

(2022) 12 CAL CK 0063
In the Calcutta High Court
Case No : Criminal Revision No. 21 Of 2022

Harish Hirani And Anr.

APPELLANT

Vs

State Of West Bengal And Anr.

RESPONDENT

Date of Decision : 21-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 12, 21, 142
Indian Penal Code, 1860 — Section 21, 120B, 204, 417, 418, 419, 420, 465, 468, 469, 506, 509
Code Of Criminal Procedure, 1973 — Section 161, 190(1)(b), 195, 197, 200, 202, 482
Evidence Act, 1872 — Section 165

Citation : (2022) 12 CAL CK 0063

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Sekhar Kumar Basu, Sudipto Moitra, Ayan Bhattacharya, Antarikshya Basu, Palash Mukherjee, Y. J. Dastoor, Samrat Goswami, Samira Grewal, Imran Ali, Debjani Sahu,

Final Decision : Allowed

Judgement

Bibek Chaudhuri, J

1. The petitioner being the accused persons in connection with Complaint Case No.CN-809 of 2021 under Sections 417/418/419/420/465/468/469/506/509 read with Section 120B of the IPC presently pending before the learned Metropolitan Magistrate, 19th Court at Calcutta have challenged the order dated 4th September, 2021 of taking cognizance in respect of the above mentioned offences by the learned Additional Chief Metropolitan Magistrate, Calcutta and order dated 22nd September, 2021 passed by the learned Metropolitan Magistrate, 19th Court, Calcutta issuing process against the petitioners under Section 204 of the IPC.

2. Indisputably, the petitioners are the functionaries of Central Mechanical Engineering Research Institute (CMERI), an unit of Council for Scientific and

Industrial Research (CSIR). At the outset, it would be prudent to mention that CSIR is a Society, registered under the Societies Registration Act, 1860 having Administrative Control of the Department of Scientific and Industrial Research (DSIR), Ministry of Science and Technology, Government of India. The petitioner No.1 is the Director of CSIR-CMERI, Durgapur and the petitioner No.2 is an ex-employee working as Administrative Officer in the said institute at Durgapur.

3. The opposite party No.2 is a Senior Scientist posted at CSIR-CMERI, Durgapur. The opposite party No.2 lodged a court complaint before the learned Additional Chief Metropolitan Magistrate, Calcutta which gave rise to Case No.CN-809 of 2021. Salient points of grievances depicted in the complaint by the opposite party No.2 are as follows:-

- i) Appointment of petitioner No.1 is disputed which is already in public domain vide order dated 21st February, 2019 in CRM 2101 of 2019.
- ii) Both the accused with ill-motive started financial corruption in the institute resulting in institution of one criminal case and as many as 14 numbers of vigilance cases against them.
- iii) To achieve wrongful gain, both the accused started exploiting the employees by making illegitimate demands and transferring them to other places if they refused to accede to such unlawful demands.
- iv) The accused persons made several derogatory comments and sexist remarks against woman employees.
- v) The wife and daughter of accused No.1 sat on "Dharna or protest" against accused No.1 for the habit of outraging the modesty of woman.
- vi) Accused No.1 used to call the complainant in his chamber beyond the scheduled office time, weekends and holidays alone without any work.
- vii) He also directed the complainant to make tour with male employees.
- viii) The accused persons induced the complainant to make false allegations against some of the employees who lodged complaints against them.
- ix) They threatened her to remove from the position as head of the department, Surface and Field Robotics Laboratory.
- x) Finally the accused persons removed the complainant and transferred her to a non-existent and imaginary unit namely, Centre of Excellence on Mechatronics.
- xi) They tried to manipulate office records by preparing fake Memorandum of Understanding and declared that a Centre of Excellence on Mechatronics has been developed.
- xii) They hatched criminal conspiracy against the complainant by fabricating a letter under the name of Somnath Mahato seeking sensitive information.

