that documents of un-impeachable character and sterling quality, annexed with the petition under section 482 Cr.P.C can be considered to come to its logical conclusion.

22. As I have already stated above that the complainant Krishnendu Naryan in his initial deposition admitted that accused no. 4, 5, 6 and 7

lodged a complaint at English Bazar P.S alleging that he had demanded Rs. 19,00,000/- from them for raising pukka construction so, it must be said that the aforesaid two complaint dated 08.12.2016 and 18.12.2016 are documents of un-impeachable character and can certainly be considered while dealing with a prayer made under section 482 Cr.P.C.

23. It is also well settled in view of ***Sanjay Upadhay case***, reported in **AIR 2024 SC 811** that the news article in question if published in good faith, in exercise of fundamental right of freedom of speech and expression enshrined under article 19 (1) (a) of the Constitution of India, it does not attract ingredients of the offence punishable under section 500 of the IPC. In the instant case it is also apparent that there was no *mala fide* on the part of the publisher in publishing the news in view of the fact that the response of the opposite party/complainant as well as response of the police and also the response of the concerned family members of the family from whom the money has been allegedly demanded by the opposite party has been incorporated in the news. Since the version/response of all concerned parties have been reported without having any expression of reporter's own view, the reporting appears to be a balanced reporting, which does not attract offence under section 499 of the IPC, punishable either under section 500 or offence under 501 IPC.

24. I have already indicated above that before issuance of process under section 204 of IPC, the complainant alone had given initial deposition stating that due to publication of such false news his prestige has been lowered down to the eyes of people of Malda and outside Malda and the people are now questioning about his integrity. Exprnation 4 of Section 499

of IPC clearly states that no imputation is said to harm a person's reputation unless that imputation directly or indirectly in the estimation of others, lowers the moral or intellectual character of that person. Therefore to maintain a case under section 500 or 501 of the IPC, the complainant is required to prima face show by producing evidence at the stage of initial deposition under section 200 of the Code and to exhibit that in the estimation of any such witness, his moral or intellectual character was lowered.

25. In the instant case no witness from Malda or outside Malda or the people who allegedly questioning about his integrity after the aforesaid publication, has come forward while initial examination was done for issuance of process under section 200 of Cr.P.C.

26. In the Judgments of ***Nisika properties of Pvt Ltd*, 2013 SCC OnLine Cal 14482, *M/s Pataka Industries Pvt Ltd.*, 2013 SCC OnLine Cal 19696, *Dipankar Bagchi*, 2009 SCC Online Cal 1877 and *Kalpana Mazumdar* 2017 SCC OnLine Cal 103**, Co-ordinate Benches of this High Court held that the inference of the complainant that due to such publication/imputation, the reputation of the complainant has been lowered down in the estimation of the public is of no use to make out an offence of defamation, unless before the process issuing court, the concerned witness is examined in who's estimation the reputation of the complaint has been lowered down due to such publication. Since the complainant has not examined any such witness at the stage of initial deposition which can reflect that his character has been lowered in the estimation of such witness

and since no one can be defamed in his own eyes, the instant proceeding is hit by explanation 4 to section 499 of the IPC.

27. That apart it is well settled that though the exercise of fundamental right guaranteed under Article 19 is available to every citizen but the exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a) of the Constitution of India. The Apex Court held in **Arnab Ranajan Vs. Union of India and others** reported in **(2020) 14 SCC 12** as follows :

38. Article 32 of the Constitution constitutes a recognition of the constitutional duty entrusted to this Court to protect the fundamental rights of citizens. The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a). The petitioner is a media journalist. The airing of views on television shows which he hosts is in the exercise of his fundamental right to speech and expression under Article 19(1)(a). India's freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal. The exercise of that fundamental right is not absolute and is answerable to the legal regime enacted with reference to the provisions of Article 19(2). But to allow a journalist to be subjected to multiple complaints and to the pursuit of remedies traversing multiple States and jurisdictions when faced with successive FIRs and complaints bearing the same foundation has a stifling effect on the exercise of that freedom. This will effectively destroy the freedom of the citizen to know of the affairs of governance in the nation and the right of the journalist to ensure an informed society. Our decisions hold that the right of a journalist under Article 19(1)(a) is no higher than the right of the citizen to speak and express. But we must as a society never forget that one cannot exist without the other. Free citizens cannot exist when the news media is chained to adhere to one position. Yuval Noah Harari has put it succinctly in his recent book titled "21 Lessons for the 21st Century": "Questions you cannot answer are usually far better for you than answers you cannot question".

28. Therefore the constitutional guarantee of freedom of speech is not so much for the benefit of the press as it is for the benefit of the public. The freedom of speech include with its compass the right of all citizen to be read and be informed as coated in **Indian Express Newspaper (Bombay) Pvt. Ltd and others Vs. Union of India** reported in **(1985) 1 SCC 641**.

29. In view of aforesaid discussion it is quite clear from the materials available to this court that the complaint along with the initial deposition of the complainant itself fails to make out any offence either under section 500 or 501 of the IPC and as such it does not attract any culpability to the petitioner herein who are arrayed as accused no. 1, 2, 3 of the written complaint.

30. The Magistrate concerned was so desperate in issuing the process against the petitioners herein that he even ignored the mandatory provision laid down in section 202 of the Code of Criminal Procedure. From the complaint itself, it is clear that the residence of accused no. 1 or 2 or 3 are not within the jurisdiction of the concerned magistrate but he issued process without making any enquiry about the allegation levelled against the petitioner either by himself or by making a direction for investigation to be made by a police officer or any other competent person. Only perusing the contents of complaint which does not constitute offence under section 500 or 501 IPC, he took cognizance and thereafter without knowing as to whose estimation the complainant has been allegedly defamed, he adjudicated that there are grounds to proceed against the petitioner herein, which is not at all sustainable in the eye of law.

31. In view of above the impugned proceeding being complaint case no. 382C/2017 pending before the learned Chief Judicial Magistrate, Malda, is hereby quashed, qua the petitioners herein namely *Anirban Chattopadhyay, Pradipta Biswas and Abhijit Saha*. Accordingly present application being **C.R.R 2428 of 2017** stands allowed.

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.)