IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR.JUSTICE AJOY KUMAR MUKHERJEE

CRR 2633 of 2022
John Mayne
Vs.
Devapriya Mukherjee

For the petitioners	:	Mr. Sandipan Ganguly Ms. Manaswita Mukherjee
For the OP No.2	:	Mr. Shayan Sachin Basu Mr. Abhijit Adhikary Mr. M Ali
Heard on	:	07.07.2026
Judgment on	:	20.11.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The present revisional application has been preferred seeking quashment of complaint case no. AC 347 of 2022, presently pending before learned Additional chief Judicial Magistrate, Alipore.

2. Learned Senior counsel Mr. Gangully submits is that the petitioner and the Opposite party (in short OP) were acquainted with each other from the Month of August, 2008. Initially they used to work in the same company

but the opposite party subsequently resigned from the said job. However, the opposite party kept contact with the petitioner. Later on there was a fallout between the parties and the OP herein allegedly sent several harrasive and intimating text messages to the wife of the petitioner. In turn the wife of the petitioner lodged a complaint on 14.09.2021 against the OP herein, which culminated in the registration of Survey Park Police Station case No. 167 dated 14.09.2021 under section 506(11) /509/120B. Investigation of the said proceeding ultimately ended in a charge sheet, which was filed on 31stJanuary, 2021 against the OP herein.

3. He further submits that after submission of the charge sheet, in the said case, the present impugned proceeding being AC 347/2022 under section 354A/506 of the IPC has been started by the OP against the petitioner wherein it is stated that the OP got acquainted with the petitioner in August, 2008. With the passage of time the petitioner came out with a proposal about his love for the OP, for which she was not really interested and she wished to be good friends only. The petitioner being the married person having two major children used to consistently convey to the OP as to how miserable and sad his life was with his wife and how much he wanted to be with the OP for the rest of his life. The petitioner sought emotional support from the OP and allegedly requested the OP that he will get separated from his wife due to their unaccountable problems for the years. In the month of January, 2021 the petitioner purportedly sent some text messages and conveyed about his painful life and further requested the OP to meet him. The petitioner allegedly continued in sending indecent text messages with repeated requests for sexual favours. On 17thApril, 2021 at

about 7.00 P.M. the petitioner allegedly told the OP that he was not physically and mentally satisfied with his wife and requested the OP for sex. Furthermore the petitioner tried to be in close physical contact with the OP time and again on the pretext of emotional support. The OP was shocked and surprised and immediately protested the same and somehow managed to flee from the clutches of the petitioner. The petitioner did not beg for mercy for such act, instead he threatened the OP not to inform the matter to anybody. On 19th April, 2021 the petitioner called the OP and asked her to delete all the text messages from her phone because his wife had come to know about his multiple previous affairs and if the OP does not obey his words the petitioner will deliberately defame her family members and well-wishers. The OP lastly threatened over phone on 06.05.2021. She further stated in the complaint that being a single mother to a minor daughter and due to fear of the social harassment and defamation, she could not report the matter to the police or to the near and dear ones of the petitioner. However, after gaining mental courage, she preferred the present complaint as the petitioner has caused sexual harassment of the nature of unwelcome physical contact and advances and demanded for sexual favours over texts and furthermore the petitioner had made criminal intimidation and thereby committed offence under section 354A/506 of the Indian Penal Code.

4. Being aggrieved by the aforesaid proceedings learned counsel for the petitioner Mr. Ganguly further submits that no prima facie case is made out against the petitioner either under section 354 A or 506 of the IPC. He argued that the allegation of the OP in the complaint is that petitioner had sent her certain indecent text messages and further threatened her to delete

the same after his wife had come to know about his multiple affairs. However in the initial deposition recorded under section 200 of the Cr.P.C. the same complainant has stated that she got acquainted with the accused in the year 2008 and their friendship turned into a love affair and the accused proposed her for marriage but later on she came to learn that the present accused is a married person having two children. Therefore, he submits that although there is no whisper of a love affair in the petition of complaint, but when the OP personally appeared before the court for the purpose of recording her initial deposition, she admitted to be in a romantic relationship with the petitioner though subsequently she had come to know that the petitioner is married and has two children.

