

(2021) 07 CAL CK 0030
In the Calcutta High Court
Case No : Criminal Revision No. 4256 Of 2017

Debasish Bhattacharjee & Anr APPELLANT
Vs
State Of West Bengal & Anr. RESPONDENT

Date of Decision : 09-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 20, 21
Code Of Criminal Procedure, 1973 — Section 154, 155(2), 157(1), 161, 162, 164,
173(2), 173(8), 320, 482
Indian Penal Code, 1860 — Section 34, 306, 498A, 506

Citation : (2021) 07 CAL CK 0030

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Sourav Chatterjee, Soham Banerjee, Rana Mukerjee, Sukanya Bhattacharya, Debjani Sahu

Final Decision : Disposed Of

Judgement

Bibek Chaudhuri, J

1. This criminal revision arises out of an application filed by the accused persons/ petitioners under Section 482 of the Code of Criminal Procedure

(hereafter described as "the Code") praying for quashing of FIR filed by the opposite party No.2 as the defacto complainant that gave rise to

Dum Dum P.S Case No.821 of 2017 dated 17th August, 2017 under Section 306/34 of the Indian Penal Code (IPC).

2. The opposite party No.2 was served notice of the instant revision time and again but she preferred not to take part in the hearing of the matter.

Vide order dated 5th March, 2020, a Coordinate Bench of this Court accepted service upon the opposite party No.2 and fixed the matter for hearing

under the heading "Contested Application". Even thereafter series of orders

were passed for service upon the opposite party No.2 and such directions were duly complied with by the petitioners, but appearance of the defacto complainant cannot be ensured.

3. Though the instant application was filed by the petitioners praying for quashing of a criminal case instituted against them, this Court at the time of hearing finds that the chain of events leading to the filing of F.I.R under Section 154 of the Code by the defacto complainant and consequent investigation by police are shrouded with bona fide suspicion and reasonable doubt involving wide ramification in the administration of justice, persuading the Court to adjudicate the issue in hand under the touchstone of the basic requirement of investigation of a criminal case to establish the truth behind commission of an offence. As observed by the Honâ??ble Supreme Court in Pooja Pal vs. Union of India and Ors : (2016) 3 SCC 135, â??As the cause of justice has to reign Supreme, a Court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of faulty investigation, meekly complete the formalities to record a foregone conclusion. Justice then would become a casualty.â??

4. Now, the facts. The defacto complainant is the daughter of one Dr. Anindita Bhattacharrya, since deceased. On 17th August, 2017, she got a telephonic information from Dum Dum Police Station that her mother had committed suicide in a room which was under tenancy of the petitioner No.1. She lodged a written complaint alleging, inter alia, that the petitioner No.1 developed illicit relationship with her mother with the sole motive to squeeze huge amount of money from her. The mother of the complainant did not keep any relation with her and her father for one and half years prior to her unnatural death. Few days prior to her death, she demanded huge sum of money from her husband, i.e, the father of the defacto complainant. It was also alleged that the petitioner No.1 took huge sum of money from her mother putting illegal pressure upon her. He and his wife (petitioner No.2) forced the deceased to stop all communication with the defacto complainant for about a week prior to her death. Finally, failing to bear such pressure and torture inflicted upon her allegedly by the petitioners, the mother of the defacto complainant committed suicide.

5. The above narration is the gist of the written complaint made by the opposite

party No.2 on 17th August, 2017 with the Officer-in-Charge of Dum

Dum P.S. On the basis of the said complaint police registered Dum Dum P.S Case No.821 of 2017 under Section 306/34 of the IPC against the

petitioners and the case was endorsed to S.I Naru Gopal Chakraborty for investigation. The record shows that investigation of the case ended in filing

charge sheet against the petitioners under Section 306/34 of the IPC in the Court of learned Additional Chief Judicial Magistrate, Barrackpore, North

