

**IN THE HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 79 of 2023

Chandra Prakash Sharma & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioners

: Mr. Deborshi Dhar,
: Mr Somraj Paul,
: Mr. Subham Ghosh.

For the State

: Mr. Ujjwal Luksom,
: Mr. Saikat Chatterjee,

Heard On

: 11.02.2025.

Judgment On

: 11.02.2025.

Rai Chattopadhyay, J.

1. The present revision is filed by the petitioner, seeking quashing of the criminal case against him being GR No. 2459 of 2022, now pending in the Court of Learned Additional Chief Judicial Magistrate at Siliguri and connected with Pradhan Nagar P.S. Case No. 397 of

2022 dated 28.05.2022 under Sections 188, 354 and 34 of the Indian Penal Code.

- 2.** The F.I.R. as mentioned above, was filed on May 28, 2022 with the allegations against the present petitioners inter alia that in her pursuit for admitting her father for treatment at Nivedita Hospital, Pradhan Nagar, on May 20, 2022 and May 23, 2022 the complainant faced offensive acts by the accused persons/petitioners, so much so, to attract the necessary ingredients of offence under the afore-stated provisions of law. The de facto complainant has stated in the F.I.R. that she wanted to take information about the details of utilization of the “Swasthya Sathi Card” in the said hospital, for which she had contacted at the counter of the hospital. However, without responding to her request, the accused persons allegedly subjected her with hostile behavior, abusive language and threat. The de facto complainant in the F.I.R. has also made allegations that the accused persons have jointly and severally outraged her modesty. She mentions herself to be a member of Schedule Caste and finally requested the police authority to take appropriate steps as regards her grievance.

- 3.** Mr. Deborshi Dhar appearing for the petitioner, has submitted that against the petitioners no ingredient of offence would be available as alleged, either from the F.I.R. or any other documents collected by the police during investigation. So far as the cognizable offence under Sections 188 and 354 of the IPC are concerned, according to the learned advocate for the petitioner, no prima facie material has been brought on record to suggest commission of offence as above, by the petitioners. He would say that there is no evidence so far, to show any intention or motive of the petitioners in committing the offence as alleged, rather the allegations are omnibus in nature made in a mechanical manner with malice and for wrecking vengeance. In such view of the facts, according to the learned advocate appearing for the petitioner, sending the petitioners to face trial in the present case, shall amount to abuse the process of the Court.
- 4.** For the reasons as above, petitioners have filed the present case seeking quashing of the entire criminal proceeding against them.
- 5.** On behalf of the State, there are serious objections as to the contentions and prayer of the petitioner particularly for the reason that a charge-sheet has already been submitted by police in the case

on November 30, 2022. Hence, it is stated that, the prima facie materials against the petitioners are already on record. Learned advocate Mr. Ujjwal Luksom appearing for the State has referred to the materials in C.D. particularly, the statement of witnesses on the basis of which he has submitted that witnesses have eloquently stated against the unruly and offensive behavior and conduct of the petitioners towards the de facto complainant amounting to commission of an offence, as alleged. Also that the nature of allegation is very serious, therefore, he insists that the Court does not espouse the plenary power under Section 482 of the Cr.P.C. or intervene into the proceedings which are bound to be sent before the Trial Court for the trial to take place. He seeks that the present revision be dismissed.

6. The well settled principles of law, as to when the Court should interfere into the criminal proceeding in exercise of its inherent power as per section 482 of the Cr.P.C. can be crisply mentioned to be that:

When the allegations made in the F.I.R., even if taken at their face value and accepted in entirety do not prima facie constitute any offence or make out any case against the accused persons, that the allegations against the accused persons do not disclose a cognizable offence justifying an investigation, that uncontroverted allegations made in the F.I.R. and the evidence collected in support

of the same do not disclose commission of offence by the accused persons or make out a case against him/them, that the allegations made in F.I.R. are inherently improbable and absurd or that there is an express legal bar for continuance in a criminal proceeding against the accused persons or that the entire proceeding is result of mala fide intention and marred with malice or motive to wreck vengeance.

