
(2023) 10 CAL CK 0003
In the Calcutta High Court
Case No : Criminal Revision No. 1254 Of 2023

Pujan Sen Gupta

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 03-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 120B, 403, 406
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 161, 482
Passports Act, 1967 — Section 10(3)(e)

Citation : (2023) 10 CAL CK 0003

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Ayan Bhattacharjee, Rudra Prasad Sinha, Shaila Afrin, Rafat Jahan, Jayita Banerjee, Zareen N. Khan, Md. Kutubuddin

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing of F.I.R. and subsequent proceedings therein in respect of Survey Park Police Station Case No. 17 dated 17.01.2017 under Sections 120B/403/406 of the Indian Penal Code, 1860 pending before the Learned 8th Judicial Magistrate at Alipore.
2. The petitioner's case is that the petitioner no.1 is aged about 67 years and is the paternal uncle of the defacto-complainant in Survey Park, P.S. Case No. 17 of 2017.
3. The petitioner's sister-in-law namely Anima Sengupta is the mother of the defacto Complainant. She died in the year 2015 and is one of the executants of the Will made by the deceased mother of complainant, dated 28.01.2010.
4. The allegations in the case as mentioned in the charge sheet, being no. 27 of 2019 dated 31.03.2019 are as follows:-

".....that in the month of July, 2008 the FIR named persons entered into a criminal conspiracy and deceitfully misappropriated the property entrusted to the mother (since deceased) of the complainant by way of siphoning the fund of amount of Rs. 6,25,000/- and Gold Jewelleries worth Rs. 7,30,000/- in the month of November, 20 to 24.04.2015. The deceased mother of the complainant used to reside in the two flats at Santoshpur, Kolkata – i.e. on the 1st Floor, 9E, 5th Street, Modern Park, Kolkata – 700075, where the FIR named accused persons being the relatives used to visit and fraudulently induced the mother of the complainant to deliver the properties to them on the plea of loan but they misused the same for their ulterior motive and from time to time the accused persons have withdrawn the money from UCO Bank, Santoshpur Branch, A/C No. 17700100002864 which was in the name of the mother of the complainant but funded by the complainant. The accused no. 3 conspired with accused no.1 and 2 and passed instruction upon accused no. 1 and 2 to take illegal possession of the joint property located at Mumbai (Flat no. 27, 3rd Floor, LIC Colony, A/6/5, Prasanna Prabha Apartment, Borivali, West Mumbai – 400 092) and promised the complainant that he will return the money after few months, but he intentionally has not refunded the same. In the mean time on 7th May, 2015 the mother of the complainant passed away at Pune and taking the advantage of relationship, all the FIR named accused persons misappropriated the joint property illegally and unlawfully, depriving the share of the complainant for their wrongful gain and wrongful loss. When the complainant asked them to return her due money, jewellerys and properties, they threatened her with dire consequences and asked her not to demand for the share. During enquiry the complainant also came to know that the accused persons 1 and 2 submitted a forged and manufactured nomination from in respect of the Flat at Mumbai dated 27.09.2015 although her mother died on 07.05.2015 and used the same as genuine for their ulterior motive. Thus they have committed cheating and forgery....."

5. It is stated that the FIR was initiated in the year 2017 but the petitioner and the other accused person's mother, had made her last Will in favour of the accused person on 28.01.2010.

6. That no such allegation of breach of trust or misappropriation of property has ever been recorded by the deceased person, in any of the police station nor has any General Diary ever been recorded by her.

7. That it is after the demise of the mother of the complainant, when it came to the knowledge of the complainant that the deceased mother has distributed the property and the ancestral jewellery amongst her children including the complainant. She became furious and lodged a false FIR against the petitioner and the other accused persons as she wanted the entire property.

8. A Title Suit being T.S. No. 95 of 2016 has also been filed against the other accused persons of the Survey Park P.S. Case being No. 17 of 2017 by the complainant, which is pending before the Ld. Civil Judge (Sr. Div.) at Alipore in

which the Ld. Court on 03.06.2016 has directed that since there is a chance of deprivation of right of co-sharer ship in the suit property, on being faced by multiplicity of proceeding, in the event of a encumbering and or transferring and or parting with the suit property to any third party, would cause irreparable loss and injury to the petitioner, the Ld. Court was pleased to pass an order, directing the opposite party not to create any third party interest in respect of the suit property for a limited period from the date of the knowledge of the injunction. After obtaining the said order and without disclosing the facts that any such injunction order had already been obtained by the complainant or that a civil dispute and suit is pending in respect of the said property, the criminal case was filed.

9. Mr. Ayan Bhattacharjee, learned counsel for the petitioner has submitted that in the above proceeding being Survey Park P.S. Case no. 17 of 2017 dated 17.01.2017 the entire criminal proceeding is manifestly attended with malafide and the proceeding is maliciously instituted with the ulterior motive for wreaking vengeance on the accuseds.

10. The petitioner is one of the executants of the last Will made by Anima Sengupta being the mother of the complainant and has no share and or interest in any of the property(ies) belonging/left behind by/to the said testator.

