

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

29.01.2025
Court No.3
10
(PA)

CRR 332 of 2024

**Mrs. Kumari Nilakshi
Vs.
The State of West Bengal & Anr.**

Mr. Bikramaditya Ghosh,
Ms. Supriya Singh,
Mr. Sumit Kumar
... For the petitioner

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Abhijit Sarkar
... For the State

Mr. Kumar Shantanu,
Ms. Priyanka Das
... For the opposite party no.2

This is an application under Section 482 of the Code of Criminal Procedure, 1973 (*In short 'CrPC'*) corresponding to Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2024 (*in short 'BNSS'*) for quashing of proceedings being G.R. Case No. 737 of 2023 arising out of Bhaktinagar Police Station Case No. 112 of 2023 dated 16th February, 2023 under Section 306 of the Indian Penal Code, 1860 (*in short 'IPC'*) as well as for quashing of charge sheet pending before the learned Chief Judicial Magistrate at Jalpaiguri.

The brief fact of the case is that 16th February, 2023 a written complaint was lodged by the complainant-opposite party no.2 regarding commission of suicide by his wife Shilpi Kumari who used to

reside at *Salkalpa* Apartment. A few days ago a quarrel took place between the children of the deceased and the other children of the apartment, which led to quarrel between the guardians also. The caretaker-cum-Secretary namely Dinesh Pai secretly took video of such quarrel. On 16th February, 2023 the ladies of NHPC workers forced the caretaker of the Society to upload a video involving the wife of the *de facto* complainant namely, Shilpi Kumari (deceased) on “*Sankalp Enclave*” *whatsapp* group. Upon such uploading of the video the NHPC members including the petitioner started abusing the deceased. Due to such continuous abusing it is alleged that the deceased Shilpi Kumari out of humiliation committed suicide by hanging in the bed room. On such allegation the FIR was registered against the present petitioner and six others being Bhaktinagar Police Station Case No.112 of 2023 dated 16.02.2023 under Section 306 of the IPC. Upon completion of the investigation, charge sheet was submitted on 18th May, 2023 against Dinesh Pai, Hemlata Sharma and Kumari Nilakshi (petitioner herein) under Section 306 of the IPC. On 23rd August, 2023 and 22nd November, 2023, the *de facto* complainant filed applications for further investigation. The prayer of the *de facto* complainant for further investigation was allowed by the learned Chief Judicial Magistrate, Jalpaiguri on 22nd November, 2023. Upon further investigation, supplementary charge sheet was submitted against nine accused persons including the petitioner under Section 306/34 of the IPC.

Being aggrieved and dissatisfied by such filing of charge sheet, the petitioner has preferred the present criminal revision for quashing of the proceedings.

Ms. Supriya Singh, led by Mr. Bikramaditya Ghosh, learned advocates appearing for the petitioner submits that there is no such direct evidence collected during investigation against the petitioner to implicate the present petitioner showing her involvement in the alleged offence. The petitioner was not the member of the *whatsapp* group in which allegedly derogatory remarks/comments were posted against the deceased-victim. She also indicates that in fact on the date of occurrence the petitioner was assaulted by the deceased-victim. Further the petitioner is not the administrator of the said *whatsapp* group, therefore she cannot be held liable for any such alleged derogatory remarks/comments in the *whatsapp* group. To make out an offence under Section 306 of the IPC, there has to be *prima facie* evidence of abetment or instigation to commit suicide which is *sine qua non*. Hyperboles employed in exchanges should not, without anything more, be glorified as an instigation to commit suicide. In the present case said ingredients are totally absent. In absence of ingredients of abetment or instigation to suicide, the implication of offence against an accused under Section 306 of the IPC is not sustainable. To buttress her contentions, she relies on the following decisions of the Hon'ble Supreme Court:

- (i) ***M. Arjunan versus State Represented By Its Inspector of Police*** reported in ***(2019) 3 SCC 315***

(ii) ***Geo Varghese versus State of Rajasthan and Another***
reported in ***(2021) 19 SCC 144***

(iii) ***Mahendra Awase versus State of Madhya Pradesh***
reported in ***2025 SCC OnLine SC 107***

In light of her aforesaid submissions, she prays for quashing of the proceedings against the petitioner.