7. So far as the present case is concerned, the complainant's allegation is that she has been subjected to abuse and outrage of modesty by the petitioners. The F.I.R. however is bereft of necessary details of particulars of the alleged incident regarding the time or specific role of any of the petitioners.
8. However, keeping in mind the law settled that an F.I.R. need not be an encyclopaedia of facts, the Court curiously looks into materials available in C.D. On careful perusal of the witnesses' statement and other documents available therein, the court finds that the petitioners name has been mentioned by the witnesses. Witnesses have also stated altercations to have taken place between the petitioner and the de facto complainant. Even then, one cannot find as to the specific role of the petitioners individually which is necessary for ascertainment of their specific offences. The allegations against the petitioners, therefore, both in the F.I.R. and the materials in C.D. are omnibus in nature. It is further noted that,

witnesses have stated about the petitioners having driven out the de facto complainant from the hospital by actually physically pushing her off. There also the witnesses have not specified about the name of any particular assailant to have committed the offences. One of the witnesses have gone to the extent of mentioning that the petitioners could not have touched a lady in such an inappropriate manner, but even then, without any specification as to who has pushed the de facto complainant out of the hospital. The Court is constrained to find such evidence to be vague and non-specific, against the petitioners.

9. Otherwise in terms of the law settled as discussed above, the criminal proceeding against the citizen should have been maintained only if the materials on record including the F.I.R., if disclose cognizable offence against the accused persons or if at all makes out a case against them. In order to see the specific ingredients of offence required to be available against the petitioner, may be mentioned with reference to a Supreme Court Judgment of ***S.P.S. Rathore v. CBI, (2017) 5 SCC 817*** for Section 354 of The Indian Penal Code, 1860

“42. In order to constitute the offence under Section 354 IPC, mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. A careful approach has to be adopted by the court while dealing with a case alleging outrage of modesty. The

essential ingredients of the offence under Section 354 IPC are as under:

- (i) that the person assaulted must be a woman;*
- (ii) that the accused must have used criminal force on her; and*
- (iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty.”*

The other judgment may also be mentioned, that is, **Vidyadharan v. State of Kerala** reported in **(2004) 1 SCC 215**

“10. Intention is not the sole criterion of the offence punishable under Section 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight.”

For Section 188 of The Indian Penal Code, 1860, the Court may refer to a judgment of the Hon’ble Supreme Court in **C. Muniappan v. State of T.N.**, reported in **(2010) 9 SCC 567**

“ 35. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent public servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial court to frame a charge under Section 188 IPC.”

- 10.** The Court is constrained to find that neither of the ingredients as stated above is available in this case from the materials on record, so far as the present petitioners are concerned. The petitioners are the owners and associates of the concerned hospital. Apparently, in

view of the F.I.R. as well as the witnesses' statement, the de facto complainant developed an altercation over certain issues with the petitioners in the hospital. Obviously, the de facto complainant has failed in the bargain. A criminal case filed against the petitioners thereafter, cannot be found to be free from flairs of mala fide or malice. Needless is to mention that a malicious or untrue allegation only for the purpose of wrecking vengeance would not be sufficient to maintain the criminal proceeding or sending up the accused persons to face trial. On the contrary, the law is well-settled in that respect that the criminal proceeding in such an event would be an abuse of the process of Court.

- 11.** As discussed earlier, in the present case, the allegations against the petitioners are found to be non-specific and vague and omnibus in nature. Therefore, those should not be construed to be sufficient for sending up the petitioners to face trial as that would amount to abuse of the process of Court, in accordance with law.
- 12.** I, therefore, find merit in the present criminal revision case and intent to allow the same.

- 13.** The Criminal Revision No. 79 of 2023 is allowed directing quashing of the entire criminal proceeding being G.R. Case No. 2459 of 2022 now pending in the Court of Learned Additional Chief Judicial Magistrate at Siliguri and connected with Pradhan Nagar P.S. Case No. 397 of 2022 dated 28.05.2022.
- 14.** Criminal Revision is allowed and disposed of.
- 15.** C.D. be returned.

(Rai Chattopadhyay, J.)