xiii) They started issuing show cause notice based on that pseudonymous letter by Somnath Mahato.

xiv) The accused persons made false allegation against the complainant that she had collected cheques from the Block Office.

xv) They fabricated another false document in the name of Dr. S.R Debbarma against the complainant and hatched criminal conspiracy against her by fabricating the said letter.

xvi) They tried to collect cheques by sending some other person in the Block Development Office.

xvii) The accused persons tried to implicate the complainant in a criminal case being Durgapur P.S Case No.548 of 2018 in which it was found after investigation that the complainant was not involved.

xviii) Some false documents were created by the accused persons and used as a statement under Section 161 of the Cr.P.C in connection with a criminal case.

xix) The accused persons have hatched up conspiracy to deprive her from her promotion and remove her from service.

xx) The accused persons have forged the ACR/PMS/evolution report and removed the actual marks obtained by the complainant from the ACR report.

xxi) The accused persons spread rumours against her insulting her modesty.

xxii) They started to harass her when the complainant filed an appeal before the competent authority at the Headquarter against them.

xxiii) They tried to steal the scientific knowhow of the complainant's invention on "Amphibian Robot" technology.

xxiv) The complainant received a threatening letter from the accused persons when a piece of stone covered by a paper containing threat of dire consequences was thrown to her residence directing her to effect amicable settlement with the accused persons and to work as per the direction of the accused persons.

4. It is submitted by Mr. Sudipto Moitra, learned Advocate for the petitioner that the petition of complaint is a glaring instance of frivolity. The allegations made by the complainant which have been summarised hereinbefore does not contain any criminal offence and thus, is liable to be quashed. Even assuming that the accused persons exploited the employees by making legitimate demands and threatened them to transfer if they refused to comply with their legitimate demands, the accused persons are liable for departmental proceeding. The complainant made some bald allegation to the effect that the accused persons used to make derogatory and sexist remark against the woman employee. They are in the habit of outraging modesty of women. The petitioner No.1 used to call the opposite party No.2 in his chamber and made her to sit without any work. On the basis of such general allegations without mentioning specifically the date,

time and manner of occurrence do not constitute any criminal offence.

5. It is further submitted by Mr. Moitra that the complainant was aggrieved by her transfer from one department to another department. According to her the said department is a non-existent entity. If the complainant was wrongfully transferred from one department to another department by the petitioner No.1 in discharge of his official duties, no criminal liability can be attributed to the accused. It is further submitted by Mr. Moitra that indisputably all the incidents barring the incident of throwing stone in the house of the uncle of the complainant, took place within the jurisdiction of Durgapur. Only to create the jurisdiction of Calcutta, a story of throwing stone with a life threatening letter wrapped on it was manufactured. It is submitted by Mr. Moitra that the incident dated 26th August, 2021 was not even prima facie proved before the learned Magistrate. The learned Magistrate did not think it proper to refer the complaint for inquiry under Section 202 of the Cr.P.C by the police. On the other hand, the learned Magistrate prima facie held that some incident took place on 26th August, 2021 and took cognizance of offence thereafter issued process against them. It is pointed out by the learned Advocate for the petitioners that jurisdiction of a particular court cannot be created in the manner by which the learned Additional Chief Metropolitan Magistrate took cognizance of offence on the basis of a court complaint under Section 190(1)(b) of the Cr.P.C and the order of issuing process by the learned Metropolitan Magistrate without making an enquiry as to the truthfulness of the allegation.

6. Mr. Moitra further submits that the complainant has alleged that on 26th August, 2021 a stone wrapped with a paper was thrown to the house of her uncle. The said paper contained dire threats to the complainant. However, the uncle of the complainant in whose house the stone was thrown did not come forward to lodge a complaint. The learned Magistrate did not ask police to inquire into the veracity of such allegation by recovery and seizure of the stone and threatening letter wrapped with the stone. It has not been even prima facie brought to the record of the case that the alleged threatening letter was thrown by the accused or by any person employed by him.

