

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Criminal Revisional Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

CRR No. 503 of 2024

Biswambar Prasad

Versus

The State of West Bengal & Anr.

Mr. Deborshi Dhar

Mr. Somraj Paul

.....For the Petitioner.

Mr. Tapan Bhattacharjee

Mr. Dhiman Sil

.....For the State.

Mr. Sourav Lohani

Mr. Amit Kumar Pandey

.....For the Opposite Party No. 2.

Hearing Concluded On : 20.05.2025

Judgment on : 23.05.2025

Krishna Rao, J.:

1. The petitioner has filed the present application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 praying for quashing of the criminal proceeding initiated against the petitioner by the Khoribari Police Station Case No. 396 of 2022 dated 21st December, 2022 under Sections 354 and 354D of the Indian Penal Code, 1860, corresponding to G.R. Case No. 5495 of 2024 and the Charge Sheet No. 73 of 2023 dated 28th February, 2023 under Section 354 of the Indian Penal Code, 1860, pending before the Learned Court of Additional Chief Judicial Magistrate at Siliguri.
2. The opposite party no. 2 has lodged a complaint before the Officer-in-Charge Kharibari Police Station on 21st December, 2022, against the petitioner alleging that the petitioner always has ill and bad glance towards the opposite party no. 2 and her daughter and sometimes, she saw that the petitioner always peek at the window when the opposite party no. 2 slept on bed but for saving reputation of the family, she always kept mum and did not disclosed to her husband. She has a grocery shop in her house and the said shop run by opposite party no. 2 and her daughter and taking advantage of the same, the petitioner shows some gesture and tried to touch her body and intentionally use force with an ill motive to dishonor her.
3. It is further case of the opposite party no. 2 that on 20th December, 2022 at 5.30 P.M., the petitioner came to her shop and asked for some grocery items and during exchange of grocery items, the petitioner

suddenly caught holds her hand and given wrong proposal for which the opposite party no. 2 raised voice, the petitioner fled away.

4. On the basis of the said complaint, the police registered the above case and on completion of investigation, filed charge sheet for the offence under Section 354 of Indian Penal Code, 1860.
5. Mr. Deborshi Dhar, Learned Advocate representing petitioner submits that in the year 2020, the husband of the opposite party no. 2 had started illegal construction of two storied building without obtaining any sanctioned building plan form Panchayat Authorities and also tried to install mobile tower on the west corner of the roof of the illegal constructed building. The petitioner along with other members of the locality have made a complaint to the Block Development Officer against the illegal construction and installation of mobile tower. On the basis of the representation inspection was conducted by the Junior Engineer Kharibari Development Block and Panchayat Development Officer in the land of the husband of the opposite party no. 2. On inspection, it was found that there was no approved building plan and the proposed land was not recorded in the name of the husband of the opposite party no. 2.
6. After inspection, no steps have been taken by the concern authority. The petitioner has filed a writ petition before this Court being WPA No. 1025 of 2023 and the said writ petition was disposed of by this Court directing the petitioner to file a comprehensive representation to the

Sub-Divisional Officer, Siliguri and the Sub-Divisional Officer is directed to dispose of the representation, if any, submitted by the petitioner within a period of four weeks from the date of receipt of representation. Counsel for the petitioner submits that as per the order passed by this Court, the Sub-Divisional Officer, Siliguri after hearing of the parties passed an order directing to demolish the two storied building and to remove the mobile tower within six weeks.