5. He further submits that the OP has only annexed excerpts of messages and did not annex the entire communication, yet the nature and tenor of the communication which she focused do not show that she was uncomfortable with the purported messages sent by the petitioner. Therefore, even if for the sake of arguments, it is accepted that the petitioner had sent sexually coloured messages to the OP but on a perusal of the reply of the OP reveals that she welcomed such messages and also participated in playful sexual banter with the petitioner. Infact instead of making any attempt to refrain the petitioner from making such proposals to her, the OP herein is seen to play along with the petitioner as can be expected from a couple who are in a consensual relationship. The purported chats show a romantic relationship between two parties and conversations that stem from such relationship. There has been existing relationship between the parties admittedly since 2008 and therefore, the intimate conversation that

occurred during the course of a romantic relationship cannot be retrospectively branded as instance of sexual harassment merely because the relationship failed. There is nothing to show that the petitioner made alleged sexually coloured remarks towards the OP without her consent.Therefore, the factum of a friendship developing into a romantic relationship between the parties since 2008 contradicts the allegations of the OP as mentioned in the petition of complain.

6. He further argued that in the present complaint the petitioner nowhere explained as to why the complaint has been reported by her after about a delay of 8 months from the alleged date of occurrence. He also laid emphasise that survey Park Police station case No. 167 of 2021 was initiated by the petitioner's wife on 14.09.2021 and during the course of investigation the OP herein obtained bail on 29.10.2021, but she did not lodge any complain anywhere against the petitioner. It is only after filing of the charge sheet on 31st January, 2022 that she had lodged the instant complaint nine days after aforesaid charge sheet was submitted against her. For approximately eight months, she remained entirely quiet and did not lodge any complaint anywhere. Therefore, the instant case is a classic example of *malafide* and malicious prosecution, whereby the criminal law has been weaponised by the OP for the purpose of settling personal scores.

7. In this context he also pointed out that from a perusal of the order dated 09.02.2022 passed by the learned Magistrate, thereby taking cognizance of the offences alleged in the petition of complaint and the order dated 30th March, 2022 thereby issuing process against petitioner, it transpires that learned Magistrate failed to appreciate the facts of the

instant case and thereby took cognizance and issued process mechanically. The contradiction in the petition of complaint and the initial deposition of the OP has not been considered by him. Therefore, further continuance of the impugned proceeding would be mere abuse of the process of the court.

8. Per contra Learned Counsel appearing on behalf of the opposite party submits that the complaint, the initial deposition, the contemporaneous Whats App communications and the subsequent materials placed before the court clearly disclose a prima facie commission of cognizable offences and raise serious disputed question of fact which cannot be adjudicated in a proceeding under section 482 Cr.P.C./528 BNSS. The petitioner has attempted to convert the present Application into a full-fledged trial by inviting this High Court to appreciate disputed evidence, interpreted electronic communication, determine the nature of the relationship between the parties and to adjudicate upon questions of consent and evaluate the credibility of rival versions which are fully outside the limited jurisdiction of the court under section 482 Cr.P.C.

9. He further submits that a comparison of the original revisional application, the affidavit-in-reply, the supplementary affidavit and the further affidavit demonstrates that the petitioner has repeatedly altered his stand depending upon the materials brought on record by the OP. He further submits that the very necessity of introducing successive factual explanations demonstrates that the matter cannot be adjudicated merely by reading the complaint. He argued that if the petitioner relies upon a romantic relationship to explain the chats, he necessarily admits sustained emotional intimacy and prolonged interaction. Once such inter action is

admitted the controversy is no longer capable of summary determination. The court must necessarily examine the surrounding circumstances, the nature of conversations, whether the conduct complained of was unwelcome and whether the ingredients of offence are ultimately made out. The petitioner cannot invite this court to hold a mini trial on disputed electronic evidence in a proceedings under section 482 Cr.P.C.

