

Jitendra Agarwal
Vs.
The State of West Bengal & Anr.

Mr. Pawan Kumar Gupta
Mr. Awadesh Kr. Rai
Ms. Sofia Nesar
Mr. Santany Sett

...For the Petitioner

Ms. Rituparna De Ghose
Ms. Pallavi Priyadarshee

...For the State

Opposite party/complainant is not represented.

The report regarding service of intimation upon the private opposite party no. 2, is taken on record.

Being aggrieved by and dissatisfied with the order of taking cognizance dated 06.10.018 as well as continuance of impugned criminal proceeding being G.R. case no. 210 of 2018 under Section 420/406/354/354A/506 of the Indian Penal Code, presently pending before the learned Metropolitan Magistrate, 16th Court, Calcutta, the present application has been preferred by the present petitioner who has been arraigned as an accused on the basis complain filed by the opposite party no. 2 herein, under Section 156(3) of the Code of Criminal Procedure.

It is argued on behalf of the petitioner that the court below while allowed the said application for initiating investigation, did not apply his judicial mind. The petitioner is innocent and is no way connected with the alleged offence. He further submits that the dispute of a purely civil in nature has been given colour of criminal offence by the opposite party no.2 and as such, even if for the sake of argument, the averments made in the complaint are taken to be

gospel truth, it does not constitute any offence against the petitioner. The lis between the parties, is per se dispute over commercial transaction and the opposite party no. 2 in order to avoid her obligation in civil contract has put the foundation of her claim through criminal proceeding.

He further submits that from bare perusal of the complaint, the only story, which the respondent has made out is that she allegedly supplied goods on credit and the entire payment of the same is not made by the petitioner. However complainant by articulating the same fact has given the same a shape of different penal offences, whereby she tried to make the law as the tool of vengeance. Personal grudge cannot be permitted to be ventilated through criminal proceeding.

He further submits that for such reason police during investigation did not find any *prima facie* case under section 420 or 406 of I.P.C and accordingly those sections were dropped while they filed the charge sheet.

Petitioner also submits that though charge sheet submitted against petitioner under section 354/354A/506 I.P.C on the basis of false allegation but fact remain that opposite party no. 2 never visited the office of the petitioner. Had there been proper investigation the same would have revealed that the opposite party no.2 had never been to the place of petitioner which nullifies the occurrence of alleged offence under section 354/354A/506 of I.P.C. He further submits that earlier opposite party no. 2 by virtue of filing an application prayed for cancellation of anticipatory bail granted to the petitioner vide CRM no. 8486 of 2018, where this court while

rejecting such prayer for cancellation observed that unfortunately, the real grievance of the petitioner appears to be that the opposite party no.1 (petitioner herein) did not suffer adequate coercion by being taken into custody that may be prompted the opposite party no.1 to quickly release the money that is claimed by the petitioner. Therefore according to petitioner the impugned order taking cognizance on the impugned charge sheet is bad in law and the entire proceeding is liable to be quashed.

Ms. Ghose, Learned counsel for the State opposed the prayer for quashing of the impugned proceeding and in this context, she has referred the statement of the three witnesses recorded under Section 161 of the Code and the statement of complainant recorded under Section 164 of the Code. She further submits that the complain cannot be barred by law in view of the fact that the present proceeding involves recurrent cause of action. She further submits that the materials collected during investigation prima facie constitute offence under Section 354 as well as Section 354A of the IPC and as such, the prosecution should get opportunity to prove their case during trial and should not be quashed at its threshold, invoking court's jurisdiction under Section 482 of the Code of Criminal Procedure. In spite of service of intimation, opposite party no. 2/de facto complainant chosen not to represent.

Before going to further details let me reproduce the essentials of offence under section 354 of IPC which are as follows:-

- (i) That the assault must be on a woman
- (ii) That the accused must have used criminal force on her
- (iii) That the criminal force must have been used on the

woman intending thereby to outrage her modesty.

Therefore under section 354 to constitute an offence of indecent assault on a woman, an intention to outrage her modesty must be present. In the FIR it is alleged, in order attract 354 IPC that on 17.01.2017 petitioner/accused pushed the complainant, used vulgar words by making some gesture and by making objectionable statements touching the character of the complainant and that the petitioner pushed complainant with bad motive and threatened with dire consequences, if she demands any amount on the basis of the purchase.

