

(2023) 12 CAL CK 0032
In the Calcutta High Court
Case No : Criminal Revision No. 2963 Of 2019

Surajit Hazra & Anr.

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 05-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 34, 323, 341, 354, 379, 506
Code Of Criminal Procedure, 1973 — Section 164, 482

Citation : (2023) 12 CAL CK 0032

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

Bench : Single Bench

Advocate : Anil Kr. Chattopadhyay, Sujata Das

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing of the proceedings in Amta P.S. Case No. 205/2019, dated 19.06.2019, under Sections 341/323/354/506/34 of the Indian Penal Code and an order dated 11.07.2019 passed by the Learned Additional Chief Judicial Magistrate, Uluberia, Howrah, in the connected G.R. Case No. 1298 of 2019.

2. The petitioner's case is that the Complaint in this case was filed by the Opposite Party No. 2 on 19.06.2019, against the petitioner alleging that on 16.06.2019, when he was getting his land measured by an Amin, the petitioners assaulted him with lathi, bricks etc. and outraged the modesty of his daughter-in-law.

3. The petitioners state that the petitioners are the co-sharer/co-owner of the said property with no demarcation. In that connection, the petitioners filed a Civil Suit being L.R. 15/2018 against the Complainant and an Interim order of status-quo was passed by the Civil Judge (Junior Division), Amta, Howrah, on

19.09.2018 vide Order No. 2 and the petitioners are/were in the Possession till date of the said property.

4. In spite of the said Order of status-quo, on 17.06.2019, the complainant along with his associates came to the petitioners plot (Dag No. 1000) and on forcefully entering started to cut down the trees with Axe, Katari etc. At that stage, the petitioners opposed the same, but the said Santu Samanta along with his associates created serious breach of peace and also assaulted them (Petitioners herein) and they were injured.

5. The petitioner lodged a complaint with the Amta Police Station and Amta P.S. Case No. 204/19, dated 17.06.2019, under Sections 341/323/379/506/34 of the Indian Penal Code was started against the said Santu Samanta and others.

6. In spite of due Service there is no representation on behalf of the opposite party no.2.

7. The State has placed the Case Diary.

8. The proceedings in this case against the petitioners, ended in charge sheet for offence punishable under Sections 341/323/354/506/34 of the Indian Penal Code.

9. Admittedly the opposite party No.2 filed this case two days after the petitioners filed a Case against the opposite party relating to the same incident.

10. In Mahmood Ali & Ors. vs. State of Uttar Pradesh & Ors., Criminal Appeal No. 2341 of 2023 arising out of SLP (Criminal) No. 12459 of 2022, on August 08, 2023. The Supreme Court has held:-

"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)"

11. In the entry dated 30.06.2019 in the case diary, it has been clearly noted that the alleged victim of Section 354 of the Indian Penal Code refused to get her statement recorded under Section 164 Cr.P.C. In spite of that charge sheet has been submitted under Section 354 IPC among others. There is also no medical papers nor any prima facie evidence against the petitioners to substantiate the offences alleged and as such permitting the alleged case to proceed towards trial will be an abuse of process of law. The dispute is also clearly a joint family property dispute and thus a civil dispute (Paramjeet Batra vs State of Uttarakhand and Ors., (2013) 11 SCC 673).

12. CRR 2963 of 2019 is thus allowed.

13. The proceedings in Amta P.S. Case No. 205/2019, dated 19.06.2019, under Sections 341/323/354/506/34 of the Indian Penal Code and an order dated 11.07.2019 passed by the Learned Additional Chief Judicial Magistrate, Uluberia, Howrah, in the connected G.R. Case No. 1298 of 2019 is hereby quashed in respect of the petitioners herein.

14. There will be no order as to costs.

15. All connected Applications, if any, stand disposed of.

16. Interim order, if any, stands vacated.

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

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