10. He further argued that every subsequent pleading filed by the petitioner contains improvements over the earlier pleadings. Initially petitioner merely asserted that no offence was disclosed. Thereafter petitioner expanded factual narrative by alleging that the OP herself proposed marriage. Thereafter subsequently the petitioner further expanded his defence by alleging a prolonged consensual relationship and thereby he introduced allegations concerning anonymous messages and comment against him and his family. This itself shows that the petitioner is not relying upon a pure question of law but upon a progressively evolving factual defence. Therefore such approach is wholly inconsistent with the limited scope of section 482 jurisdiction.

11. He further contended on behalf of the OP that the complaint is supported by contemporaneous communications demonstrating repeated sexual overtures, emotional manipulation and persistent on the part of petitioner and thereby raises serious allegation requiring trial. Therefore, the controversy cannot be decided without appreciation of evidence. Though the petitioner has repeatedly contended that the present complaint is merely a counter blast to the criminal proceedings initiated by his wife but the existence of previous litigations between the parties does not by itself justify

quashing of criminal proceeding. At the stage of taking cognizance the magistrate is not expected to conduct a meticulous examination of the evidence and he is only required to satisfy himself that the complaint and the materials placed before him discloses a prima facie case. The present application deserves dismissal not merely because the petitioner's factual case is contradictory but because the petitioner seeks relief which is legally impermissible under the settled principles governing section 482 Cr.P.C./528 BNSS jurisdiction . The petitioner's defence is a matter of evidence and existence of affectionate conversations do not automatically negate subsequent unwelcome conduct. Therefore, since the complaint and the initial deposition discloses a clear prima facie case and since the contemporaneous electronic communications, further reinforce the existence of a triable case, the impugned proceeding does not fall any of the seven categories mentioned in **Bhajanlals' Case** reported in **1992 Supp (1) SCC 335** and therefore, the continuation of the criminal proceeding cannot by any stretch of imagination be termed as abuse of process of the court. On the contrary quashing the proceeding at this stage would amount to stifling a legitimate prosecution without permitting the evidence to be tested in accordance with law. Therefore, the instant application is liable to be dismissed.

Decision

12. Before going further let me reiterate the background of initiation of the present proceeding for the brevity of discussion. In the petition of complaint the OP claimed that she is known to the petitioner since August, 2008 when she had joined Aviva Life Insurance as petitioners Executive Assistant.

13. However, she resigned from the said company in 2009. The prosecution complaint is based on some text messages by which the petitioner conveyed about his painful life and requested the OP to meet him in January, 2021. It is alleged in the complaint that on 17.04.2021 after meeting the OP the petitioner requested for sex from the OP and also tried to be in close physical contact with her on the pretext of emotional support. Complaint is based on further allegation that on 19.04.2021 the petitioner called the OP and asked her to delete everything from her phone because his wife had come to know about petitioners multiple affairs.

14. On the contrary the wife of the petitioner had lodged a complaint on 14.09.2021 alleging that she received several abusive and threatening messages but due to COVID restrictions she could not seek police help immediately. She further stated that on 14.09.2021 she received a Whats App message from the OP herein and thereafter the OP called the wife of the petitioner and during such conversation she tried to know if the wife of the petitioner had any intention of dissolving her marriage. In the said letter of complaint dated 14.09.2021 the wife of the petitioner alleged that she again started receiving abusive messages and she was further threatened by the OP herein to the extent that the OP can easily hack the phone and email ID of the wife of the petitioner, her social media profile and that she would implicate the wife of the petitioner in false cyber crime related cases by transmitting obscene materials from her social media accounts and email IDs, if she does not divorce the petitioner. It is also alleged in the complaint that the OP herein further threatened the wife of the petitioner that if she

dared to disclose the incident or take legal action she would harm the wife of the petitioner and their children through hired killers and musclemen.