7. According to Mr. Moitra before issuance of process the Magistrate must be satisfied that there exists prima facie ground that the accused has committed the offence complained of. Without such objective, satisfaction that there exists strong suspicion against the accused and the accused should be brought under trial, the learned Magistrate is not entitled to issue process against the accused.

8. Referring to a Full Bench decision in the case of Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology & Ors. reported in (2002) 5 SCC 111, it is submitted by Mr. Moitra, learned Counsel on behalf of the petitioners that CSIR is an organization well within the range of article 12 of the Constitution of India and therefore is an organ of the State. It is submitted by Mr. Moitra that Section 197 of the Cr.P.C affords protection to a public servant, not removable from his office save by or with the sanction of the government against any offence alleged to

have been committed by him while anything is done or purported to be done in the discharge of his official duty. The allegation made by the complainant that the accused persons threatened her to remove from the position of Head of the Department, Surface and Field Robotics Laboratory or that she was illegally transferred to a non-existent and imaginary unit, namely, Centre of Excellence of Mechatronics of that the petitioners manufactured and fabricated some documents to use them against the complainant or that they tried to receive the cheques from Block Development Officer or that they deleted the marks obtained by the complainant in her annual confidential report etc are all acts purportedly done by the petitioner in discharge of their official duties. Even assuming that the said incidents constitute offence under any of the penal provisions of the IPC or other statute, it was necessary for the complainant to take prior sanction against the petitioners before lodging complaint against them.

9. Mr. Moitra further submits that in view of the judgment by the Hon'ble Supreme Court in Visakha's case and subsequent promulgation of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 the complainant could have lodge a complaint before the Sexual Harassment Committee of her office. But she never made any such complaint against the petitioners. On the contrary she has lodged complaint against them without specifying any incident in support of her allegation with regard to the offence of outraging modesty.

10. Reference has been made by Mr. Moitra to a Supreme Court decision in the case of GHCL Employees Stock Option Trust vs. Kranti Sinha reported in (2013) 4 SCC 505, to submit that criminal law cannot be set in to motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other materials on record. Coming to the instant case it is pointed out by Mr. Moitra that the complainant examined herself under Section 200 of the Cr.P.C with two other witnesses. Besides the complainant one Prabir Kr. Dutta who was examined under Section 200 Cr.P.C is the uncle of the complainant. He does not know anything except the alleged incident dated 26th August, 2021. The third witness who was examined under Section 200 Cr.P.C is one Ruddro Prasad Chatterjee who happens to be an employee of CSIR-CMERI, Durgapur. The complainant is his office colleague. Mr. Moitra placed initial statement of the complainant and the said Ruddro Prasad Chatterjee. All such allegations made against the petitioners referred to some incidents which they allegedly did in discharge of their official duties.

11. The petitioners have annexed an order passed in CRR 2972 of 2012 by a Coordinate Bench on 4th March, 2020 wherein a Coordinate Bench of this Court was pleased to hold that before issuance of process, the learned Magistrate should have taken note of Section 195 and 197 of the Code of Criminal

Procedure so far as the allegations relating to some of the offences are concerned, those are directly connected with the official act of the present petitioner. Therefore, this Court in the above mentioned report was pleased to set aside the order of issuance process against the petitioners and directed the learned Magistrate to apply his mind with regard to applicability of Sections 197 of the Code of Criminal Procedure.

12. Mr. Moitra next refers to another decision of the Hon'ble Supreme Court in Krishna Lal Chawla & Anr. vs. State of Uttar Pradesh & Anr. reported in AIR 2021 SC 1381. Paragraphs 15-23 of the aforesaid report are absolutely relevant and quoted below:-

"15. It is said that every trial is a voyage of discovery in which the truth is the quest. In India, typically, the Judge is not actively involved in 'fact-finding' owing to the adversarial nature of our justice system. However, Section 165 of the Indian Evidence Act, 1872 by providing the Judge with the power to order production of material and put forth questions of any form at any time, marks the influence of inquisitorial processes in our legal system. This wide-ranging power further demonstrates the central role played by the Magistrate in the quest for justice and truth in criminal proceedings, and must be judiciously employed to stem the flow of frivolous litigation.

