

(2024) 02 CAL CK 0016

In the Calcutta High Court

Case No : Criminal Revision No. 3332 Of 2016, 939 Of 2020

Rahul Sinha @ Biswajit Sinha

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 06-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 21, 22, 226
Indian Penal Code, 1860 — Section 120B, 147, 148, 149, 153A, 153B, 157, 158, 186, 307, 325, 326, 332, 333, 353, 379, 427, 435, 447
Prevention of Damage to Public Property Act, 1984 — Section 3, 4
West Bengal Maintenance of Public Order Act, 1972 — Section 9, 10
Explosive Substances Act, 1908 — Section 3, 4
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482

Citation : (2024) 02 CAL CK 0016

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

Bench : Single Bench

Advocate : Sekhar Kumar Basu, Moyukh Mukherjee, Arijit Bakshi, Suman De

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing of the proceedings being:-

(a) Suti Police Station Case No. 379/12 dated 31.08.2012 under Sections 147/148/149/ 447/ 186/ 353/ 332/ 333/ 427/325/ 326/ 307/ 435/ 379 of the Indian Penal Code and Section 3/4 of Prevention of Damage to Public Property Act, read with Section 9/10 of the Maintenance of Public Order Act, pending before the Court of the Learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad (corresponding to G.R. Case No. 1222/12).

(b) Suti Police Station Case No. 380/12 dated 31.08.2012 under Sections 147/148/149/ 447/ 186/ 353/ 332/ 333/ 427/ 325/ 326/ 307/ 435/ 379 of the Indian Penal Code with Section 3/4 of Prevention of Damage to Public Property Act, read

with Section 9/10 of the Maintenance of Public Order Act, pending before the Court of the Learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad (corresponding to G.R. Case No. 1223/12).

2. FACTS:-

The present case against the petitioner has been initiated on the basis of a written complaint filed by the opposite party no. 2, Block Development Officer of Block Suti-I, alleging that:-

One Swadhin Ghosh, President, Suti-I, local Committee of Bhartiya Janata Party prayed for a meeting (on deputation) with the BDO, Suti -I, on 31.08.2012, at 3pm. The BDO, Suti -I, received the said prayer in his office, however, no permission was granted. None of the members of the said political party met the Block Development Officer, informing him or obtaining any permission for constructing a pandal within the office premises. That no permission was obtained from the competent authority for use of microphone. That people started gathering at the Block premises, from 1 pm, and the meeting formally started at about 1.30 pm. At that time, more or less 1000 persons assembled at the said spot. It was further alleged that, the local leaders, namely, Sasthi Ghosh, Anamitra Banerjee, and the petitioner, along with one Subhas Mondal, reached the said pandal and resumed the meeting. The petitioner, who is holding the post of president, Bhartiya Janata Party, West Bengal, delivered his speech for about 20 minutes, and at about 2.20 pm, he got down from the stage. At that time, the mass assembled on the spot, started flinging stones, bricks, and bombs towards the said officers and office building. The petitioner left the said spot in the mean time. The Block Development Officer, allegedly, tried his best to control the unruly mob and requested them to keep peace. The staff of the said office closed all doors and windows of the said office and tried to escape. Thereafter about 40-50 persons, who were armed, broke into the said office building and destroyed all the furnitures and other Government properties, as well as burnt the police vehicles. It was also alleged that the unruly mob, became violent and attacked Government officials as well as police personnels, with bombs, lathies, bombs etc.

3. On the basis of the aforesaid complaint, Suti Police Station Case No. 379/12 dated 31.08.2012, under Sections 147/ 148/ 149/ 447/ 186/ 353 /332 /333 /427 /325 /326 /307 /435 /379 of the Indian Penal Code read with Section 3/4 of the Prevention of Damage to Public Property Act read with Section 9/10 of the Maintenance of Public Order Act, was registered for investigation against the petitioner and other co-accused persons (hereinafter referred to as the first FIR).

4. The petitioner had to suffer further ignominy and harassment, when it was brought to his knowledge that after the receipt of the aforementioned case, and in respect of the selfsame facts and allegations, another case was registered for investigation against the petitioner herein.