Mr. Aditi Shankar Chakraborty, learned Additional Public Prosecutor appearing on behalf of the State submits that the application for quashing is premature. There are evidences collected during investigation which show that the video was uploaded in the “*Sankalp Enclave*” *whatsapp* group and there was continuous abuse upon the deceased which led to circumstances resulting in suicide by the deceased-victim. The case of the prosecution is based on the circumstantial evidence which can only be established after the evidences are led and adduced before the Court in trial. During the course of further investigation statement of some more witnesses have been recorded by the investigating agency under Section 161 of the CrPC which clearly shows involvement of the petitioner in the alleged offence. Therefore, quashing of the proceedings, at this stage where charge-sheet has been submitted, disclosing *prima facie* materials against the accused-petitioner would be a travesty of justice. In view of above his submissions he prays for dismissal of the revision petition.

Mr. Kumar Shantanu, learned Advocate for the opposite party no.2 *de facto* complainant also submits that the question whether there was abetment or instigation on the part of the petitioner can only be ascertained after full-fledged trial. Hence, to quash the proceeding,

at this stage, would amount to stifling of a genuine litigation. He also indicates that other accused persons namely Smt. Kiran Kumari @ Kiran Bhabi and Khusbu Kumari @ Khushboo Kumari filed separate applications being CRR No. 75 of 2024 and CRR No. 82 of 2024 respectively, which were dismissed by this Court. The present petitioner stands on the same footing. Smt. Kiran Kumari @ Kiran Bhabi challenging such order passed in CRR No. 75 of 2024 filed a petition for Special Leave to Appeal (Crl.) No(s). 9794/2024 before the Hon'ble Supreme Court, which was subsequently withdrawn by the petitioner of that petition. Further the decisions cited on behalf of the petitioner are factually distinguishable and hence does not apply to this case. In light his submissions as aforesaid, he also seek for dismissal of the application.

The facts divulging from the materials placed before this Court are that prior to the occurrence a quarrel took place between the children of the deceased and the other children of the apartment, which led to quarrel between the guardians also, relating to certain disputes amongst their children. Such quarrel between the guardians was videographed by the caretaker of '*Sankalp Apartment*'. The said video was uploaded in the ladies *whatsapp* group. Thereafter there was abusive comments made against the deceased continuously by members of such *whatsapp* group which led to humiliation and commission of suicide by the deceased. In the FIR there are allegation against the present petitioner (*mentioned as wife of Bharat Kumar*) of abusing the deceased in the *whatsapp* group prior to commission of suicide by the victim. Further on going through the statements of the

witnesses recorded under Section 161 of the Cr.P.C, it is found that there are allegations against this petitioner of making abusive and humiliating comment in the ladies whatsapp group against the deceased. Moreover, one of the witnesses namely Rinki Agarwal has also stated in her statement that the quarrel, which is the genesis of the entire incident, actually took place between the present petitioner and the deceased. Although the learned advocate for the petitioner tried to impress upon the court that on the date of incident the petitioner was assaulted by the victim but no such materials such as any complaint or medical documents has been placed to primarily suffice such contention. In the present case, charge sheet was submitted at first against the petitioner and two others and thereafter upon further investigation by the order of the Court, supplementary charge sheet was submitted against the petitioner and eight others under Sections 306/34 of the IPC on the basis of *prima facie* materials collected during the course of investigation. Now whether such abusive humiliating comments by the petitioner in the ladies whatsapp group led to commission of suicide by the victim are circumstances which can be decided only on full-fledged trial.

It is a trite law that while exercising power under Section 482 the Court should not usurp the jurisdiction of the trial court. The Court can quash a prosecution which amounts to abuse of process of the court, but that power cannot be exercised to hold a parallel trial, only on the basis of the statements and documents collected during investigation or enquiry, for the purpose of expressing an opinion whether the accused concerned is likely to be punished if the trial

court is allowed to proceed. **[See Radhey Shyam Khemka and Another versus State of Bihar reported in (1993) 3 SCC 54]**. It is settled principle of law that at the stage of quashing of proceeding it is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein unless they are so absurd and inherently improbable that no prudent man can ever reach to just conclusion. **[See Rupan Deol Bajaj (Mrs) and Another versus Kanwar Pal Singh Gill and Another reported in (1995) 6 SCC 194]**. It is placed on record that there is neither any absurd or inherent improbability noted in the facts of the present case nor the facts alleged in the complaint on its face value fails to disclose an offence with which the accused-petitioner is charged.