16. All of this leads to one inescapable conclusion. That the Trial Judge has a duty under the Constitution and the CrPC, to identify and dispose of frivolous litigation at an early stage by exercising, substantially and to the fullest extent, the powers conferred on him. This Court has earlier emphasised on the high degree of responsibility shouldered by the trial Judges in All India Judges' Association v. Union of India, (1992) 1 SCC: (AIR 1992 SC 165). Ranganath Misra CJ (as he was then) writing for himself and two others stated:

"42. The trial Judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the proceedings in Court. On him lies the responsibility of building up of the case appropriately and on his understanding of the matter the cause of justice is first answered. The personality, knowledge, judicial restraint, capacity to maintain dignity are the additional aspects which go into making the Court's functioning successful."

17. Frivolous litigation should not become the order of the day in India. From misusing the Public Interest Litigation jurisdiction of the Indian courts to abusing the criminal procedure for harassing their adversaries, the justice delivery system should not be used as a tool to fulfil personal vendetta. The Indian judiciary has taken cognizance of this issue. In 2014, this Court elucidated as follows, the plight of a litigant caught in the cobweb of frivolous proceedings in Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470: (AIR 2014 SC 3241)

"191...One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst

the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his...”

While the Court’s ruling pertained to civil proceedings, these observations ring true for the criminal justice machinery as well.

We note, with regret, that 7 years hence, and there has still been no reduction in such plight. A falsely accused person not only suffers monetary damages but is exposed to disrepute and stigma from society. While running from pillar to post to find a lawyer to represent his case and arranging finances to defend himself before the court of law, he loses a part of himself.

18. As aforesaid, the trial courts and the Magistrates have an important role in curbing this injustice. They are the first lines of defence for both the integrity of the criminal justice system, and the harassed and distraught litigant. We are of the considered opinion that the trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Article 21 of the Constitution. In this context, the trial Judges have as much, if not more, responsibility in safeguarding the fundamental rights of the citizens of India as the highest court of this land.

19. As recorded by us above, the present controversy poses a typical example of frivolous litigants abusing court process to achieve their mischievous ends. In the case before us, the Magistrate was aware of the significant delay in the filing of private complaint by Respondent No. 2, and of the material improvements from the earlier NCR No. 158/2012 which were made in the private complaint. It was incumbent on the Magistrate to examine any possibility of abuse of process of the court, make further enquiries, and dismiss the frivolous complaint at the outset after judicial application of mind.

20. However, this was not done – the Magistrate issued process against the Appellants by order dated 4.04.2019, and this controversy has now reached this Court for disposal.

21. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilising the institution of justice for unjust means. Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends.

22. This Court's inherent powers under Article 142 of the Constitution to do 'complete justice' empowers us to give preference to equity and a justice-oriented approach over the strict rigours of procedural law (*State of Punjab v. Rafiq Masih (Whitewasher)*, (2014) 8 SCC 883: (AIR 2015 SC 1267)). This Court has used this inherent power to quash criminal proceedings where the proceedings are instituted with an oblique motive, or on manufactured evidence (*Monica Kumar (Dr.) & anr. v. State of Uttar Pradesh*, (2008) 8 SCC 781). Other decisions have held that inherent powers of High Courts provided in Section 482, Cr.P.C may be utilised to quash criminal proceedings instituted after great delay, or with vengeful or malafide motives. (*Sirajul & ors. v. State of Uttar Pradesh*, (2015) 9 SCC 201; *State of Haryana v. Bhajan Lal*, AIR 1992 SCC 604). Thus, it is the constitutional duty of this Court to quash criminal proceedings that were instituted by misleading the court and abusing its processes of law, only with a view to harass the hapless litigants.

