

(2019) 07 CAL CK 0030

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 670 Of 2018

Ashok @ Asok Chattopadhyay Vs State Of West Bengal & Anr ?

Date of Decision : 09-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 401, 482

Indian Penal Code, 1860 — Section 34, 323, 354A, 379, 448, 506

Citation : (2019) 07 CAL CK 0030

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Ashok, Rana Mukherjee, Debjani Sahu, Amitava Karmakar

Final Decision : Dismissed

Judgement

Madhumati Mitra, J

The petitioner has approached this Court by filing an application under Section 482 read with Section 401 of the Code of Criminal Procedure praying

for quashing of the proceedings being G.R. Case No. 2033 of 2015 arising out of Chinsurah Women Police Station Case No. 24 of 2015 dated

12.09.2015 under Sections 448/354A/323/506/379/34 of the Indian Penal Code.

In his application for quashing of the criminal proceedings pending against him, the petitioner has stated that he is a practicing advocate. He is a writer

and researcher and has been honoured by the Calcutta University with Griffith Memorial Award for his research works on Freedom Fightersâ??

History of Hooghly district.

The facts which are necessary to dispose of the present revisional application are as follows :-

The opposite party no.2, Manika Dutta, is the wife of the son of the sister of the petitioner. Financial condition of the sister of the petitioner was not

sound and as such the sister and her husband were allowed to reside in the paternal house of the petitioner prior to the death of the father of the petitioner. The opposite party no.2 on 12.09.2015 at about 10-45 am visited the police station along with her husband and lodged a written complaint to the effect that on that day her maternal uncle in law (the present petitioner) and the driver of the petitioner forcibly entered into her room and used filthy languages. When the opposite party no.2 raised protest, then the petitioner and his driver outraged her modesty and assaulted her and also snatched away her gold chain. They threatened the defacto complainant i.e. opposite party no.2 with dire consequences and left that place.

On the basis of the said written complaint lodged by the opposite party no.2, Chinsurah Women Police Station Case No. 24 of 2015 dated 12.09.2015 was started against the FIR named accused persons. After completion of the investigation charge-sheet was submitted against the FIR named accused persons for commission of alleged offences punishable under Sections 448/354A/323/506/ 379/34 of the Indian Penal Code.

It is the settled principles of law that in order to exercise the inherent power under Section 482 Cr.P.C., the contents of the First Information Report shall have to be examined and the High Court at this stage has no jurisdiction to go into the merit of the case or to examine the correctness of the version of either party. Whatever appears on the face of the First Information Report shall be taken into consideration to see whether the allegations contained in the First Information Report or complaint or the statements of the witnesses in support of the same taken at their face value make out any offence as alleged against the petitioner/accused.

In the instant revisional application, the petitioner appeared in person. While making his submission in favour of quashing of the proceedings pending against him, he has contended that he has been falsely implicated in the criminal proceedings. He has specifically submitted that the defacto-complainant is the wife of the son of his sister and she with her husband stay in the house of his father and they filed the instant case in order to harass him. The written complaint was lodged with malicious intention and with an ulterior motive for wreaking vengeance on the petitioner. It is his specific contention that continuance of the criminal proceedings against him would be an abuse of the process of the Court.

The copy of the case diary has been produced by the learned advocate appearing for the State. Prayer for quashing of the criminal proceedings has

been strongly opposed by the learned advocate for the State. He has submitted that the materials collected by the Investigating Officer during

investigation support the allegations contained in the FIR.

Learned advocate for the State invited the attention of the Court to the relevant portions of the case diary and contended that it is not at all a fit case

to exercise jurisdiction by the High Court under Section 482 of the Code of Criminal Procedure.

Learned advocate appearing for the opposite party no.2 has submitted that the ingredients of the alleged offences under Sections

448/354A/323/506/34 of the Indian Penal Code are very much present in the First Information Report. The allegations made in the FIR and the

statements of the witnesses recorded by the Investigating Officer during investigation make out a prima facie case for proceeding against the present

petitioner. The petitioner who is the maternal uncle in law of the opposite party no.2 who lodged the written complaint is one of the accused persons in

the criminal proceedings pending before the Learned Court below. It appears that during investigation statements of the witnesses have been recorded

under Section 161 of the Code of Criminal Procedure. Materials collected during investigation clearly indicate the existence of prima facie case for

proceeding for commission of the alleged offences against the present petitioner.

The petitioner has contended that he has been falsely implicated out of personal grudge.

Quashing of the proceedings by the High Court by appreciating evidence is not proper when the allegations made in the First Information Report and

the materials referred to in the charge-sheet prima facie make out alleged offences. The court while considering the prayer for quashing should not

assume the jurisdiction of the trial court and to consider the plea of innocence of the accused. While considering the prayer for quashing, the High

Court should not delve deep into the merit of the case or adjudicate upon the disputed question of facts.

Considering all aspects, I am of the view that the allegations as made out in the FIR prima facie constitute the offences alleged. Subsequent,

submission of charge-sheet against the petitioner and the materials collected

during investigation make out prima facie case for proceeding against the present petitioner.

The present case does not come within the parameters as laid down by the Honâ??ble Supreme Court in the case of State of Haryana & Ors.

â?Vs.- Bhajan Lal & Ors. reported in AIR 1992 SC 60 4and subsequent cases, regarding exercise of inherent power under Section 482 of the Code

of Criminal Procedure. Moreover, from the materials placed on record it cannot be said that the continuance of the criminal proceedings pending

against the petitioner would amount to an abuse of process of the Court.

In my opinion, it is not a fit case to exercise the discretion under Section 482 of the Code of Criminal Procedure.

As a result, the application under Section 482 of the Code of Criminal Procedure being CRR 670 of 2018 is dismissed. Interim order, if any, stands

vacated.

Copy of the case diary be handed over to the learned advocate for the State immediately.

Urgent photostat certified copy of this judgment be supplied to the parties, if applied for, upon compliance with all formalities.