

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1550 of 2020

Sri Biswajyoti Chatterjee

Vs.

The State of West Bengal & Anr.

For the Petitioner

: Mr. A. K. Dutta
Mr. B. Banerjee
Mr. K. Banerjee

For the Opposite Party No. 2

: Mr. Kaushik Gupta
Ms. M. Gangopadhyay

For the State

: Mr. Saibal Bapuli
Mr. A. Bhattacharrya

Heard on

: 10.11.2022

Judgment on

: 21.11.2022

Shampa Dutt (Paul), J.:

This revision is against an order dated 01.05.2020 passed by the Learned Chief Judicial Magistrate, Tamluk, Purba Midnapore, in G.R. Case No. 3434/2015 arising out of Haldia (Women), Police Station Case No. 13/2015, where in the court has taken cognizance on submission of charge sheet for offence punishable u/s 376 (2)(f)/417/506/166/120B of the Indian Penal Code against the petitioner accused.

The petitioners case is that he is a member of the West Bengal Judicial Service and at the time of the alleged incident he was posted at Haldia, as Additional Chief Judicial Magistrate. It is his case that he was a victim of conspiracy where the opposite party no. 2 /Complainant filed this case against him in which charge sheet has been submitted and cognizance has been taken erroneously.

The opposite party no. 2/Complainant filed the written complaint stating therein that in the year 2014 she had lodged a complaint against her husband Palash Roy, Under Section 498A of the Indian Penal Code and subsequently filed a divorce suit against her husband. During the pendency of the cases she came in contact with the Petitioner who took her Mobile number and used to talk to her. The petitioner told her that he had separated from his wife and he will marry her and also keep her with him with

her son. He further told her to wait till her divorce and assured her that he will take the responsibility of her and her son. The petitioner kept the complainant and her son in a rented house at Tamluk and got her son admitted in Tamralipta Public School and paid the expenses. The petitioner had physical relation with the complainant several times and also sent money in the account of the complainant for regular expense. The petitioner also took her to his residence at Kolkata. When the Complainants divorce was finalised, the petitioner started to avoid her and told her not keep any connection with him and used filthy language and threatened to kill her and her son.

Mr. A. K. Dutta, Learned Counsel for the Petitioner

submits that the Complainant obtained a collusive decree of divorce from her husband and subsequently in Oct, 2015 registered her earlier marriage with her husband Palash Roy under the Hindu Marriage Act, by suppressing the fact of divorce. On 12th December, 2015 the complainant filed this case.

It is further submitted that the Learned Magistrate took cognizance without applying his Judicial mind. The Learned Magistrate did not consider that if a woman continues to be in a physical relationship with a man despite the uncertainty of marriage, she cannot claim that she has been raped on a false promise of marriage and that consensual sex with false promise to marry, is not rape.

It is further contended that the Learned Magistrate did not consider the statements in the FIR in the proper perspective, as the

complainant was never forced to have physical relationship. The Learned Magistrate did not consider that there is no allegation in the F.I.R stating that the petitioner's promise to marry was done in bad faith or with intention to deceive. It is not the case of the complainant that the petitioner stopped the financial help. The complainant being an educated lady was aware that the petitioner is a married man. As the Learned Magistrate has failed to consider that there is no ingredients of the offences as alleged, the cognizance taken is bad in law and as such the order under revision is liable to be set aside and quashed.

The opposite party no. 2/complainant being represented by Mr. Kaushik Gupta, Learned Advocate, has placed before the Court that the complainant has been exploited by petitioner, who holds a responsible post being a Judicial Officer. The petitioner has denied to marry the complainant and has threatened to kill her and her son. It is submitted that the petitioner being an influential person has exploited the complainant by misusing his position, and the complainant being a helpless lady with a minor son seeks the protection of law and the revisional application if allowed would be an abuse of process of law.

Mr. Saibal Bapuli, Learned Advocate for the State has placed the case diary before the Court and submits that the investigating officer in this case has collected sufficient evidence against the petitioner which includes

SMS messages sent to the complainant by the petitioner. One of the mobile phone from which the messages were sent is in the name of Pranab midda, (driver of the petitioner). Several other incriminating materials having been collected clearly making out a case of cognizance offence and the charge sheet has been lawfully submitted against the petitioner. The Learned Magistrate on proper consideration of the materials placed in the case diary took cognizance in accordance of law. The revisional application being misconceived and based on wrong facts is liable to dismissed.

Heard all the parties in full, perused the materials on record including the case diary. Considered.

It is found that the investigation in this case was extensive and several important/incriminating evidence has been collected by the investigating officer, which includes SMS, Messages, statements recorded U/s 161 Cr.P.C., details of places where the complainant and the petitioner had physical relationship.

The Criminal proceedings in this is based on trust. The complainant put her trust and belief in the petitioner, who held an important post in the Judiciary. Being in a position of influence (Complainants case was pending before the petitioner), the complainant put her trust in the petitioner and believing such assurance continued in the relationship hoping that it would result in marriage.

Whether the petitioner conducted himself in bad faith or with intention to deceive the complainant is to be adjudicated at the time of trial by way of adducing evidence.

At this stage the material in the case diary is sufficient making out a clear case of cognizable offence against the petitioner.