23. In this Court's quest for complete justice, and to bring peace between the parties, who are fighting various litigations since 2006, we exercise our powers under Article 142 to quash all the litigations between the parties arising out of this incident."

13. That in view of the above observation of the Hon'ble Supreme Court was pleased to quash criminal proceedings instituted against the appellant under Article 142 of the Constitution.

14. Mr. Moitra, thus, concludes that the petition of complaint predominantly contains allegations against the accused persons that the complainant is the victim of vengeance by the accused persons. She was not given due recognition of her work. She was illegally transferred to a non-existent department. Her annual confidential reports were forged. She was compelled to make statement against her colleagues under the compulsion of the accused persons. The accused persons allegedly admitted to receive government money from the office of the Block Development Officer which was granted to the complainant for her project. All such so called illegal acts, if at all done by the accused persons, were done in discharge of their official duty. Therefore, sanction under Section 197 of the Cr.P.C was absolutely necessary. Secondly, the allegations against the accused No.1 that he used to make sexist remark to the women employees or that the wife of the accused No.1 protested against him for his sexist remarks have no leg to stand. Except general allegations, complainant failed to narrate any specific incident when they allegedly indulge in such illegal acts. It is also submitted by Mr. Moitra that the incident date 6th August, 2021 of throwing stone wrapped with paper containing threatening letter against the complainant has also not been prima facie established. Therefore, the petition of complaint is liable to be quashed.

15. Mr. Y.J Dastoor, learned Senior Counsel on behalf of the complainant submits that CSIR is a society registered under the Societies Registration Act. It is governed by the rules and regulations and by laws contained in the

memorandum of association. Rule 15 of the said Rules clearly states that the society shall be domain organisation and its functions shall include the following:

- i) Review the progress and performance of CSIR.
- ii) Give the police direction to the governing body.
- iii) Approve the annual report and the yearly account of CSIR.

16. It is submitted by Mr. Dastoor that the protection by way of sanction under Section 197 of the Cr.P.C is not applicable to the officers of government companies or the public undertakings, even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the government. It is further submitted by Mr. Dastoor referring to a decision of the Hon'ble Supreme Court in *Md. Hadi Raja vs. State of Bihar & Anr.* reported in (1998) 5 SCC 91 that "public servant" has not been defined in the Cr.P.C, but the term "public servant" is defined in Section 21 of the IPC which will have the same meaning in Criminal Procedure Code. The justification for the protection under Section 197 of the Code of Criminal Procedure lies in the public policy to ensure that official acts performed by a public servant do not lead to needless and vexatious prosecution of such public servant and it is desirable that it should be left to the government to determine the question as to whether a public servant should under particular facts and circumstance be prosecuted. With regard to the status of a corporation, it is held by the Apex Court in *Md. Hadi Raja's case* (supra) that the instrumentality and the agency of a corporate veil, for all intents and purposes may be held to be a third arm of the government and such instrumentality discharges the duties and functions which the Government intends to do. Such instrumentality or agency is none the less juridical person having a separate legal entity. Therefore, such instrumentality must be held to have an independent status distinct from the State and cannot be treated as a government department for all purposes.

17. Mr. Dastoor also refers to a decision in the case of *Bharat Sanchar Nigam Limited & Anr. vs. Pramod V. Sawant & Anr.* reported in (2019) 16 SCC 63. In paragraph 8 of the said report the Hon'ble Supreme Court observed as hereunder:-

"8. At the very outset, we are of the opinion that the question for grant of sanction for prosecution under Section 197, Cr.P.C. on the ground of being a 'public servant' is not available to appellants nos.3 and 4 on account of their ceasing to be employees of the Indian Telecommunication Service after their absorption in the appellant Corporation on 01.10.2000, prior to the complaint. The fact that their past service may count for purposes of pension in case of removal or dismissal by the Corporation or that administrative approval of the concerned ministry may be formally required before any punitive action will not confer on them the status of 'public servant' under the Cr.P.C."