15. The wife of the petitioner's aforesaid allegations which culminated in the registration of survey park Police station case no. 167 of 2021 under section 506 II /509/120B IPC. After completion of investigation the police authorities submitted charge sheet against the OP herein under the above mentioned sections on 31.01.2022. 9(Nine) days thereafter i.e. on 09.02.2022 the OP herein filed the impugned complaint being AC case no. 347 of 2022 and after taking initial deposition the court below issued process against the petitioner in terms of section 204 IPC.

16. The allegation levelled in the instant complaint by the OP herein is that the petitioners sent her certain indecent text messages and further threatened her to delete the same after his wife had purportedly come to know about his multiple affairs. It appears that though there is no whisper of love affair in the petition of complaint but the OP in her initial deposition recorded under section 200 of the Cr.P.C. stated that she got acquainted with the accused in the year 2008 as an employee of Aviva Life Insurance Pvt. Ltd.' and that friendship turned into a love affair and the accused proposed her for marriage. Later on, she came to learn that the present accused/petitioner is a married person with a daughter of 23 years and son of 21 years.

17. In this context let me reproduce section 354 A of the IPC which reads as under

354A. Sexual harassment and punishment for sexual harassment.—

(1)A man committing any of the following acts—

(i)physical contact and advances involving unwelcome and explicit sexual overtures; or
(ii)a demand or request for sexual favours; or
(iii)showing pornography against the will of a woman; or
(iv)making sexually coloured remarks,shall be guilty of the offence of sexual harassment.
(2)Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
(3)Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

18. The question therefore, is whether allegations made in complaint *prima facie* made out the offence of sexual harassment by making sexually coloured remarks by the petitioner through Whats App or not and whether the allegation of criminal intimidation has been made out or not to continue with the proceeding.

19. The OP herein in her initial deposition clearly stated about the existence of a love relationship. The Whats App messages that the OP has annexed to her petition of complaint reveals that she and the petitioner were in regular telephonic contact. However, on perusal of the said messages it does not prima facie appear from the responses made by the OP through Whats App that she was uncomfortable with the purported messages sent by the petitioner. Nowhere in the annexed Whats App message, the OP herein is found to have taken an unwavering stand nor she cautioned the petitioner that the contents of the petitioner's communication constitutes unwelcome sexual overtures, and that the petitioner should refrain from making such proposal to her. The quoted messages prima facie shows that there was consensual relationship between the parties and both of them joined in the chats as a part of consensual relationship.

20. The supreme Court has consistently cautioned against giving criminal colour to consensual relationship merely because they do not culminate in marriage or the manner in which one of the parties may have desired. A failed relationship by itself cannot be converted into an allegation of sexual harassment specially when it is the case of the petitioner that the present complaint is the counter blast of the charge sheet filed against the OP on the basis of the complaint lodged by the petitioner's wife. There has been an existing relationship between the parties since 2008 and therefore the intimate conversation that occurred during the course of functioning such relationship, can hardly be said to be instance of sexual harassment merely because such relationship failed subsequently.

21. The breaking point of the relationship between the petitioner and the OP as appearing from the submission of the parties was the initiation of the aforesaid Survey park station case no. 167 dated 14.09.2021 by the wife of the petitioner against the OP. The provision of section 354 A has been incorporated in the statute for the purpose of preventing sexual harassment of the women at work place for invoking in the cases where there exist genuine sexual harassment. The intimacy and consensual relation between the parties since 2008 inspite of the fact that the petitioner was married and the OP whose marital status is single, there is no gainsaying that intimate conversation by the petitioner was unwelcomed.

22. Learned counsel for the petitioner strenuously argued that the impugned proceeding is a counterblast to the criminal proceeding started against the OP. In her FIR the wife of the petitioner alleged that in between 19.04.2021 to 16.05.2021 she received several threatening and intimidating

messages from the OP and she was feeling afraid and being concern for her safety had lodged the complaint and it further appears that during investigation such allegation have been prima facie established.