11. The petitioner has been entrusted by his Sister-in-law namely Anima Sengupta being the mother of the complainant as one of the executants in her last Will and accordingly the petitioner has filed a Probate Application before this Hon'ble Court being PLA 96/2017 which is pending and the petitioner without any interest in any of the property of the testator of the Will, while doing his duty as one of the executants of the Will, has been a victim of the grudge and ill-motive of the complainant to obtain the properties which were not devolved onto her by her deceased mother.

12. That the complainant had even sent a legal notice to the Co-operative society of the scheduled property in the registered Will objecting on the transfer of the ownership of the property. The society namely Prasanna Prabha Co-operative Housing Society Limited through their Ld. Advocate Sri G.V. Nayak expressly stated that the name change had occurred, because Mrs. Anima Sengupta while she was alive nominated her flat in favour of Mr. Paul Sengupta on 17.01.2009 and therefore till the time the probate of the Will is granted, such Mr. Paul Sengupta will have all such rights and such rights will cease to exist only if the contrary is proved in the probate court. Such recording of the flat was done as per the nomination given by the deceased mother of the complainant.

13. The petitioner is completely innocent and in no way connected with the commission of the alleged offence and has been falsely implicated in the instant case.

14. The petitioner also received one show cause notice from the Regional Passport Office, Kolkata through the Superintendent Sri. Angshuman Datta

asking why his passport bearing No. T2235706 should not be impounded pursuant to the pending criminal proceeding under Survey Park Police Station Case No. 17 dated 17.01.2017 pending before the Ld. 8th ACJM at Alipore. Thereafter, the Regional Passport Officer through its Senior Superintendent Sri. Anshuman Datta communicated an order dated 14.01.2020 to impound the passport of the petitioner being passport no. T2235706 under Section 10(3)(e) of the Passports Act, 1967. The petitioner accordingly surrendered physically before the Superintendent.

15. That on a prima facie examination of the complaint and the materials therein, it would show that no case whatsoever is made out herein against the petitioners and as such, the instant proceeding is liable to be quashed.

16. Supplementary affidavit has been filed in support of the documents filed.

17. Ms. Zareen N. Khan, learned counsel for the State has placed the case diary along with the memo of evidence.

18. In spite of due service there is no representation on behalf of the opposite party no.2.

19. From the materials on record and the case diary it appears that:-

i) The mother of the complainant left behind a Will dated 28.01.2010 of which the petitioner is the executor.

ii) One of the attesting witnesses has also supported the petitioner in his statement recorded under Section 161 of Cr.P.C.

iii) It is on record that the complainant has filed a Civil Suit being T.S. no. 95/2016 pending before the Court of the Learned Civil Judge (Sr. Div.), Alipore, against the petitioner in respect of the property of her mother, which she bequeathed.

iv) The petitioner's specific case is that he is only the executor of the Will and no property whatsoever has been bequeathed to him.

v) PLA 96/2017 has been preferred before the High Court for probate of the Will, executed by the mother of the complainant.

20. Thus, from the materials on record, the ingredients required to constitute the offence alleged under Sections 120B/403/406 IPC are clearly absent in this case, as admittedly there is a Civil Suit filed by the complainant against the petitioner and the property involved is subject matter of the Will in respect of which probate has been prayed for.

21. There is no element of criminal breach of trust between the parties as there was no entrustment by the complainant in favor of the petitioner.

22. From the materials on record it is clear that the dispute between the parties is civil in nature and a suit with an order of status quo is also in force in respect

of both the parties is also pending before a Civil Court prior to filing of the present criminal case.

23. The Supreme Court in several precedents has discouraged such proceedings initiated by the complainant only to harass the other party. Some of the rulings are as follows:-

a) M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006 (Para 8, 9, 10).

b) Birla Corporation Ltd. vs Adventz Investments and holdings, (Criminal Appeal No. 877 of 2019) (Para 86).

c) Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021) (Para 37, 41, 42).

d) R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022 (Para 17).

e) Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023 (Para 21, 24).

24. In Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022), the Supreme Court held:-

"15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369 decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:

"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves 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 the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

"7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to

continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 which is to the following effect :

"102. (7) Where a criminal proceeding is manifestly attended with mala fides 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." Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. The exposition of law on the subject relating to the exercise of the extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in *State of Haryana and Others v. Bhajan Lal and Others*, 1992 Supp.

(1) 335 as under :

"102. In the backdrop of the interpretation of the various relevant provisions of the Code 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 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though 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 of myriad kinds of cases wherein such power should be exercised.

(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 concerned Act (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 concerned Act, 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."

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others*, 2021 SCC Online SC 315."

25. The present case falls under category 1 and 3 of Para 102 of Bhajan Lal (Supra).

26. The revisional application being CRR 1254 of 2023 is allowed.

27. The proceedings in Survey Park Police Station Case No. 17 dated 17.01.2017 under Sections 120B/403/406 of the Indian Penal Code, 1860 pending before the Learned 8th Judicial Magistrate at Alipore, is quashed.

28. All connected applications, if any, stands disposed of.

29. Interim order, if any, stands vacated.

30. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

31. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.