5. On enquiry by the petitioner it was revealed that one Rajat Das, Sub Inspector of Police, Inspector in Charge of Ahiron, lodged a complaint with the Officer in Charge of Suti Police Station, inter alia alleging:-

On 31.08.2012, at about 12.00 hrs when the complainant along with his force were performing their duty at the Office of the Block Development Officer, Suti-I, where there was a schedule of deputation, by the Bhartiya Janata Party in protest of construction work of Murshidabad Centre of Aligarh Muslim University and other demands, there was a gathering of about 1000 supporters and a stage was constructed inside the premises of Suti-I, C-Block Office. The meeting started at about 13.00 hrs under the leadership of Sasti Ghosh, Swadhin Ghosh, Anmitra Banerjee, Ashok Misra, Badal Das, Madan Ghosh, Gayanati Ghosh, Ajay Ghosh, Kalu Ghosh and others.

At about 2 pm, all of a sudden, the petitioner, and one Subhas Mondal arrived at the said spot and started their speech. That as a result of the said speech, the said mob, became violent and started flinging bricks at the Office of the Block Development Officer. The said mob started hurling bombs, at the police party due to which five police personnels sustained grievous injury on their person. The unruly mob set the police vehicle ablaze. The said mob also destroyed furniture and other Government properties. The said mob snatched away police lathis, and when the petitioner delivered his speech, he categorically stated that the boundary wall of the Aligarh Muslim University should be broken, as it was only constructed for the Muslim community. Such words, allegedly, incited the mob and they started pelting stones at the said office.

6. On the basis of the aforesaid complaint, Suti Police Station Case No. 380/12 dated 31.08.2012 under Sections 147/ 148/ 149/ 447/ 186/ 153A/ 153B/ 157/ 158/120B /353 / 332 /333 /427/ 325/ 326/ 307/ 435/ 379 of the Indian Penal Code read with Section 3/4 of the Prevention of Damage to Public Property Act, read with Section 9/10 of the Maintenance of Public order read with Section 3/4 of the Explosive Substances Act, was registered for investigation against the petitioner herein and other co-accused persons.

7. The investigating agency completed its investigation in connection with Suti Police Station Case No. 379/12 dated 31.08.2012, and submitted its report in final form being Charge Sheet No.1/13 dated 17.01.2013 under Sections 147 /148 /149 /447 /186 /353 /332 /333/427 /325 /326 /307 /435 /379 of the Indian Penal Code, against the petitioner and other co-accused persons.

8. Similarly the investigation in connection with the other case being Suti Police Station Case No. 380/12 dated 31.08.2012, also continued, and upon completion of investigation the investigating agency was pleased to submit Charge Sheet being Charge Sheet No. 128/13 dated 30.04.2013 under Sections 147/ 148/ 149/ 447/186 /353 /332 /333 /427 /325 /326 /307 /435 /379 of the Indian Penal Code read with Section 3/4 of PDPP Act, read with Section 9/10 of the MPO Act.

9. The petitioner herein has been made an accused in two successive FIRs with regard to the selfsame incident, pertaining to the selfsame allegations. Thus it is submitted that the filing of the second FIR in this case, is a clear infringement of the fundamental right of the petitioner enshrined in Article 21 of the Constitution of India.

10. Hence the two revisions with a prayer for quashing of the said proceedings.

11. The following judgements have been relied upon by the petitioners:-

i) T.T. Antony vs State of Kerela and Ors., (2001) 6 SCC 181.

ii) Babubhai vs State of Gujrat and Ors., (2010) 12 SCC 254.

iii) Amitbhai Anichandra Shah vs Central Bureau of Investigation, (2013) 6 SCC 348.

12. Admittedly both the cases arise out of the same incident as alleged, one by the local B.D.O. and by the Inspector-in-charge.

