

(2024) 02 CAL CK 0081

In the Calcutta High Court

Case No : Criminal Revision No. 1753 Of 2019, IA No. CRAN 1 Of 2019 (Old No. CRAN 3366 Of 2019)

Suman Biswas And Ors.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 23-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Indian Penal Code, 1860 — Section 34, 323, 341, 354, 354B, 506

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 161, 164, 482

Citation : (2024) 02 CAL CK 0081

Hon'ble Judges : Ajay Kumar Gupta, J

Bench : Single Bench

Advocate : Sekhar Kumar Basu, Antarikhya Basu, Sayan Mukherjee, Ranabir Ray Chowdhury, Mainak Gupta

Final Decision : Allowed

Judgement

Ajay Kumar Gupta, J

1. This instant Criminal Revisional application has been filed by the Petitioners / accused persons under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of proceedings of G.R. Case No. 1343/2018, pending before the Court of the Learned Additional Chief Judicial Magistrate, Serampore, Hooghly, arising out of Chanditala Police Station Case No. 245/2018 dated 18th June, 2018, under Sections 341/354B/506/34 of the Indian Penal Code, 1860 and also praying for setting aside the order dated 7th February, 2019 passed by the learned Additional Chief Judicial Magistrate, Serampore, Hooghly in the aforesaid proceeding thereby taken cognizance against the petitioners on the basis of final report submitted being Charge Sheet No. 372/2018 dated 28.09.2018 under Sections 341/323/354/506/34 of the Indian Penal Code, 1860.

2. The factual matrix is relevant for the purpose of disposal of this case as under:

The Opposite Party No. 2 being an Assistant Teacher, Saint Stephen's School, Dankuni lodged in her individual capacity a complaint against the petitioners resulted an FIR being Chanditala Police Station Case No. 245/2018 dated 18.06.2018 punishable under Sections 341/354B/506/34 of the Indian Penal Code to the effect that the petitioner no. 1, Ex-Principal Saint Stephen's School, Dankuni forcibly outraged her modesty and tried to obtain her signature forcibly in the transfer order and also transferred her to other school and other accused persons have tortured her mentally by alleging falsely allegation and standby with the petitioner no. 1 and supported him. Whereas the contention of the Petitioners is that the allegation against the petitioners is out and out false, frivolous and concocted only to harass the Petitioners and counter blast of her transfer order.

3. Under the above circumstances, this case has come up before this Bench for disposal.

SUBMISSION ON BEHALF OF THE PETITIONERS:

4. Mr. Basu, learned Sr. Advocate appearing on behalf of the Petitioners submitted that the allegation is nothing but a retaliation to her transfer order dated 15.06.2018 issued as per the decision of the School Managing Committee wherein the petitioner no. 1 holds the post of Secretary and other petitioners being senior co-ordinators, informed the transfer of the de-facto complainant to Saint Stephen's School, Budge Budge. The said transfer order was issued after holding a meeting and finally decided by the School Managing Committee. Transfer order was issued and the same was communicated to her as such obtaining her signature forcibly on the transfer order is baseless and false allegation. The complaint lodged by the opposite party no. 2 is frivolous, malicious and grossly an abuse of process of law. Even after investigation, no sufficient materials collected against the Petitioners by the investigating officer. Investigating officer had surreptitiously jumped and filed charge sheet without sufficient materials against the petitioners/accused persons, who are respectable members of the society vide Charge Sheet No. 372/2018 dated 28.09.2018 under Sections 341/323/354/506/34 IPC.

5. It is further submitted that the learned Court below without considering the materials available in the charge sheet, erroneously and mechanically took cognizance on 07.02.2019 which is illegal and liable to be set aside. Learned advocate appearing on behalf of the petitioners also placed a reliance of a judgment reported in Thesima Begam and Ors. vs. State of Tamil Nadu (2020) 14 SCC 580 to support his contention that the investigating officer has filed charge sheet against all the accused persons mechanically and without application of mind though there is no sufficient material collected during the investigation. It is totally an abuse of process of law and to ensure the ends of justice, this proceeding is required to be quashed otherwise petitioners would suffer and prejudice greatly.

SUBMISSION ON BEHALF OF THE STATE:

6. On the other hand, learned Advocate appearing on behalf of the State produced the memo of evidence as well as Case Diary and submitted there are sufficient materials available in the CD to establish prima facie accusations of the de-facto complainant.

