

(2024) 02 CAL CK 0072
In the Calcutta High Court
Case No : Criminal Revision No. 2035 Of 2019

Gurudas Mondal And Anr.

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 22-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 156(3), 161, 401, 482

Indian Penal Code, 1860 — Section 34, 376, 417, 420, 447, 448, 506

Citation : (2024) 02 CAL CK 0072

Hon'ble Judges : Ajay Kumar Gupta, J

Bench : Single Bench

Advocate : Kaustav Bagchi, Debayan Ghosh, Priti Kar, Sudip Ghosh, Bitasok Banerjee

Final Decision : Allowed

Judgement

Ajay Kumar Gupta, J

1. This Criminal Revisional application has been filed by the petitioners under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 seeking quashing of proceeding in connection with G.R. Case No. 01 of 2019 arising out of Hariharpara Police Station Case No. 01 of 2019 dated 1st Day of January, 2019 under Sections 447/506/34 of the Indian Penal Code, 1860 which culminated into Charge Sheet vide Charge Sheet No. 66 of 2019 dated 6th day of February, 2019 under Sections 448/506/34 of the Indian Penal Code, 1860 pending before the Court of the Learned Chief Judicial Magistrate, Berhampur, Murshidabad.

FACTS OF THE CASE:

2. The brief facts are relevant for the purpose of disposal of this case as under:

The petitioner nos. 1 and 2 are the husband and wife. Petitioner No. 1 employed as a constable under the National Disaster Response Force under the Ministry of

Home Affairs. They have been arraigned as accused persons on the basis of a written complaint filed by the opposite party no. 2 alleging therein that one another case being Belgharia Police Station Case No. 370 of 2018 dated 28th Day of May, 2018 under Sections 376/417/506 of the Indian Penal Code, 1860 is pending before the Court of the Learned Sub-Judge at Barrackpore. In the said case, the petitioner no. 1 enlarged on bail by the Hon'ble High Court. After enlarging on bail, petitioner no. 1 and petitioner no. 2 both were moving around the house of de-facto complainant at village Mamudpur in suspicious manner. She suspected that they were carrying fire arms with a view to attack/assault her or her family members and had also threatened the de-facto complainant with dire consequences to kill. Hence, the present case i.e. Hariharpara Police Station Case No. 01 of 2019 dated 1st Day of January, 2019 under Sections 447/506/34 of the Indian Penal Code, 1860 was registered and started against the Petitioners. Subsequently, upon conclusion of investigation, a charge sheet No. 66/2019 dated 6th Day of February, 2019 under Sections 448/506/34 of the Indian Penal Code, 1860 has been submitted and the learned Magistrate was, inter alia, pleased to take cognizance on 25th Day of February, 2019 though the contention of the petitioners is that the allegation is totally false, fabricated, frivolous and malicious one. No such incident ever took place as alleged by the de-facto complainant/Opposite Party No. 2 herein.

Actually, the opposite party no. 2 was engaged for a private tutor for his daughters. Due to financial problem faced by opposite party no. 2, she requested the petitioners to provide a sum of Rs. 2,50,000/- in the months of October and November, 2017. The petitioner no. 1 herein had paid the said amount through his bank account to the opposite party no. 2 with an undertaking that she would pay back the said amount within a period of six months. But even after expiry of six months, she refused to return the same and to avoid payment and to save herself from initiation of civil and criminal cases and continuous demand by the petitioners, she initiated a false case under Sections 376/417/506 of the Indian Penal Code, 1860 and in that case, when the petitioners have obtained bail, she again lodged another complaint falsely with ulterior motive. Under the above facts and circumstances, the revisional application came up before this Bench for consideration and disposal.

SUBMISSION ON BEHALF OF THE PETITIONERS:

3. It is submitted on behalf of the petitioners that they have waited for a considerable period of time to get back their money given to the de-facto complainant on her request subject to condition that she would return the same within specified time but no result. Having no alternative, the petitioner no. 1 was constrained to file an application under Section 156 (3) of the Code of Criminal Procedure, 1973 on 2nd Day of July, 2018 after issuing a legal notice dated 12th June, 2018 upon the Opposite Party No. 2. Complaint has been accepted by the learned Court and on the basis of order passed by the learned Court, a criminal case was registered and started against the opposite party no.

2 under Sections 420/506/34 of the Indian Penal Code being Belgharia Police Station Case No. 517/2018 dated 23rd Day of July, 2018.

4. It is further submitted that the de-facto complainant has lodged such frivolous and malicious complaint against the petitioner No. 1 and his wife as counter blast of such initiation of criminal case against the Opposite Party No. 2 as such it is a gross abuse of process of law and is required to be quashed to secure the ends of justice. Furthermore, no specific allegation had been attributed to the petitioners herein in commission of alleged offences. The allegation is vague and fabricated. Petitioners were never moving or roaming around the house of de-facto complainant at village Mamudpur and had threatened the Opposite Party No. 2 or done any illegal acts. As such, the entire proceeding is liable to be set aside and/or quashed.