The Supreme Court in

a) M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021), Criminal Appeal No. 330 of 2021, Where in the Court citing several precedents held :-

“ * * * * *

*iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty). v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint; vi) Criminal proceedings ought not to be scuttled at the initial stage; * * * * * xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice; xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent*

duty on the court; 8 xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

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In Ramveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr.,

Special Leave petition (CRL.) No. 2953 of 2022, the Court held :

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“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under **Section 482** of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under **Section 482** of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under **Section 482** of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.**”

The Court while deciding the Case relied upon several precedents.

In Umesh Kumar Vs State of Andhra Pradesh and Anr. (Supra) the Supreme Court **also** held :-

“20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (Vide Pepsi Foods Ltd. v. Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] , Ashok Chaturvedi v. Shitul H. Chanchani [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704 : AIR 1998 SC 2796] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] .)

21. In *Rajiv Thapar v. Madan Lal Kapoor* [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] this Court while 11 dealing with the issue held as follows : (SCC p. 348, para 30)

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1. Step one : Whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two : Whether the material relied upon by the accused would rule out the assertions contained in the charges leveled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three : Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four : Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?”

22. In *State of Bihar v. P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] this Court dealt with an issue of whether an

application under Section 482 CrPC for quashing the charge-sheet should be entertained before cognizance is taken by a criminal court and held as under : (SCC pp. 269-70, para 68) 12

“68. ... Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to ‘killing a stillborn child’. Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained. ... The chargesheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report.”

(emphasis supplied)

23. *The issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82 : AIR 1987 SC 877] this Court held as under : (SCC p. 318, para 16) “16. ... It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant.”*

24. In Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 : AIR 2007 SC 1274] this Court held as under : (SCC p. 43, para 74)

“74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained.”

25. In State of A.P. v. Golconda Linga Swamy [(2004) 6 SCC 522 : 2004 SCC (Cri) 1805 : AIR 2004 SC 3967] this Court held as under : (SCC p. 529, para 8) *“8. ... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”* (See also *K. Karunakaran v. State of Kerala [(2007) 1 SCC 59 : (2007) 1 SCC (Cri) 251]* .)

26. *Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.*

27. *The scheme for inquiry/ trial provided under CrPC is quite clear. After investigation, report under Section 173(2) CrPC is to be submitted before the competent court i.e. the Magistrate having jurisdiction in the matter and the Magistrate may take cognizance under*

Section 190 CrPC. However, it is still open to the Magistrate to direct further investigation under the provisions of Section 173(8) CrPC. If the case is triable by the Court of Session, the Magistrate would commit the case to the said court under Section 209 CrPC. It is for the court to examine whether there is sufficient material collected during investigation and filed along with the charge-sheet that a prima facie view can be taken to proceed against the accused and in view thereof, frame charges under Section 228 CrPC. At this stage the remedy available to the accused is to ask for discharge under Section 227 CrPC. In case charges are framed the accused has to face the trial, charges can be added/altered at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 CrPC. The only legal requirement is that a witness has to be recalled as provided under Section 217 CrPC when a charge is altered or added by the court.”

30. *In State of Maharashtra v. Salman Salim Khan [(2004) 1 SCC 525 : 2004 SCC (Cri) 337 : AIR 2004 SC 1189] this Court deprecated the practice of entertaining the petition under Section 482 CrPC at a premature stage of the proceedings observing as under : (SCC pp. 527-29, paras 4 & 12)*

“4. ... The arguments regarding the framing of a proper charge are best left to be decided by the trial court at an appropriate stage of the trial. Otherwise, as in this case, proceedings get protracted by the intervention of the superior courts.

In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and

acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. ...”

In the instant case, charge-sheet has been filed and cognizance has been taken by the Magistrate concerned; the committal proceedings have not yet taken place; and some of the offences attracted in this case are exclusively triable by the Sessions Court.

The Supreme Court in State of Maharashtra vs. Salman Salim Khan (2004) 1 SCC-525, held:-

“12.....In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial.....” At present the only material before this Court is the charge sheet included in the case diary and at this stage, it is premature to come to a clear finding. The materials in the case diary and the charge sheet there in makes out a cognizable offence against the accused/petitioner and there is sufficient materials for proceeding against the accused/petitioner towards trial and the inherent power of the court should not be exercised to stifle a legitimate prosecution (in the words of the Supreme Court). The Charge Sheet and the evidence placed in support thereof, form the base to take or refuse to take cognizance by the competent court. Applications against charge sheet and considering the matter on

merit in the guise of prima facie evidence to stand an accused for trial, amounts to pre trial of Criminal trial. (State of Bihar Vs P.P. Sharma, AIR 1991 SC 1260). The ultimate test therefore, is whether the allegations have any substance (Prakash Singh Badal Vs State of Punjab, AIR 2007 SC 1274). 16

In the Present case there is substance in the allegations and material exists to prima facie make out the complicity of the applicant/petitioner in a cognizable offence, which is triable by a court of sessions and as such the proceedings in this case should not be quashed and this is a fit case where the inherent powers of the Court should not be exercised.

Accordingly, the criminal revisional application being **CRR 1550 of 2020 stands dismissed.**

No order as to costs.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

Let a copy of this Judgment be sent to the Learned Registrar General of this court for Information and necessary action as the petitioner here in is a judicial officer.

(Shampa Dutt (Paul), J.)