18. Placing reliance on *Md. Hadi Raja's case*, it is submitted by Mr. Dastoor that

the Hon'ble Supreme Court held that the appellant No.3 and 4 being the employees of the corporation, the question of sanction under Section 197 of the Code of Criminal Procedure treating them to be "public servant" does not arise because of their absorption in the corporation. In fine, it was held by the Hon'ble Supreme Court that an employee of a government undertakings or a corporation are not public servants and protection under Section 197 of the Cr.P.C is not available to them. Accordingly, it is submitted by Mr. Dastoor that the ratio laid down in Pradeep Kr. Biswas (supra) is not at all relevant in view of the subsequent decision in BSNL's Case (supra).

19. Therefore, the learned Magistrate was well satisfied that protection under Section 197 of the Cr.P.C is not available to the accused. It is submitted by Mr. Dastoor that after issuance of process against the accused persons, they appeared before the trial court and filed an application for recalling of the order of issuance of bailable warrant of arrest against them. The said application was rejected by the learned Magistrate vide order dated 17th December, 2021. Therefore, it is contended by Mr. Dastoor that the accused persons submitted to the jurisdiction of the trial court. They did not challenge the order dated 22nd December, 2021 in view of which, bailable warrant was issued against the accused persons and the order dated 27th December, 2021 when the learned Magistrate rejected their prayer for recalling of the order of issuance of bailable warrant against them. Therefore, the instant revision challenging the order of taking cognizance and issuance of process against the accused persons is bad in law.

20. Mr. Dastoor next refers to the decision in N.K. Sharma vs. Abhimanyu reported in (2005) 13 SCC 213. In the aforesaid report, the issue that fails for consideration before the Hon'ble Supreme Court is whether a class-1 officer of the State Government (Haryana) deputed to work as Managing Director of Cooperative Society is entitled to protection under Section 197 of the Cr.P.C. It was held by the Hon'ble Supreme Court in paragraph 12 of the N.K. Sharma (supra) underlying object in enacting Section 197 Cr.P.C is to protect a public servant from a frivolous prosecution. The said provision, however, although may not be construed too narrowly, as was held in Shreekantiah Ramayya Munipalli vs. State of Bombay : 1955 (1) SCR 1177, whereupon the learned counsel for the Appellant placed reliance, cannot be interpreted liberally so as to bring within its purview other officers who are not so protected. In order to avail protection under Section 197 of the Code of Criminal Procedure a person must come within the definition of public servants as defined in Section 21 of the IPC. Thus, when service of a member of Indian Administrative Service is placed at the disposal of cooperative Stores Limited, a society registered under the Bombay Cooperative Societies Act, he was held not to be entitled to protection under Section 197 of the Cr.P.C. It is pointed out by Mr. Dastoor that N.K Sharma (supra) considered the Seven Judges' Bench decision in Pradeep Kr. Biswas (supra) and held that the appellant who was posted as Managing Director of a Cooperative Society, was not entitled to protection under Section 197 of the Cr.P.C. Mr. Dastoor also refers to

the decision in *K.N. Shukla vs. Navnit Lal Manilal Bhatt & Anr.* reported in AIR 1967 SC 1331 and submits that if once the Central Government has delegated its power to another authority with regard to appointment and removal of public servant, then for the purpose of Section 197 of the Criminal Procedure Code the public servant concerned will not be treated to be a public servant "not removable from his office except by or with the sanction of Central Government." It is contended by Mr. Dastoor that in the instant case the petitioners are not public servants within the meaning of Section 21 of the IPC. They are employees of an organization registered under the Societies Registration Act. Therefore, the petitioners are not entitled to get protection under Section 197 of the Cr.P.C.