About four months after the said alleged occurrence and about nine months before lodging instant complaint, the opposite no.2 herein filed civil suit for recovery of self-same due amount of Rs. 6,25,824/- along with sales tax amount of Rs. 25,198/- on 15.05.2017 and para 11 of the plaint reads as follow:-

“The plaintiff state that on 17.1.2017, plaintiff no.2 went to the office of the defendant as per his assurance to collect money but she was insulted by him. The defendant used vulgar words by making some gesture and by commenting objectionable statements touching the character of the plaintiff no.2. the defendant threatened the plaintiff no.2 and other directors with dire consequences if the plaintiffs demand any amount on the basis of the purchase order as indicated hereinabove. There is no doubt that the defendant is liable to make payment of Rs.6,25,824/- along with Sales Tax amount of Rs. 25,198/- to the plaintiff no.1 company”

Side by side if I read relevant portion of paragraph 4 of written complaint treated as FIR, in connection with self-same alleged occurrence it reads as follow:-

“on 17.1.2017, the complainant went to the office of accused person as per his assurance to collect money but she was insulted by him. The accused pushed the complainant, used vulgar words by making some gesture and by making objectionable statements touching the character of the complainant. The accused person also pushed the complainant with bad motive. The accused person threatened the complainant with dire consequences if she demands any amount on the basis of the purchase order as indicated hereinabove. Accused person also threatened to kill the complainant, her husband and family members by his hired goons. Accused

person flatly denied to pay any amount though the goods were utilized by him and he made money from such goods. ”

From the aforesaid narration of self same alleged occurrence made by opposite party No.2, it is clear that incident allegedly occurred on 17.1.2017 and the civil suit, which was filed on 15.5.2017 though contains the same allegation of using vulgar words, objectionable statement touching her character, threatening with dire consequences, making some gesture, but it does not contain any allegation of pushing the complainant or pushing her with bad motive and it has been manifestly introduced in the instant written complaint which was lodged nine months after filing civil suit to attract section 354 IPC, because as I have stated above, one of the essential element to attract section 354 is that accused must have used criminal force upon the woman and such force must have been used intending thereby to outrage her modesty. Accordingly the words “pushed” and “with bad motive” have been newly introduced in the complaint as an afterthought.

In order to attract the elements of section 354 IPC even if a quarrel had proceeded the push, in the absence of any clear and impeachable evidence as to petitioner’s intention to outrage complainant’s modesty or his knowledge that by his conduct he was likely to outrage her modesty, conviction under section 354 IPC is not possible.

I have gone through victim’s statement recorded under section 164 Cr.P.C., where she stated that petitioner had not made payment, moreover petitioner behaved with her badly, pushed her, uttered bad languages and had threatened her with dire consequences. However, she would not say anything against

petitioners, if the payment is made. Not only that the husband of *de facto* complainant, her husband's brother and her son though made statement under section 161 Cr.P.C. during investigation but they have not stated anything about alleged pushing her or outraging her modesty by push or otherwise. Accordingly materials collected during investigation and also from unimpeachable document relied by petitioner, it clearly depicts that the words "push", "bad motive" have been used by complainant in the FIR, in order to attract section 354 IPC they are all afterthought, vague, evasive and even not substantiated during investigation.

So far as charge under section 354A of IPC is concerned, it is needless to reiterate that said new offence relating to 'sexual harassment' has been introduced by the amendment Act, 2013. Under the said provision sexual harassment includes physical contact and advances involving unwelcome and explicit sexual overtures, demand or request for sexual favours, showing pornography against the will of a woman, making sexually coloured remarks etc. From the four corners of the written complaint as well materials collected during investigation, I do not find any iota of allegation of sexual harassment by the petitioner either in the plaint or in the written complaint or in the materials collected during investigation.

Having considered the written complaint treated as FIR and other materials collected during investigation, in the background of dispute between the parties, over the issue of non-payment of money during commercial transaction, I am unable to persuade myself to hold that the materials disclose any cognizable offence far from

offence of outraging modesty or sexual harassment. In fact the allegation of outraging modesty or sexual harassment are so absurd and inherently improbable, on the basis of which no prudent man can ever reach a just conclusion that there are sufficient ground for proceeding against accused/petitioner for committing any cognizable offence. Accordingly clause (2), (5), (7) of paragraph 102 of **Bhajanlal's case**, reported in **1992 Supp (1) SCC 335** clearly attracts in the present case. The other allegations in the complaint under section 506 of IPC is the allegation over non-cognizable offence and does not warrant police investigation.

In view of the aforesaid discussion and in view of the materials collected during investigation, I find that there is hardly any chance of conviction of the petitioner at the end of trial in view of such materials and further continuance of the present proceeding will be a mere abuse of process of the court.

In such view of the matter, **CRR 2710 of 2019** stands allowed.

The impugned proceeding being G.R. case no. 210 of 2018 under Section 420/406/354/354A/506 of the Indian Penal Code, presently pending before the learned Metropolitan Magistrate, 16th Court, Calcutta is hereby quashed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)