

(2014) 02 CAL CK 0062

In the Calcutta High Court

Case No : CRR No. 3954 of 2011 With CRAN No. 1306 of 2012

Mukta Mukherjee @ Mukhta Mukherjee and Another	APPELLANT
Vs	
State of West Bengal and Raj Kumar Mishra	RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 143, 323, 34, 354, 447

Citation : (2014) 02 CAL CK 0062

Hon'ble Judges : Ranjit Kumar Bag, J

Bench : Single Bench

Advocate : Kallol Mondal, Mr. Dipankar Mahata and Mr. Kisan Ray, Advocate for the Appellant; Milan Mukherjee, Mr. Biswajit Manna and Mr. B.N. Panda for Opposite Party No. 2, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

R.K. Bag, J.—This revisional application u/s 482 of the Code of Criminal Procedure, 1973 is preferred by the petitioners for quashing the proceedings being C. Case No. 42 of 2010 under Sections 500/34 of the Indian Penal Code, 1860 pending before the Court of Learned Judicial Magistrate, 2nd Court, Purulia.

2. The background of filing the present revisional application is that on February 7, 2010 the petitioner No. 1 submitted one written complaint before the officer-in-charge of Purulia Town Police Station disclosing the fact that the opposite party No. 2, Shri Raj Kumar Mishra and his brothers and associates obstructed the labourers engaged by the petitioners for carrying out renovation work in the house purchased by them from the brother of grand-father of the opposite party No. 2. The petitioner No. 1 alleged in the said petition of complaint that the opposite party No. 2 and his associates abused the petitioners with filthy language, threatened them with dire consequences and assaulted the petitioner No. 1 by holding the tuft of her hair. The officer-in-charge of Purulia Town Police Station treated the said petition of complaint as FIR No. 21 of 2010 dated

February 7, 2010 under Sections 143/447/448/323/354/506 of Indian Penal Code, 1860. The Police investigated the case and submitted the charge sheet in due course against the opposite party No. 2 and his associates who are related with each other. The opposite party No. 2 and his associates contested the said criminal case which ultimately ended in acquittal. On 24.03.2010 the opposite party No. 2 filed a petition of complaint before the Court of Learned Chief Judicial Magistrate, Purulia against the present petitioners disclosing the fact that the present petitioners made false allegation against them before the officer-in-charge of Purulia Town Police Station and thereby Purulia Town Police Station Case No. 21 of 2010 dated 07.02.2010 was started against the opposite party No. 2 and others. The opposite party No. 2 has specifically stated in the said petition of complaint that the reputation of the opposite party No. 2 and his associates was lowered down in the eye and estimation of his friends, relatives and well-wishers due to their implication in the criminal case on false allegation. Accordingly, the opposite party No. 2 has filed the petition of complaint before the Court of Learned Chief Judicial Magistrate, Purulia against the present petitioners for issuing process under Sections 500/501/34 of Indian Penal Code and the same was registered as C. Case No. 42 of 2010. Ultimately, the said case was transferred to the Court of Learned Judicial Magistrate, 2nd Court, Purulia who issued process against the petitioners under Sections 500/34 of Indian Penal Code, 1860 and the petitioners appeared and surrendered before the Court of Learned Magistrate and were released on bail.

3. Mr. Kallol Mondal, Learned Advocate for the petitioners submits that the contents of the petition of complaint filed by the opposite party No. 2 against the petitioners before the Court of Learned Chief Judicial Magistrate do not disclose any offence under Sections 500/34 of Indian Penal Code, 1860. Mr. Mondal has pointed out that Learned Magistrate did not make any observation in the judgment of the criminal case started against the opposite party No. 2 and others that the statements made by the witnesses in the said case are false. By referring to Eighth Exception to Section 499 of Indian Penal Code, 1860, Mr. Mondal has urged before this Court that it is not defamation to prefer in good faith any accusation against any person before the lawful authority. On the other hand, Mr. Mukherjee Learned Advocate representing the opposite party No. 2 submits that the reputation of the opposite party No. 2 and the witness nos. 2 and 3 of the petition of complaint was lowered down in the eye and estimation of the friends and relatives due to their implication in the criminal case being FIR No. 21 of 2010 dated February 7, 2010 started at the instance of the petitioner No. 1, particularly when they have been harassed and ultimately acquitted of the charge in the said criminal case. However, Mr. Mukherjee, Learned Advocate for the opposite party No. 2 could not point out from the judgment of the criminal case arising out of FIR No. 21 of 2010 dated February 7, 2010 that the petitioners made any false allegation against the opposite party No. 2 or that the witnesses in the said criminal case gave any false evidence. None appears on behalf of the state to make any submission in this case.