21. Learned Senior Counsel on behalf of the petitioner further submits that the court of the learned Metropolitan Magistrate, Calcutta has no jurisdiction to try the case instituted on the complaint filed by the opposite party No.2. The incident dated 26th August, 2021 is part of the same transaction of several offences allegedly committed by the accused persons. The complainant was threatened with dire consequences if she failed to act under the direction of the petitioners. In order to prove the said incident the uncle of the complainant came to the court and deposed. This is not the stage to challenge the veracity of the statement of the uncle of the complainant. Veracity of the witness cannot be assailed in revision. Thus, the learned Magistrate correctly decided that the court had jurisdiction to try the offence complained of.

22. On the issue of the scope of inherent power of the High Court provided under Section 482 of the Code of Criminal Procedure, the learned Senior Counsel on behalf of the opposite party No.2 first refers to a decision in the case of *R.P Kapur vs. State of Punjab* reported in AIR 1960 SC 866. In the aforesaid report, the Hon'ble Supreme Court had the occasion to consider the scope of the inherent power of the High Court under Section 561(A) of the old Code of Criminal Procedure. It is held by the Hon'ble Supreme Court that the aforesaid Section states 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 process of any court or otherwise to secure the ends of justice. The inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. It is submitted by the learned Senior Counsel that the learned Magistrate on due consideration of the petition of complaint filed by the opposite party No.2 and the statement of the complainant and the witnesses on solemn affirmation issued process against the accused persons. The act of the learned Magistrate is well within the scope of his jurisdiction. By invoking Section 482 of the Code of Criminal Procedure, Magisterial act cannot be questioned.

23. On the same issue he also refers to another decision of the Hon'ble Supreme Court in the case of *Amit Kapoor vs. Ramesh Chander & Anr.* reported in (2012) 9 SCC 460. In the above report also it is observed by the Hon'ble Supreme Court that inherent power under Section 482 of the Cr.P.C being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically

provided for under other provisions of the Cr.P.C. Normally, the court may not invoke its power under Section 482 of the Cr.P.C where a party could have availed of the remedy. In the instant case the accused persons should surrender before the court of the learned Magistrate and ventilate their grievances at the time of consideration of charge. At the very inception of criminal proceeding the petitioners are not permitted to invoke Section 482 of the Code of Criminal Procedure.

24. On the similar issue the learned Senior Counsel refers to the decision in the case of Iridium India Telecom Ltd. Vs. Motorola Incorporated & Ors : (2011) 1 SCC 74, State of Karnataka vs. M. Devendrappa & Anr : (2002) 3 SCC 89, State of M.P vs. Surendra Kori : (2012) 10 SCC 155 and Padal Venkata Rama Reddy vs. Kovvuri Satyanarayana Reddy & ors. : (2011) 12 SCC 437.

25. I have heard the leaned Counsels for the parties. I have also carefully perused the materials on record as well as the decisions referred to by the learned Senior Counsels for the parties. Indisputably, the Council for Scientific and Industrial Research (CSIR) is autonomous society whose President is the Prime Minister of India. CSIR today is amongst the foremost and largest publicly funded scientific and industrial research organization in the World. Rules & Regulations and Bye-Laws of the CSIR states that the Prime Minister of India shall be the Ex-Officio President of the Society. The Director General shall be the Ex-officio Secretary of the society. The Director General and Members of the society are appointed by the President of India. Rule 12 specifically states that the Central Civil Services (Classification Control and Appeal) Rules and the Central Civil Services (Conduct) Rules, for the time being in force, shall apply, so far as it may be to the Officers and Establishment in the service of society subject to the following modifications that:-

(a) reference to the "President" & "Government Servant" in the Central Civil Services (Classification, Control and Appeal) shall be as reference to the "President of the Society" and "Officers & Establishment in service of the society" respectively;

(b) reference to "Government" & "Government Servant" in Central Civil Services (Conduct) Rules, shall be construed as reference to the "Society" & "Officer and establishments in the service of the Society" respectively.