- 7.** Learned Counsel for the petitioner submits that a mass complaint was filed against the illegal construction by the husband of the victim before the concerned authorities on 20th December, 2022 wherein the wife of the petitioner is the signatory no. 1 in the said complaint and immediately on the very next date, i.e. on 21st December, 2022, the opposite party no. 2 has made a complaint to the Officer-in-Charge of Kharibari Police Station against the petitioner.
- 8.** The petitioner submits that after the investigation, police has filed charge sheet under Section 354 of the IPC but there is no basic ingredients are available in the charge sheet for the alleged offence under Section 354 of the IPC. He submits that Section 354 of the IPC prescribes assault or criminal force to women with intent to her modesty but the charge sheet does not disclose any sort of assault or physical assault upon the victim. He submits that the allegation of “giving wrong proposal” as alleged in the FIR and as alleged in the charge sheet has also not been specifically stated either by the victim or the Investigating Officer or by any witnesses examined by the

Investigating Officer during the investigation as to what was the nature of such wrong proposal.

9. Learned Counsel for the petitioner submits that the opposite party no. 2 instituted the criminal proceeding against the petitioner only for taking due advantage of the provisions of Section 354 of the IPC though no such incident was happen and during investigation, the police could not get any evidence but inspite of the same the police has submitted charge sheet against the petitioner under Section 354 of the IPC. He submits that there is no iota of evidence collected by the Investigating Officer to prima facie prove that the petitioner has committed the alleged offence.

10. The petitioner has relied upon the following judgments in support of his submissions:
 - i. ***State of Punjab vs. Major Singh*** reported in **1996 SCC OnLine SC 51.**
 - ii. ***S.P.S. Rathore vs. Central Bureau of Investigation & Anr.*** reported in **(2017) 5 SCC 817.**
 - iii. ***Haji Iqbal @ Bala Through S.P.O.A. vs. State of U.P. & Ors.*** reported in **2023 SCC OnLine SC 946.**
 - iv. ***Vidyadharan vs. State of Kerala*** reported in **(2004) 1 SCC 215.**

11. Learned Counsel for the State submits that on receipt of the complaint of the opposite party no. 2, the police finds that a prima facie case is

made out against the petitioner, accordingly, the police has initiated FIR against the petitioner for the offence under Section 354/354D of the IPC.

12. Learned Counsel for the State submits that during investigation, the Investigating Officer has collected several materials against the petitioner for the offence under Section 354 of the IPC and accordingly, the Investigating Officer has submitted charge sheet for the offence under Section 354 of the IPC. He submits that during investigation, the Investigating Officer has examined independent witnesses and from the evidence of the independent witnesses it reveals that the petitioner has committed alleged offence against the opposite party no. 2.
13. Learned Counsel for State submits that investigation is completed and sufficient materials have brought on record and as such this is not a fit case wherein the proceeding can be quashed by invoking the provision under Section 482 of the Cr.P.C.
14. Section 354 of the IPC reads as follows:

“354. Assault or criminal force to woman with intent to outrage her modesty.- *Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.]”*

- 15.** It is well settled principle of law as to when the Court should interfere into the criminal proceeding in exercise of its inherent power by invoking Section 482 of the Code of Criminal Procedure can be crisply mentioned to be that:

“when the allegations made in the F.I.R. even if taken at its face value and accepted its entirety do not prima facie constitute any offence or make out any case against the accused persons that the allegation against the accused persons do not disclosed 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 person or make out a case against him, that the allegations made in the 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 and vengeance.”

- 16.** In the present case, as per the FIR on 20.12.2022, at about 05.00 P.M. the petitioner came to the shop and ask for some grocery items and at that time, during exchange of grocery items with the petitioner, the petitioner suddenly caught the hand of the opposite party no. 2 and given her a wrong proposal and thereafter, the opposite party no. 2 raised her voice against the petitioner and the petitioner fled away. During investigation, the Investigating Officer has recorded the statement of two independent witnesses, namely, Pintu Palen and Soma Sarkar. This Court perused the statement of both the witnesses recorded under Section 161 of the Cr.P.C. and found that the witnesses in their statements have stated that they had only heard it

from the opposite party no. 2 about the incident and they have not seen anything from their own eyes. Taking into consideration of the evidence, the statement of these two witnesses recorded under Section 161 of the Cr.P.C. this Court finds that the two independent witnesses are the hearsay witnesses and they heard the alleged incident from the opposite party no. 2. Other than the two witnesses, there is no other witness examined by the Investigating Officer or any evidence collected by the Investigating Officer to corroborate the case of the opposite party no. 2.