13. From the materials on record including the case diaries in respect of both the cases, the following facts are evident:-

i) The written complaint filed by the B.D.O. Suti-I, shows that the president of the local committee of a political party prayed for a meeting on a deputation.

ii) The B.D.O. received the said prayer, but no permission was given.

iii) But a pandal was put up. About 1000 persons gathered at the meeting, which started at 1.30 p.m.

iv) Local leaders including the petitioner reached the place of occurrence and the petitioner gave his speech for about 20 minutes and got down from the stage at about 2.20 p.m. and left the place.

v) It was then that the mass which had gathered there allegedly threw stones, bricks, bombs at the office building. The door of the office was broken by 40-50 armed persons and on entering they destroyed furnitures and other government properties which include 3 motor cycles, a police vehicle and one hired vehicle. They took away registers. They attacked government officials and police personnel, who sustained injuries. The mob also allegedly destroyed the B.D.O.'s official quarter.

vi) On being chased by the police and firing of gas shells, the mob dispersed at 4.15 p.m.

vii) Charge sheet in Suti P.S. Case No. 379/12 has been filed under Sections 147 /148 /149 /447 /186/ 353 /332 / 333/ 427 /325 /326 /307 /435 /379 of the Indian Penal Code against the petitioner and other accused persons.

viii) Charge sheet in Suti P.S. Case No. 380/12 has been filed under Sections 147 /148 /149 /447 /186 /353 /332 /333 /427 /325 /326 /307 /435 /379 of the

Indian Penal Code read with Section 3/4 of PDPP Act, read with Section 9/10 of the MPO Act.

14. Admittedly both the cases arise out of the same incident. The offences alleged are on same facts.

15. In *Tarak Dash Mukherjee & Ors. vs State of Uttar Pradesh & Ors.*, in Criminal Appeal No. 1400 of 2022 (arising out of SLP (Criminal) No. 503 of 2020), on August 23, 2022, the Supreme Court held:-

"12. If multiple First Information Reports by the same person against the same accused are permitted to be registered in respect of the same set of facts and allegations, it will result in the accused getting entangled in multiple criminal proceedings for the same alleged offence. Therefore, the registration of such multiple FIRs is nothing but abuse of the process of law. Moreover, the act of the registration of such successive FIRs on the same set of facts and allegations at the instance of the same informant will not stand the scrutiny of Articles 21 and 22 of the Constitution of India. The settled legal position on this behalf has been completely ignored by the High Court."

16. The complainant in the two cases are two government officials.

17. In the written complaint, it has been categorically stated that the petitioner gave a speech for about 20 mins, and then left the place.

18. Admittedly the alleged offences were committed after he left the premises.

19. There are about 39 accuseds in this case.

20. There is no allegation that the petitioner was part of the mob.

21. As such none of the ingredients required to constitute the offences alleged, are prima facie present in respect of the petitioner herein and allowing the cases to continue will be an abuse of process of law.

22. In *Mahmood Ali & Ors. vs State of U.P. & Ors.*, in Criminal Appeal No. 2341 of 2023, on August 08, 2023, the Supreme Court has held:-

"11. The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. The parameters are:-

"(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.”

We are of the view that the case of the present appellants falls within the parameters Nos. 1, 5 and 7 resply of Bhajan Lal (supra).

12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the

stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

13. In *State of Andhra Pradesh v. Golconda Linga Swamy*, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:-

"5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial

process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....”

(Emphasis supplied)”

23. CRR 939 of 2020 and CRR 3332 of 2016 are accordingly allowed.

24. The proceedings being Suti Police Station Case No. 379/12 dated 31.08.2012 under Sections 147 /148 /149 /447 /186 /353 /332 /333 /427 /325 /326 /307/ 435/ 379 of the Indian Penal Code with Section 3/4 of Prevention of Damage to Public Property Act, read with Section 9/10 of the Maintenance of Public Order Act, (corresponding to G.R. Case No. 1222/12) and the proceedings being Suti Police Station Case No. 380/12 dated 31.08.2012 under Sections 147 /148 /149 /447 /186 /353 /332 /333 /427 /325 /326 /307 /435 /379 of the Indian Penal Code with Section 3/4 of Prevention of Damage to Public Property Act, read with Section 9/10 of the Maintenance of Public Order Act, pending before the Court of the Learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad (corresponding to G.R. Case No. 1223/12) are hereby quashed in respect of the petitioner Rahul Sinha @ Biswajit Sinha.

25. All connected applications, if any, stand disposed of.

26. Interim order, if any, stands vacated.

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

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