23. It also to be noted seriously that the OP in her complaint has conveniently suppressed all the aforesaid background. She has also not stated anything about the said background while she was examined under section 200 of Cr.P.C. Therefore there is reason to believe that the present complaint alleging sexual harassment, has been made with a *malafide* intention to wreck vengeance upon the petitioner and his family in order to arm twist the petitioner to withdraw the criminal case pending against the OP. The alleged act of sexual harassment purportedly committed by the petitioner have been reported by the OP after a delay of eight months. The OP in the petition of complaint at the beginning has alleged that the offences had purportedly taken place sometime in the month of August, 2008 later in the averment she has alleged that the incident of sexual harassment took place in the year 2021. As per petition of complaint the last purported incident took place on 17.04.2021, whereas the last incident of alleged threatening and intimidation took place on 06.05.2021. However the instant complaint was lodged on 09.02.2022 i.e. after a lapse of eight month without having any plausible explanation of such inordinate delay. It is also curious enough that OP herein had prior opportunity of preferring a complaint against the petitioner. She was all along aware of the aforesaid Survey Park Police Station Case no. 167 of 2021 where she appeared and obtained bail on 29.10.2021 but she lodged the instant complaint on 09.02.2022 only after submission of the charge sheet against her in connection with the

aforesaid criminal case, which raises a serious doubt in the absence of plausible explanation as to why she kept mum for lodging complaint for such a considerable period of time and why she has lodged the complaint after a long delay. In the absence of any acceptable cause, it supports the petitioner's case that the instant proceeding is a counterblast of the aforesaid FIR lodged by petitioner's wife.

24. Furthermore, there is also no explanation as to why OP herein took two different stands in respect of her relationship with the complaint. The OP has alleged in the petition of complaint that she met the petitioner sometime in the year 2008 and with passage of time she and the petitioner became friends and they shared everything in personal life with each other. Subsequently the petitioner proposed his love for the OP but she refused the said proposal as he only wanted to be friend with the petitioner. On the other hand when the OP was examined under section 200 of the Cr.P.C. she said that her friendship with the petitioner had turned into a love affair and the petitioner had proposed her for marriage. Later on she had come to know that the petitioner is married and has two children.

25. Therefore, the core issue of the allegations made in the petition of complaint are in contrast to the deposition of the OP recorded under section 200 Cr.P.C. The OP in her complaint suppressed that she was in a consensual relationship with the petitioner and that the relationship had eventually soured when the wife of the petitioner had initiated a criminal complaint against the OP. This is indicative of a situation that when the complainant decided to proceed against the accused, she had ensured that the complaint is to be well drafted with the necessary pleadings, so that the

complaint discloses the ingredients to constitute the alleged offence. Therefore, the complaint which has been lodged at a belated stage after submission of a charge sheet against her, though well drafted but has supressed the aforesaid fact of romantic relationship with the petitioner for a long period of time and that the relationship between them soured on account of lodging FIR by the petitioners wife against her which proceeding ultimately culminated into a charge sheet.

26. The Hon'ble Apex Court in ***Iqbal @ bala and Ors. Vs. State of Up and others*** reported in **(2023) 8 SCC 734** and ***Md. Ali Vs. State of UP*** reported in **2023 SCC Online SC 950** made it clear that once the complainant decides to proceed against the accused with an ulterior motive for wrecking personal vengeance, then he would ensure that the complaint is very well drafted with all necessary pleadings. The complaint would ensure that the averments made in the complaint are as such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will be not just for the court to look into the averments made in the complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not but it also owes a duty to look into many other attending circumstances emerging from the record of the case, over and above the averment and if need be, with due care and circumspection try to read in between the lines. Examination of the attending circumstances in the present case leads to a conclusion that the allegations made by the OP in the petition of complaint does not constitute offence under section 354 A of the IPC as it lacks the essential ingredients. It is evident that the petition of complaint have been filed by her after her

relationship with the petitioner turned sour and the wife of the petitioner lodged an FIR alleging harassment and intimidation against her and she found that charge sheet has also been submitted against her in that proceeding.