24 Parganas.

6. Chapter XII of the Code deals with the provisions relating to Information to the Police and Their Powers to Investigate. Under Chapter XII

of the Code, the investigating authority has to proceed only on the information about commission of cognizable offence which is first entered in the P.S

diary by the Officer-in-Charge under Section 157(1) of the Code and all other subsequent information would be covered by Section 162 for the reason

that it is the duty of the investigating officer not merely to investigate the cognizable offence reported in the F.I.R, but also other connected offences

found to have been committed in the course of same transaction or the same occurrence and the Investigation Officer has to file one or more reports

under Section 173(2) of the Code, if he comes across any further information pertaining to the same incident, he can make further investigation with

the leave of the court under Section 173(8) of the Code.

7. Coming to the instant case, the Case Diary produced by the Learned Public Prosecutor-in-Charge reveals that the investigating officer examined in

all six witnesses and recorded their statement under Section 161 of the Code. Since the Charge Sheet has been filed on 31st December, 2018, this

Court can safely disclose the names of the said witnesses and record their statement before the Police in gist to examine whether prima facie case

against the accused persons is made out or not.

8. The names of the witnesses are Amar Singh, Dipak Das, Md. Jahid and Sree Nivaran Bhusakal. The statements of the above named witnesses are

same and identical in contents and even words. Those were written in Bengali presumably by one person and apparently not by the Investigating

Officer. There is no certification that the said statements of the above named witnesses were recorded by some other person under the dictation and

instruction by the Investigating Officer. All the witnesses stated that the

deceased and the petitioner No.1 disclosing their identity as brother and sister started to reside in a flat situated at premises No.31, Dr. J.R Dhar Road within P.S Dum Dum as tenants. Subsequently, the witnesses came to know from the defacto complainant/opposite party No.2 that they used to live in the said flat as lovers. The defacto complainant informed them that Debashis used to torture the deceased both physically and mentally. He and his wife used to put pressure upon the deceased for huge amount of money. Failing to bear such torture and pressure, she committed suicide on 16th August, 2017. The said witnesses also stated that on the date of occurrence at night they repeatedly called the deceased knocking at her door, but did not get any reply. Then they informed Police. Police came and broke open the lock of the door and recovered dead body of the deceased.

9. The statements of the above named witnesses suggest that their statements are in the nature of hearsay. They had no direct knowledge about the relationship between the deceased and the petitioners till her unnatural death which they allegedly came to know from the defacto complainant/opposite party No.2. They had also no personal knowledge about perpetration of torture by the petitioners upon the deceased prior to her death. According to them, they heard such allegation from the defacto complainant. Surprisingly enough, the defacto complainant did not disclose the said fact of informing the reasons of unnatural death of her mother to the above named witnesses. The Investigating Officer did not take any attempt to get the statement of the defcto complainant recorded under Section 164 of the Code. Therefore, the statements of the above named witnesses are of no consequence to establish the charge under Section 306/34 of the IPC against the petitioners.

10. Besides, there are material contradictions between the statements made by the above named witnesses during investigation and the enquiry report in respect of Dum Dum P.S U.D Case No.99 of 2017 dated 17.08.2017 which is also part of the case diary.

11. Dum Dum P.S U.D Case No.99 of 2017 was started on the basis of a complaint made by the Residential Medical Officer of Dum Dum Municipal Specialized Hospital and Cancer Research Center informing the police officer of Dum Dum P.S, inter alia, that Dr. Anindita Bhattacharrya aged about 45 years, Hindu female was brought dead to the hospital by her cousin

brother Debashis Bhattacharrya. The dead body was examined by the said R.M.O on 17th August, 2017 at 00-50 hours. ASI, Sandip Ghosh of Dum Dum P.S conducted initial investigation of the said U.D case and recorded the chain of events stated below:-

12. The said Debashis Bhattacharrya was found present in the hospital. On being asked, he stated that he used to reside at 57 Kamal Park, Birati

within police station Nimta. He has one rented accommodation at 31 Dr. J.R Dhar Road within P.S Dum Dum. The deceased being his cousin sister

used to stay in the said tenanted flat of Debashis Bhattacharrya.