The Hon'ble Supreme Court in **State of Haryana and Others versus Bhajan Lal and Others** reported in **1992 Supp (1) SCC 335** has observed as follows:

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

The Hon'ble Supreme Court in **Neeharika Infrastructure Private Limited versus State of Maharashtra and Others** reported in **(2021) 19 SCC 401** observed as follows:

“33. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 CrPC and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/charge-sheet is filed under Section 173 CrPC, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under

Section 482 CrPC and/or under Article 226 of the Constitution of India, our final conclusions are as under:

33.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence.

33.2. Courts would not thwart any investigation into the cognizable offences.

33.3. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

33.4. The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the “rarest of rare cases” (not to be confused with the formation in the context of death penalty).

33.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

33.6. Criminal proceedings ought not to be scuttled at the initial stage.

33.7. Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

33.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

33.9. The functions of the judiciary and the police are complementary, not overlapping.

33.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

33.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

33.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

33.13. The power under Section 482 CrPC is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.

33.14. However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in *R.P. Kapur and Bhajan Lal*, has the jurisdiction to quash the FIR/complaint.

33.15. When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

33.16. The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically.

Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173 CrPC, while dismissing/disposing of the quashing petition under Section 482 CrPC and/or under Article 226 of the Constitution of India.

33.17. *Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.*

33.18. *Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”*

As it is already found that there are primary materials against the accused-petitioner, hence bearing in mind the proposition of law laid down by the Hon’ble Supreme Court as above, invoking inherent power to quash the proceeding against the petitioner will lead to stifling of a legitimate litigation.

In *Geo Varghese (supra)* relied on behalf of the petitioner, the facts involved was that the son of the complainant aged about 14 years was found hanging with the fan in the room by his grandmother. It was stated in the FIR that the deceased informed the complainant that on the said day, his PTI (Physical Training Instructor) GEO Sir had harassed and insulted him in the presence of everyone because of which he was under deep mental pressure. However, the complainant persuaded her son to attend school. Subsequent thereto, on returning from school, he again informed that GEO PTI Sir has harassed and insulted him very much and ultimately he committed suicide. The

Hon'ble Supreme Court has considered that the petitioner was a Physical Training Instructor and was also a member of the disciplinary committee charged with maintaining discipline in the school which included keeping a watch upon the students and oversee that they are attending the classes instead of bunking the same. The victim was caught by the petitioner for bunking classes and moving around the school campus without any cause or permission and a warning was given to him. Bearing in mind such facts and circumstances of the case, the FIR was quashed. The facts involved in the cited decision are distinguishable from the case at hand.

Reliance is also placed upon *Mahendra Awase (supra)*. The facts involved are that the brother of the informant was residing near his house along with his son. On 11th October, 2022, his son left home to go to the farm. When he did not return home till 2 PM, the informant called him but he got no response. On searching, a motorcycle was found parked on the side of the road and when they searched nearby, they found the victim hanging on a rope noose from a tree on the bank of Borgaon drain about 100 mtrs away from the motorcycle. From the suicide note and the statements of the witnesses it transpired that the deceased was staying disturbed for past few months and when asked he mentioned to them that appellant Mahendra Awase was harassing him with respect to repayment of a loan which one Ritesh Malakar has taken from *Shree Saakh Co-operative Society Limited*, Khargone. Aggrieved by the order of framing of charge the appellant approached the Hon'ble Court. On reading the suicide note it was held that it revealed that the appellant was asking the deceased to repay the loan

and by performing his duty of realising outstanding dues at the behest of his employer, he cannot be said to have instigated the deceased to commit suicide. Thus, the facts involved are also distinguishable from case at hand.

As regards the decision in *M. Arjunan (supra)* is concerned, the Hon'ble Supreme Court was *seisin* of a criminal appeal against conviction under Section 306 of the IPC where evidence of witnesses was before the Hon'ble court. Thus, stage of proceedings is different in comparison to case at hand.

In light of the aforesaid discussion, the revisional application being **CRR 332 of 2024** stands dismissed.

All connected applications, if any, stand dismissed.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)