SUBMISSION ON BEHALF OF THE STATE:

5. On the other hand, learned counsel appearing on behalf of the State submitted that after completion of investigation, a charge sheet has been submitted against the petitioners/accused persons under Sections 448/506/34 of the Indian Penal Code, 1860. Sufficient materials have been collected during investigation, which established a prima facie case against the present Petitioners as such the application is liable to be dismissed.

6. Nobody represented the Opposite Party No. 2. No accommodation sought for on behalf of the Opposite Party No. 2.

DISCUSSIONS AND ANALYSIS BY THIS COURT:

7. Heard the rival submissions of the parties and on perusal of the Case Diary especially the written complaint wherefrom it appears De-facto complainant made allegation to the effect that on

30. 12.2018 the Petitioner No. 1 and his wife were moving/loitering in the area carrying a bag, where the Opposite Party No. 2 resides presently at Berhampore. She suspected that they were carrying firearms in the said bag with a view to assault her and her family members but these allegations are merely her apprehensions. Even if the petitioners were loitering or roaming in the area under P.S. Hariharpara does not constitute the offence as alleged under Sections 448/506/34 of the IPC. Furthermore, during investigation, the IO has recorded statements of the different witnesses. Upon perusal of the statement of those witnesses recorded under Section 161 of Cr.PC, it reveals that in presence of the witnesses, they had threatened to the de-facto complainant and her family directly with dire consequences asking her to withdraw the case being Belgharia Police Station Case No. 370 of 2018 dated 28th Day of May, 2018 under Sections 376/417/506 of the Indian Penal Code. That statement is totally different from the allegation levelled by the De-facto complainant in her written complaint. Other allegations, made by the de-facto complainant in the written complaint, are not clear or specific allegation and appear vague. Therefore, there are no

sufficient materials against the present accused persons/petitioners, as such it would result in an abuse of the process of law.

8. Under such circumstances, this Court finds the allegation is not supported by sufficient materials collected during investigation. The allegation is wholly based on apprehensions and doubt. This Court further finds the case initiated against the Petitioners are purely on the basis of suspicion as appeared in the FIR as well as in the charge-sheet. Case alleging cognizable offences without specific allegation or not disclosing sufficient materials against the petitioners cannot be continued, as the same would be eventually resulted in every possibility of acquittal. There must be specific allegation and/or material or involvement in the alleged offence but that is entirely missing. Accordingly, continuation of such proceeding under Sections 448/506/34 of the IPC is an abuse of process of law and to secure ends of justice, this Court can exercise inherent power under Section 482 of the CrPC for quashing of the aforesaid proceeding.

9. We may not forget at this moment the well-settled law declared in the judgment of Hon'ble Supreme Court in *State of Haryana & Ors. vs. Bhajanlal & Ors.* 1992 Supp. (1) Supreme Court Cases 335, which has laid down the basic points for consideration pursuant to which a complaint may be entertained in accordance with law before a Court of law. The Court has narrated down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure may be espoused. Relevant portion thereof may beneficially be quoted below:

"102. This Court in the backdrop of interpretation of various relevant provisions of CrPC 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to myriad kinds of cases wherein such power should be exercised: (SCC pp. 378-79, para 102)

(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 Act concerned (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 Act concerned, 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.”

10. We should also not forget, the Hon’ble Supreme Court in Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others (2021) SCC Online SC 315 has laid down the several principles to be followed by the Court while exercising its power under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India out of those principles, following are the relevant for this instant case: -

“i)

ii)

iii)

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi)

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii)

ix)

x)

xi)

xii)

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi)

xvii)

xviii)"

11. In the strength of above discussions made by this Court and in view of observations made by the Hon'ble Supreme Court in the above cited judgments, this Court fully satisfies that this revisional application has a good merit and fit case to quash the aforesaid proceeding.

12. Accordingly, the revisional application being CRR 2035 of 2019 is hereby allowed and disposed of without order as to costs. Connected applications, if any, are thus, disposed of.

13. The proceeding in connection with G.R. Case No. 01 of 2019 arising out of Hariharpara Police Station Case No. 01 of 2019 dated 1st Day of January, 2019 under Sections 447/506/34 of the Indian Penal Code, 1860 which culminated into Charge Sheet vide Charge Sheet No. 66 of 2019 dated 6th day of February, 2019 under Sections 448/506/34 of the Indian Penal Code, 1860 pending before the Court of the Learned Chief Judicial Magistrate, Berhampur, Murshidabad against the petitioners, namely, Gurudas Mondal and Rinku Mondal is hereby quashed. Order passed in the said proceedings is also set aside.

14. C.D. is to be returned to the learned advocate for the State.

15. Department is directed to communicate this order to the learned trial Court immediately for information.

16. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

17. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.