13. On 16th August, 2017 at about 6 pm, he received a phone call from the landlord Amar Singh who informed him that the said rented flat was closed

from inside for long hours and nobody attended his call. Debashis rushed to the said tenanted flat from his office situated at Salt Lake Sector V at

about 8.30 pm. He also found the entrance door of the said flat closed from inside. He repeatedly called his sister from outside but nobody replied.

Then Debashis informed the matter to police. Police reached the place of occurrence and opened the door of the said flat in presence of local people.

Debashis and others entered into the said flat and found Dr. Anindita Bhattacharrya lying in unconscious state. Then ASI, Sandip Ghosh prepared

inquest report of the dead body of Dr. Anindita Bhattacharrya. From the investigation report of the above numbered U.D case it is clearly ascertained

that petitioner No.1 was all along present at the time of recovery of dead body of Dr. Anindita. He took her to local hospital. He was present at the

time inquest. But the Investigating Officer of Dum Dum P.S Case No.821 dated 17th August, 2017 recorded the statement of the witnesses in such a

manner only to mislead the court about the presence of the petitioner No.1 at the time of recovery of dead body of Dr. Anindita. On perusal of the

case diary it would appear to everybody that the local people, namely Amar Singh and others informed police when Dr. Anindita was not responding

from inside the flat where she used to stay and police came to the place of occurrence on being informed by local people broke open the door of the

flat and recovered the dead body of the said Dr. Anindita.

14. The deceased committed suicide on 16th August, 2017. Only on 4th July, 2017 she made a complaint against her husband and daughter (opposite

party No.2) for committing offence under Section 498A/506 of the Indian Penal

Code before the Inspector-in-Charge, Uttarpara Police Station. The Investigating Officer collected a copy of the said complaint but he did not think it necessary to collect the copy of the case diary to ascertain the course of investigation of the said case registered on the basis of the complaint made by the said Dr. Anindita, since deceased. During investigation the Investigating Officer collected a diary written by Dr. Anindita, since deceased on 9th July, 2017. In her diary she elaborately narrated the incidents of mental and physical torture inflicted upon her by her husband and daughter. It is further learnt from the case diary that the house at Uttarpara was the ancestral property of Dr. Anindita, since deceased and the petitioner No.1 herein. It is found that the said ancestral house of the deceased and the petitioner No.1 was grabbed by the husband of the deceased during her lifetime and both the deceased and the petitioner No.1 were compelled to leave their ancestral house and used to reside at rented accommodations. The Investigating Officer did not even take any step to ascertain the correctness of the statement recorded by the Dr. Anindita in her diary. In the said diary she clearly stated that in spite of lodging a complaint under Section 498A of the Indian Penal Code, one Madhusudan Mukherjee, the then Inspector-in-Charge of Uttarpara P.S allegedly threatened her saying that she was mentally sick. The deceased concluded her diary writing that if she would meet with an unnatural death, her husband, daughter and the Inspector-in-Charge of Uttarpara P.S would be solely responsible. In spite of recovery and seizure of the said dairy written by the deceased about one and half months before committing of suicide, the Investigating Officer did not take any attempt to ascertain the truth of the matter and his only aim was to prepare some evidence, though heresay and inadmissible in law to implicate the petitioners of this case.

15. It would also not be out of place to mention that the Investigating Officer seized one mobile phone of the deceased, but he did not take any step to collect the call records to ascertain the veracity of the complaint filed by the daughter of the deceased.

16. The chain of events as found from the case diary is as follows:-

i) On 26th June, 2017 the daughter of the deceased lodged a complaint against her that her mother was threatening her to kill and drive her away from the dwelling house under provocation of her brother Debashis Bhattacharrya.