26. Thus, it is absolutely clear that the Officers of the CSIR and its society organisations are appointed by the President and Central Civil Services (Classification, Control and Appeal) Rules and the Central Civil Services (Conduct) Rules are applicable to the officers and employees of the CSIR and its sister organisations.

27. Section 197 of the Cr.P.C offers protection to a public servant not removable from his office save by or with the sanction of the Government from being an accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. However, if he commits an

offence not connected with his official duty, he has no privilege.

28. In *Parkash Singh Badal & Anr. vs. State Of Punjab & Ors.* reported in (2007) 1 SCC 1, it is observed by the Hon'ble Supreme Court that the principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity under Section 197 of the Code of Criminal Procedure. It is not in dispute that the petitioner No.1 is the Director of Central Mechanical Engineering Research Institute (CMERI), a sister concern of CSIR. The petitioner No.2 is also an employee of CMERI, at Durgapur. They are appointed by the President of India. They are removable by the appointing authority. They are governed by the Central Civil Services (Classification and Control) Rules. From the Rules and Regulation of CSIR, the dominant role played by the Government of India in the Governing Body of CSIR is evident. The Director General who is ex-officio Secretary of the Society is appointed by the Government of India. [Rule 2 (iii)]. Furthermore, the members of the Governing Body who are not there ex-officio are nominated by the President and their membership can also be terminated by him and the Prime Minister is the ex-officio President of CSIR. By virtue of his office the Prime Minister is the President of the Society. Therefore, this Court does not have any scope to hold otherwise in derogation of the decision of the Hon'ble Supreme Court in *Pradip Kumar Biswas* (supra). It is also respectfully submitted that in view of peculiar composition of CSIR, decision of the Hon'ble Supreme Court in *Bharat Sanchar Nigam Limited* (supra) is not applicable in the instant case because CSIR is a corporation like that of BSNL.

29. In paragraph 3 of the instant judgment, I have clearly stated the allegations made out by the opposite party No.2 against the petitioners. Almost all the allegations except the allegation of throwing a threatening letter wrapped with a stone in the house of the uncle of the complainant constitute specific acts allegedly done by the petitioners in discharge of their official duties. Therefore, they are protected against such acts under Section 197 of the Code of Criminal Procedure.

30. The learned Magistrate failed to consider such aspect of the matter that prior sanction is necessary before lodging complaint against the petitioners. The learned Magistrate also failed to consider that the allegations of purported offence under Section 417/418/419/420/465/469 of the IPC read with Section 120B of the IPC were committed within the jurisdiction of the learned Additional Chief Judicial Magistrate at Durgapur. When the accused persons reside at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory to hold inquiry or investigation for the purpose of deciding whether or not there is sufficient ground for proceeding before issuance of process under

Section 202 of the Cr.P.C. The decisions in the cases of Vijay Dhanuka & Ors. vs. Najima Mamta & Ors. reported in (2014) 14 SCC 638 and Abhijit Pawar vs. Hemant Madhukar Nimbalkar & Anr. reported in (2017) 3 SCC 528 may be relied on in this regard.

31. In the instant case the learned Magistrate issued process without holding any inquiry under Section 202 of the Cr.P.C. Even if the case of the opposite party No.2 with regard to throwing of a stone in the house of her uncle with a threatening letter wrapped thereon is taken on its face value it is ascertained that there is absolutely no evidence connecting the petitioners with the said allegation.

32. For the reasons stated above, Criminal Proceeding being No.CN-809 of 2021 is liable to be quashed.

33. Accordingly, the instant revisional application is allowed on contest.

34. The Criminal Proceeding No.CN-809 of 2021 pending the learned Additional Chief Metropolitan Magistrate, Bankshall Court be quashed.