4. Relying on the decisions of the Supreme Court of India in the case of Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, and in the case of "Union of India V. Prakash P. Hinduja" reported in 2003 SCC (Cri.) 1314, this Court can summarize the proposition of law for quashing the criminal proceedings by exercising inherent power u/s 482 of the Code of Criminal Procedure, 1973 as follows:

- i) Where the allegations made in the FIR or complaint even if they are taken at their face value and accepted in entirety do not prima facie constitute any offence against the accused;
- ii) 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 against the accused, and
- iii) Where there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the Act concerned to the institution and continuance of the proceedings.

5. In the instant case, the opposite party No. 2 filed the petition of complaint against the petitioners before the Court of Learned Chief Judicial Magistrate, Purulia on the ground that the reputation of the opposite party No. 2 was lowered down in the eye and estimation of his friends and relatives when the petitioner No. 1 lodged FIR No. 21 of 2010 dated February 7, 2010 before the officer-in-charge of Purulia Town Police Station against the opposite party No. 2 and his relatives and associates. On consideration of the contents of the petition of complaint filed by the opposite party No. 2, I do not find any averment that the allegations made by the petitioner No. 1 against the opposite no. 2 and his associates with regard to the incident of February 6, 2010 is false. Nor do I find from the averments made in the petition of complaint that the action on the part of the petitioner No. 1 to report the incident dated February 6, 2010 to the officer-in-charge of Purulia Town Police Station is mala fide. It is the duty of any law abiding citizen to report any incident of crime to the police when the law abiding citizen is abused or assaulted or threatened by others. Had the same incident been found to be false, the police would not have submitted the charge sheet against the present opposite party No. 2 and others. In view of the fact that the petitioner No. 1 preferred accusation against the opposite party No. 2 and others in good faith before the lawful authority i.e. the officer-in-charge of Purulia Town Police Station, the action of the petitioner No. 1 is covered under Eighth Exception to Section 499 of Indian Penal Code, 1860. Accordingly, the allegations made in the petition of complaint by the opposite party No. 2 before the Learned Chief Judicial Magistrate, Purulia in C. Case No. 42 of 2010, even if taken at their face value and accepted in entirety do not prima facie constitute any offence against the petitioners under Sections 500/34 of Indian Penal Code, 1860. The acquittal of the opposite party No. 2 and others from the criminal case started at the instance of the petitioner No. 1 cannot give rise to any cause of action for defamation against the petitioners. I have already pointed out that the

contents of the petition of complaint being C. Case No. 42 of 2010 does not disclose any offence as alleged by the opposite party No. 2, particularly when the same is considered in the background of the criminal case started against the opposite party No. 2 and others at the instance of the petitioner No. 1. Accordingly, this is a fit case where the court should invoke inherent power u/s 482 of the Code of Criminal Procedure, 1973 to quash the criminal proceedings being C. Case No. 42 of 2010 in order to prevent abuse of the process of the court and also for the ends of justice.

6. The natural corollary of my entire above observation is that the criminal proceedings being C. Case No. 42 of 2010 started against the present petitioners by the opposite party No. 2 is liable to be quashed. Hence, the criminal proceedings being C. Case No. 42 of 2010 pending before the Court of Learned Judicial Magistrate, 2nd Court, Purulia is quashed. The revisional application and the connected application are, thus, disposed of.

Let a copy of this judgment be sent down to the learned Court below forthwith for favour of information.

Urgent Xerox certified copy of this judgment, if applied for, be given to the parties expeditiously after compliance with all necessary formalities.