Police diarized the said information vide Uttarpura P.S G.D Entry No.296 dated 5th July, 2017.

ii) On 4th July, 2017, the deceased made a complaint under Section 498A/506 of the Indian Penal Code against her husband and daughter.

iii) On 9th July, 2017, the deceased wrote a diary stating elaborately how she was tortured by her husband and daughter. She herself apprehended that the continuous torture perpetrated upon her by her husband and daughter might lead her to commit suicide.

iv) On 11th July, 2017 Debashis (petitioner No.1) made a license agreement in respect of a flat situated at 31 Dr. J.R. Dhar Road within P.S Dum Dum for residential purpose for 11 months.

v) Undisputedly Dr. Anindita Bhattacharrya, since deceased used to stay in the said flat and within a month or so, she committed suicide.

17. From the above discussion it is absolutely clear that the Investigating Officer failed to collect any evidence of abatement of suicide against the

petitioners. There is absolutely no evidence that the petitioners ever claimed illegally any money from the deceased or that the deceased was squeezed

for money by the petitioners. The Investigating Officer also failed to collect any evidence in support of the allegation of the defacto complainant

against her mother that her mother used to maintain an illicit relation with his cousin brother, petitioner No.1 herein. Thus, there is no iota of evidence

found from the record to hold even prima facie that the petitioners instigated the deceased to commit suicide.

18. On the other hand there are ample materials in the case diary available against the defacto complainant and the husband of the deceased.

19. Now comes to the issue on applicability of Section 482 of the Code.

Section 482 runs thus:-

482. Saving of inherent powers of High Court.-Nothing in this Code shall be deemed to limit or affect the inherent powers 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.

20. It is no longer a res integra that the power under Section 482 of the Code must be exercised sparingly, with circumspection and in rarest of rare

cases. Exercise of inherent power under Section 482 of the Code is not the rule but the exception. The exception is applicable only when it is brought

to the notice of the court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed

unnecessarily. The High Court can exercise its inherent power in the following cases:-

- a) To give effect to an order under the Code.
- b) To prevent abuse of the process of the Court and
- c) To otherwise secure the ends of justice.

21. In *State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors*, 1992 SCC (Cri.) 426 the Honâ??ble Supreme Court laid down the categories of cases

where the High Court may, in exercise of powers under Section 226 of the Constitution of India or under Section 482 of the Code, interfere in a

proceeding to prevent abuse of process of the court or otherwise to secure ends of justice;

a) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR did not disclose a cognizable offence under

Section 154 of the Code.

b) 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.

c) 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.

d) Where the allegations made in the FIR or the complaint are 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.

e) Where there is an express legal bar contained 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 proceeding and/or where there is specific provision in the Code or the concerned act, providing

efficacious relief for the grievance of the aggrieved party.

f) 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.

22. The scope and applicability of Section 482 of the Code on the issue of quashing of FIR was again considered by the Full Bench of the Honâ??ble

Supreme Court in Parbatbhai Aahir @ Parbatbhai vs. The State of Gujarat & Anr. reported in (2017) 9 SCC 641 paragraph 16-16.10 of the said

report is relevant for our purpose and quoted below:-

16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

(16.1) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice.

The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(16.2) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement

has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence.

While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The

power to quash under Section 482 is attracted even if the offence is non-compoundable.

(16.3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High

Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(16.4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to

prevent an abuse of the process of any court.

(16.5) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled

the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

(16.6) In the exercise of the power under Section 482 and while dealing with a

plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

(16.7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute.

They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

(16.8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(16.9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(16.10) There is yet an exception to the principle set out in propositions (16.8) and (16.9) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

23. Bearing the above principles in mind when I consider this case, I come to an irresistible conclusion that the investigation of Dum Dum P.S Case

No.821 dated 17th August, 2017 on the basis of FIR under Section 306/34 of the IPC was totally biased, wholly misdirected and fully tainted. The

Honâ??ble Supreme Court in Babubhai vs. State of Gujarat & Ors. reported in (2010) 12 SCC 254 held in paragraph 32 as hereunder:-

â??32. The investigation into a criminal offence must be free from objectionable

features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth".

