

(2024) 02 CAL CK 0051
In the Calcutta High Court
Case No : Criminal Revision No. 1737 Of 2020

Anupam Sardar & Anr.

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 19-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482
Indian Penal Code, 1860 — Section 34, 120B, 323, 341, 506

Citation : (2024) 02 CAL CK 0051

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Ashis Kr. Chowdhury, Rajib Ghosh, B.B. Bera, Binay Panda, Puspita Saha

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing of the FIR being no. 14/18 dated 03.01.2018 under Sections 341/323/506/34 of the Indian Penal Code, 1860 and Charge Sheet No. 387/18 dated 31.03.2018 corresponding to GR Case No. 93/18 pending before the Learned Additional Chief Judicial Magistrate, Baruipur, 24 Parganas (South).
2. In spite of due service there is no representation on behalf of the opposite party no. 2.
3. The petitioners are the in laws of the Opposite Party No.2.
4. It is alleged by the petitioners that the Opposite Party no. 2 along with her husband has been torturing the petitioners and their mother and also other family members continuously and several complaints have been filed.
5. The petitioners' states that the Opposite Party no. 2 is a practicing advocate

and she along with her husband has been continuously torturing and harassing the father (now deceased) and mother of the petitioners and for that reason petitioner's father had been compelled to transfer the family business in the name of the husband of the Opposite Party No. 2. After the demise of the father of the petitioners, the said Opposite Party No. 2 and her husband did not contribute to the day to day expenses and also for the expenses of the treatment of their ailing mother nor did they allow the other family members to live peacefully or to enter their ancestral property. They also filed several false cases against petitioners with an intention to capture the entire property of the petitioners. The husband of the Opposite Party no. 2 has also filed a title suit being no. T.S. 191 of 2017 in respect of their father's property which is pending for adjudication.

6. The petitioners states that the Opposite Party No. 2 is a practicing advocate by profession and by misusing her power has filed a complaint against the in-laws before the Sonarpur Police Station and the same was registered as G.R. Case No. 5525/17. But the case ended in FRT as the allegations were false. The petitioner also states that in the month of May 2018 when the family of the petitioner no.1 and his other family members had organized the last rites and rituals for their father-in-law at the ancestral property, the opposite party called the police from Sonarpur Police Station and disturbed the said ceremony without reason.

7. The Opposite Party No. 2 by suppressing all the complaints pending against her and the civil suit filed by her husband (TS 119 of 2017) made a false complaint dated 03.01.2018 before Baruipur police station which is under different jurisdiction, but Baruipur police station started Baruipur Police Station Case No. 14/18 dated 03.01.2018 under Sections 341/323/506/34 of IPC.

8. It is further stated that the allegations have been made by the Opposite Party No. 2 with the only intention of harassing the petitioners.

FINDINGS:-

9. The case of the Opposite Party No. 2 in the FIR is that on 26.02.2018 at about 11.00 hrs, Accused Anupam Sardar and Anamika Sardar along with their mother came to Baruipur Court for lodging a case against the complainant. The complainant being an advocate, then informed the Bar Association of Baruipur Court. On the protest of the Advocates of Baruipur Court, the accused persons left the Court. Thereafter, when the complainant returned from Court, the accused persons allegedly attacked, assaulted and pushed the complainant.

10. It appears from the record that the petitioner No. 1 has filed a complaint with the police on 03.06.2016 regarding the torture by the Opposite Party No. 2 & her husband. The mother of the Petitioner No.1 also lodged an FIR being no. 2051/17 dated 22.10.2017 under Sections 341/506/120B/34 of IPC. Injury Report of the Petitioner No.1 dated 03.06.2016 showing Blunt trauma on the nose and face with bleeding, is on record.

11. From the case diary placed by the State, it appears that the case against the petitioners has been filed on 03.01.2018.

12. Charge Sheet has been filed under Sections 341/323/506/34 of the Indian Penal Code.

13. From the materials on record, it appears that the dispute between the parties relates to family property. The mother-in-law of the Complainant/Opposite Party No. 2, who is also mother of the Petitioner No.1 has filed a complaint in 2017, alleging that when she was hospitalized, the Complainant/Opposite Party no. 2 herein along with her husband, who is the son, took possession of the house, and the business of the Petitioner No. 1's father and also evicted the tenants, which was the only source of income for the mother, who was then forced to live with her sister.

14. It is in the written complaint that the Complainant/Opposite Party no.2, (being an advocate herself) with the help of some Advocates stopped the petitioners and their mother/mother-in-law from lodging a case against her.

15. It is then alleged that when she came out of the Court, she was attacked by the petitioners.

16. From the materials on record including the case diary it appears that none of ingredients required to constitute the offences alleged are prima facie present against the petitioners.

17. The Supreme Court in several precedents has discouraged such proceedings initiated by the complainant only to harass the other party. Some of the rulings are as follows:-

a) M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006 (Para 8, 9, 10).

b) Birla Corporation Ltd. vs Adventz Investments and holdings, (Criminal Appeal No. 877 of 2019) (Para 86).

c) Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021) (Para 37, 41, 42).

d) R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022 (Para 17).

e) Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023 (Para 21, 24).

f) Paramjeet Batra vs State of Uttarakhand & Ors., (2013) 11 SCC 673.

18. In Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022), the Supreme Court held:-

"15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369 decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:

"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

"7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that

a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

"102. (7) Where a criminal proceeding is manifestly attended with mala fides 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." Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. The exposition of law on the subject relating to the exercise of the extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335 as under :

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(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.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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.”

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others*, 2021 SCC Online SC 315.”

19. The present case falls under category 7 of Para 102 of *Bhajan Lal (Supra)*.

20. The Supreme Court in *Randheer Singh Vs. State of Uttar Pradesh & Ors.*, (2021) 14 SCC 626, held:-

“33. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in *Paramjeet Batra (supra)* extracted above.

34. The given set of facts may make out a civil wrong as also a criminal offence. Only because a civil remedy is available may not be a ground to quash criminal proceedings. But as observed above, in this case, no criminal offence has been

made out in the FIR read with the Charge-Sheet so far as this Appellant is concerned. The other accused Rajan Kumar has died.”

21. From the materials on record, it is clear that no criminal act or intent of the petitioners has been prima facie made out in respect of the offences alleged. The dispute in this case is clearly a (civil) family property dispute, with no materials on record to prima facie show that the essential ingredients required to constitute the offences alleged are present against the petitioners.

22. Thus there being no prima facie materials on record against the petitioners in respect of the offences alleged, the proceedings being FIR No. 14/18 dated 03.01.2018 under Sections 341/323/506/34 of the Indian Penal Code, 1860 and Charge Sheet No. 387/18 dated 31.03.2018 corresponding to GR Case No. 93/18 pending before the Learned Additional Chief Judicial Magistrate, Baruipur, 24 Parganas (South) is liable to quashed.

23. CRR 1737 of 2020 is allowed.

24. The proceedings being FIR No. 14/18 dated 03.01.2018 under Sections 341/323/506/34 of the Indian Penal Code, 1860 and Charge Sheet No. 387/18 dated 31.03.2018 corresponding to GR Case No. 93/18 which is pending before the Learned Additional Chief Judicial Magistrate, Baruipur, 24 Parganas (South), is hereby quashed in respect of the petitioners namely Anupam Sardar and Anamika Sardar.

25. All connected applications, if any, stand disposed of.

26. Interim order, if any, stands vacated.

27. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

28. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.