7. In spite of service of notice upon the Opposite Party No. 2, no one represented the opposite party no. 2/ de-facto complainant. No accommodation sought for.

DISCUSSIONS AND ANALYSIS BY THIS COURT

8. Having heard the rival submissions of the parties and on perusal of the application and annexure thereto and Case Diary, it reveals the opposite party no. 2 made accusations against Suman Biswas, Ex-Principal, Saint Stephen's School, Dankuni regarding outraging her modesty forcibly and tried to put pressure upon her to sign in the transfer order but this Court does not find any statement recorded under Section 164 of the CrPC of the victim. Her statement was recorded under Section 161 of the CrPC where she stated she was tortured mentally since long. Upon protest of such torture, Suman Biswas physically tortured and outraged her modesty and tried to obtain signature on the transfer order on 18.06.2018 at about 12 hrs. Such statement has not supported by any other witnesses rather other two witnesses i.e. Care Taker and Security Guard have stated the incident differently while recording their statements under Section 161 of the CrPC. They have stated that due to the transfer of de-facto complainant to another area, some disputes arose between the accused persons and the de-facto complainant. As such, she has lodged complaint against them. So, nowhere from the evidence collected by the IO it reveals there are sufficient materials and ingredients supported the offence punishable under Sections 341/323/354/506/34 of the IPC. Matter of transfer is wholly official matter. The disputes arose between the petitioners and the de-facto complainant when her transfer order was issued and on retaliation, she had lodged a complaint against the petitioners. The transfer order dated 15th June, 2018 was issued as per the decision taken by the School Managing Committee in its meeting and directed to transfer her to Saint Stephen's School, Budge Budge with effect from 19th June, 2019 and that order was communicated upon the de-facto complainant and same was duly received by the opposite party no. 2/de-facto complainant. Apart from that, other teachers more than 20 in numbers of Saint Stephen's School, Dankuni intimidated the officer-in-charge, Chanditala Police Station vide letter dated 07.09.2018 that the allegation is false and further de-facto complainant and her husband on contrary used abusive languages and threatened to the functionaries of the said school.

9. Under the above facts and circumstances, it indicates the complaint lodged by the de-facto complainant is on retaliation of her transfer order which is purely administrative order of Managing Committee and no sufficient materials collected during investigation against the petitioners as such the allegations manifest as

false and frivolous in attending facts and circumstances of the instant case and furthermore, it was instituted with the ulterior motive of wreak vengeance.

10. 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.”

11. We should also not forget, the Hon’ble Supreme Court recently in *Abhishek versus State of Madhya Pradesh* 2023 LiveLaw (SC) 731: 2023 INSC 779 has further held in paragraph No. 16 as under: -

“16. Of more recent origin is the decision of this Court in *Mahmood Ali and others vs. State of U.P. and others* (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the 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 of wreaking vengeance, then in such circumstances, the High Court owes a duty not be 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 as, 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, to try and read between the lines”

12. In the strength of above discussions and in view of observations made by the Hon’ble Supreme Court in the above cited judgments, this Court fully convinces and satisfies that this instant application has good merit and fit to quash the aforesaid proceeding.

13. Accordingly, continuation of such proceeding under Sections 341/323/354/506/34 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 proceedings.

14. Consequently, the revisional application being CRR 1753 of 2019 is hereby allowed without order as to costs. CRAN 1 of 2019 (Old No. CRAN 3366 of 2019) is also, thus, disposed of.

15. The proceeding in connection with G.R. Case No. 1343/2018, pending before the Court of the Learned Additional Chief Judicial Magistrate, Serampore, Hooghly, arising out of Chanditala Police Station Case No. 245/2018 dated 18th June, 2018, under Sections 341/323/354/506/34 against the petitioners, namely, Suman Biswas, Supriya Bhattacharya, Sonali Karmakar, Soma Roy (Ghosh) and

Monalisa Banik is hereby quashed and order passed therein on 07.02.2019 is also set aside.

16. CD is to be returned to the Ld. Counsel appearing on behalf of the State.

17. Interim order, if any, stands vacated.

18. Let a copy of this judgment and order be sent to the learned Court below for information.

19. Parties shall act on the server copies of this order uploaded on the website of this Court.

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