(Vide R.P. Kapur Vs. State of Punjab AIR 1960 SC 866; Jamuna Chaudhary & Ors. Vs. State of Bihar, SCC at p.780, para 11 and Mahmood vs.

State of U.P.).

Paragraph 45 of the said report runs thus:-

45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India.

Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be

permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice,

the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh

investigation.

24. The Investigating Officer of Dum Dum P.S Case No.821 dated 17th August, 2017 purposefully and with ulterior motive did not try to ascertain the

truth behind the offence under Section 306 of IPC and unnatural death of Dr. Anindita Bhattacharaya in spite of receipt of complaint under Section

498A of the IPC filed by the deceased and elaborate note made by her in her diary about one and half months before her death. He even did not

examine the defacto complainant, the husband of the deceased, the petitioners and near relatives and colleagues of Dr. Anindita since deceased. His

job was only confined to record some statements of some persons who are in no way connected with the deceased or her family to create some

inadmissible evidence against the petitioners. Therefore, in my considered opinion charge-sheet No.839 dated 31st December, 2018 is liable to be

quashed because commencement of criminal trial on the basis of such faulty,

biased, tainted charge-sheet only to shield the real culprits will be an instance of abuse of process of the Court.

25. Accordingly charge-sheet No.839 dated 31st December, 2018 filed against the petitioners is quashed.

26. However quashing of charge-sheet does not mean closure of Dum Dum P.S Case No.821 dated 17th August, 2017. In Manu Sharma vs. State

(NCT of Delhi) reported in (2010) 6 SCC 1, it is observed by the Honâ??ble Supreme Court that the criminal justice administration system in India

places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty,

the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a

crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance to the basic rule of law. These are the fundamental

canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the

Constitution of India (emphasis supplied).

27. Honâ??ble Supreme Court further observed that it is not only the responsibility of the Investigating Agency, but also all the courts to ensure that

the investigation is fair and does not in any way hinder the freedom of an individual except in accordance with law. Equally enforceable canon of the

criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in an unfair manner. The investigation should

not prima facie be negative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law dehorn's his

position and influence the society (emphasis supplied).

28. The investigation of this case was tainted, biased and illegally influenced to shield the real culprits. Therefore this court is of the view that this is a

fit case where de novo investigation by a competent police officer to find out the truth and implicate the real culprit is required to be directed. This

court cannot rely upon the Inspector-in-Charge of Dum Dum P.S because he forwarded a baseless the charge-sheet to the court of learned Chief

Judicial Magistrate, Barrackpore after the same being prepared by the Investigating Officer. With regard to the question as to whether this Court in

exercise of power under Section 482 of the Code can direct denovo investigation

of a case, the Court is fortified with the following directions of the Honâ??ble Supreme Court:

- i) Vinay Tyagi vs. Irshad Ali: (2013) 5 SCC 762.
- ii) Babubhai vs. State of Gujarat: (2010) 12 SCC 254.
- iii) Pooja Pal vs. Union of India: (2016) 3 SCC 135.

29. Therefore, this court directs the Commissioner of Police, Barrackpore Commissionerate to cause de novo investigation of this case by an honest and impartial officer under his disposal not below the rank of the DCP. He is further directed to submit monthly status report of investigation to this court till its conclusion.

30. The Commissioner, Barrackpore Police Commissionerate is further directed to take necessary departmental action against Sri. Naru Gopal

Chakraborty, S.I of police who was the previous Investigating Officer in this case. For abundant caution, the learned P.P-in-Charge is directed to send

the copy of the case diary placed before this court at the time of hearing to the Commissioner of Police, Barrackpore Commissionerate immediately

along with a plain copy of this order duly certified by the ACO of this court for information and compliance.

31. Let a copy of this order be sent to the Commissioner, Barrackpore Police Commissionerate through the learned Registrar General of this Court for information and strict compliance of the order.

32. Instant revision is thus disposed of on contest, however, without cost.

33. With the disposal of the revisional application, connected application is treated to be disposed of.