17. In the Case of **S.P.S. Rathore (supra)**, the Hon'ble Supreme Court held that:

“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.

43. This Court, in *Vidyadharan v. State of Kerala*, held as under : (SCC p. 221, para 10)

“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.”

18. In the case of *Major Singh (supra)*, the Hon’ble Supreme Court held that:

“4. Intention and knowledge are of course states of mind. They are nonetheless facts which can be proved. They cannot be proved by direct evidence. They have to be inferred from the circumstances of each case. Such an inference, one way or the other, can only be made if a reasonable man would, on the facts of the case, make it. The question in each case must, in my opinion, be : will a reasonable man think that the act was done with the intention of outraging the modesty of the woman or with the knowledge that it was likely to do so? The test of the outrage of modesty must, therefore, be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In considering the question, he must imagine the woman to be a reasonable woman and keep in view all circumstances concerning her, such as, her station and way of life and the known notions of modesty of such a woman. The expression “outrage her modesty” must be read with the words “intending to or knowing it to be

likely that he will". So read, it would appear that though the modesty to be considered is of the woman concerned, the word "her" was not used to indicate her reaction. Read all together, the words indicate an act done with the intention or knowledge that it was likely to outrage the woman's modesty, the emphasis being on the intention and knowledge."

19. There is a dispute between the petitioner and the opposite party no. 2 as the wife of the petitioner along with the villagers have made a mass complaint to the Sub-Divisional Officer against the husband of the opposite party no. 2 with respect to construction of two storied building without obtaining sanctioned plan and installation of mobile tower. Subsequently, the petitioner has filed a writ petition before this Court and as per the order passed by this Court, the petitioner again made representation to the Sub-Divisional Officer and as per the order passed by this Court, the Sub-Divisional Officer has conducted inquiry and found that the construction made by the husband of the opposite party no. 2 is illegal. It is also found that the complaint was filed on 20.12.2022 and immediately on 21st December, 2022, the opposite party no. 2 has filed written complaint against the petitioner before the Officer-in-Charge Kharibari Police Station on the basis of which the present proceeding is initiated.
20. The Investigating Officer has not brought anything on record to establish that the petitioner went to the shop of the opposite party no. 2 on the allege date of incident, other than the written complaint of the opposite party no. 2. There is nothing on record to establish the case

against the petitioner for the offence under Section 354 of the Indian Penal Code, 1860.

21. Considering the above, this Court finds that neither the ingredients of Section 354 of the IPC is available from the material collected by the Investigating Officer against the petitioner or there is any evidence of any witness to establish that the petitioner has committed the alleged offence on the alleged date of incident.

22. In the case of **Haji Iqbal (supra)**, the Hon'ble Supreme Court held that:

“14. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC, 1973 or Article 226 of the

Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand.”

23. Considering the above, this Court finds that the criminal case is initiated by the opposite party no. 2 against the petitioner cannot be found to be free from flairs of malafide or malaise. It is pertinent to mention here that malice or untrue allegations only for the purpose of taking revenge could not be sufficient to maintain criminal proceeding or sending the accused to face trial.
24. This Court finds that no case is made out against the petitioner for the offence under Section 354 of the IPC and as such this is the fit case wherein this Court can invoke the provisions of Section 482 of the Code of Criminal Procedure, 1973.
25. In view of the above, Kharibari Police Station Case No. 396 of 2022 dated 21st December, 2022, Under Sections 354 and 354D of the IPC, Charge Sheet No. 73 of 2023 dated 28.02.2023 under Section 354 of the IPC corresponding to GR Case No. 5495 of 2024 pending before the Learned Additional Chief Judicial magistrate, Siliguri are set aside and quashed.
26. The petitioner is discharged from bail bond.
27. **CRR No. 503 of 2024 is allowed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)