27. Now so far as the allegation under section 506 is concerned let me reproduce section 506 of the IPC which runs as follows:-

> ***506. Punishment for criminal intimidation.—***
>
> *Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.— And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*

28. The criminal intimidation has been defined in section 503 is as follows:-

> ***503. Criminal intimidation.—***
>
> *Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. Explanation.— A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section. IllustrationA, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.*

29. Therefore, a reading of the definition of criminal intimidation would indicate that there must be an act of threatening to another persons of causing an injury to the persons reputation or property of the person threatened or to the person in whom the threatened person is interested and threat must be with the intent to cause alarm to the person threatened or it must be to make the threatened person to do an act which he is not legally

bound to do as the means of avoiding the execution of such threat or cause the threatened person to omit to do any act which he is not legally entitled to do.

30. In the instant case the allegation is that the petitioner threatened the OP to delete the chats between them and not to reveal the matter to anyone. To make out an offence of criminal intimidation, it must be established that the accused had an intention to cause alarm to the complainant. Mere expression of the word that the accused threatened her would not be sufficient to bring in the application of the said section. There is no allegation either in the complaint or in the initial deposition that the petitioner threatened her with an intention to alarm her or that she was alarmed by such threat. The term threatened when examined in isolation and without any contextual framework or accompanying word indicating an intent to insult the complainants modesty, does not come under the purview of the said offence. Perusal of the record clearly indicates that the complaint lodged by the OP is filed with improvement and also by suppression of material fact as noted above and accordingly it can be said that the complaint was lodged by the OP only to implicate the petitioner with a harrasive litigation.

31. The non application of judicial mind while taking cognizance of the offence is also apparent from the fact that the concerned magistrate took cognizance in a previously cyclostyled order by filling up certain blank portion without even mentioning the offences of which cognizance was being taken. The impugned order dated 09.02.2022 by which he took cognizance upon the offence is inoperative since the same has been passed in violation

of the direction made in Rule 183 of the Calcutta High Court Criminal Rules and Order. In the case of ***Pepsi Food Ltd and another Vs. Special Judicial Magistrate and ors.*** reported in **(1998) 5 SCC 749** it was held in para 29 as follows:-

> ***29.*** *No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. It was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants. If, however, we refer to the impugned judgment of the High Court it has come to the conclusion, though without referring to any material on record, that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused". We do not think that the High Court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the Magistrate as well, as the Magistrate will not give any different conclusion on an application filed under Section 245 of the Code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the Magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants. If we now refer to the facts of the case before us it is clear to us that not only that allegation against the appellants do not make out any case for an offence under Section 7 of the Act and also that there is no basis for the complainant to make such allegations. The allegations in the complaint merely show that the appellants have given their brand name to "Residency Foods and Beverages Ltd." for bottling the beverage "Lehar Pepsi". The complaint does not show what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturers of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information is from A.K. Jain who is impleaded as Accused 3. The preliminary evidence on which the first respondent relied in issuing summons to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955 made the Fruit Products Order, 1955 (for short "the Fruit Order"). It is not disputed that the beverage in question is a "fruit product" within the meaning of clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The Fruit Order defines the manufacturer and also sets out as to what the manufacturer is required to do in regard to the packaging, marking and labelling of containers of fruit products. One of such requirements is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacturer to be displayed on the top or neck of the bottle. The licence number of the manufacturer shall also be exhibited prominently on the side label on such*

bottle [clause (8)(1)(b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of the Order and to the penalty to which the manufacturer would be exposed under the provisions of the Essential Commodities Act, 1955. We may, however, note that in Hamdard Dawakhana (Wakf) v. Union of India [AIR 1965 SC 1167 : (1965) 2 SCR 192] an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954. This Court negatived this plea and said that the Fruit Order was validly issued under the Essential Commodities Act. What we find in the present case is that there was nothing on record to show if the appellants held the licence for the manufacture of the offending beverage and if, as noted above, the first appellant was the manufacturer thereof.

32. Therefore, the present case falls under the parameter of illustration 1,3 5 and 7 of the Bhajanlal's case (Supra) which states as follows:-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

33. In view of above **CRR 2633 of 2022** is allowed.

34. The impugned proceeding being complaint case no. AC 347 of 2022 pending before learned ACJM at Alipore is hereby quashed.

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.)