

Calcutta High Court (Appellete Side)

Abhishek Bhuwalka vs The State Of West Bengal & Anr on 23 December, 2022

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1576 of 2020

Abhishek Bhuwalka

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Soumik Ganguli,
Mrs. Sinthia Bala.

For the State : Ms. Sujata Das.

Heard on : 28.11.2022

Judgment on : 23.12.2022

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Shampa Dutt (Paul), J.:

The revision has been preferred praying for quashing of First Information Report as well as entire proceedings against the petitioner herein in connection with New Barrackpore Police Station Case No.

335/2019 dated 02.09.2019 corresponding to G.R. 5059 of 2019 under Section 323, 354, 504, 506, 427, 461 read with Section 34 of the Indian Penal Code, 1860 pending in the Court of the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas. The petitioner's case is that he is a partner of a limited liability partnership firm namely Vasudevay Vanijya LLP (LLPIN-AAI-9956), having its registered office at S-204, Ideal Plaza, 11/1 Sarat Bose Road, Kolkata-700020, Post Office-Lala Lajpat Rai Sarani, Police Station-Ballygunge, District-South 24 Parganas.

The petitioner states that Chandrali Builders and Developers Private Limited executed a registered Development Agreement dated 16.07.2019, in respect of the development of a piece and parcel of bastu land measuring an area more or less 37 cottah 13 chittaks. On the date of execution of the registered Agreement for Development dated 16.07.2019 the said opposite party no. 2 was to hand over physical possession. The land owner also appointed the developer herein i.e. Vasudevay Vanijya LLP as their Constituted Attorney by virtue of the said registered Agreement for Development dated 16.07.2019.

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It is further submitted that at the time of registration and taking over possession of the said bastu land from the opposite party no. 2 some disputes cropped up between the parties, as a result of which Vasudevay Vanijya LLP a limited liability partnership firm where the petitioner is one of the partners initiated a proceedings under Section 144(2) of the Code of Criminal Procedure on 07.08.2019 against the Chandrali Builders and Developers Private Limited. The said

partnership firm also initiated another proceedings under Section 107 of the Code of Criminal Procedure 1973. Thereafter the petitioner came to know that the said bastu land measuring and area more or less 37 Cottahs 13 Chittaks was situated within the jurisdiction of New Barrackpore Police Station and not under Ghola Police Station. Another proceedings under Section 144(2) of the Cr.P.C. was initiated by the said firm on 09.08.2019. A third such proceedings were initiated on 14.08.2019.

The opposite party no. 2 then lodged a First Information Report with New Barrackpore Police Station being 335 of 2019 dated 02.09.2019 under Section 323, 354, 504, 506, 427, 461 read with Section 34 of the Indian Penal Code. It was alleged in the said complaint that on 10.08.2019, your petitioner and his men and agents took forceful occupation of the site of the opposite party no. 2 by breaking lock and key of the site office and ransacked the stock materials and damaged the property of the office valued at Rs. 10 lakh and drove away

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the office and security personnel and displayed the banner of the company of your petitioner.

Another proceeding under Section 144(2) of Cr.P.C. was initiated by the petitioner's firm on 27.09.2019. On 27.09.2019 another Proceedings under Section 133 of the Code of Criminal Procedure was initiated by the petitioner's partnership firm. A proceeding under Section 9 of the Arbitration and Conciliation Act, 1996 was also initiated and the opposite party no. 2 appeared and filed his written

objection.

It is submitted that Barrackpore P.S. Case No. 335 of 2019 initiated on the basis of a complaint by the opposite party no. 2 is false and motivated. Notice under Section 41A of the Code of Criminal Procedure was duly complied with by the petitioner. The complaint has been filed only to harass the petitioner. The entire contention of the opposite party no. 2 that the petitioner slapped the opposite party no. 2's office personal namely Subhasish Ghosh and also manhandled a lady staff in front of the police personal is false and baseless. The said complaint and the proceedings are abuse of process of the Court of law and the allegations therein do not make out any case of a cognizable offence. It is submitted that the ingredients for the offence alleged is totally absent. The proceedings should be quashed in the interest of justice.

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Inspite of service the opposite party no. 2/complainant has not contested the case.

Mr. Soumik Ganguli learned Counsel for the State has submitted that the allegations in the First Information Report do not constitute and/or disclose, even prima facie the commission of any offence as stated against the petitioner. It is submitted that none of the ingredients of any of the offences under Sections 323, 354, 504, 506, 461, 427 and 34 of the Indian Penal Code, 1860 are present. That there is a delay in lodging the complaint filed on 02.09.2019 for an incident which allegedly occurred on 10.08.2019. The said case has been filed on unsubstantiated allegations and the total allegations for the offences

alleged in the F.I.R. are absolutely false and has been filed only to harass the petitioner and as such the said proceedings is liable to be quashed.

Mr. Sujata Das learned Counsel for the State is present. It is submitted by the State that the offences as alleged has been clearly made out against the accused persons during investigation. The case diary along with a memo of evidence has been filed in Court and as such the revision is not maintainable and liable to be dismissed.

Heard learned lawyer for the petitioner and the State. Perused the materials on record. Considered.

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The complaint lodged before the police by the opposite party no. 2 shows that the allegation against the present petitioner and others being the Director of the Partnership Firm Vasudevay Vanijya LLP Office in Kolkata is that they allegedly on 08.10.2019 took forcible occupation of the complainant's site at Talbandha Siddha Town office room by breaking lock and key of the side office and ransacked the materials and damaged the property of the complainant's office valued at Rs. 10 lakhs. Further allegation is that the petitioner manhandled one staff of the defacto complainant and also another female staff. It has been stated in the written complaint that the petitioner herein Abhishek Bhuwalka has no legal papers as to the ownership of the premises in question.

From the case diary it is seen that statement of witnesses (few) have been recorded and finding a prima facie case, the present case has

ended in charge sheet. But the case diary does not contain the statement of Subhasish Ghosh and the female staff who were allegedly manhandled by the accused. From the materials on record and the Registered Development Agreement dated 16th July, 2019 it transpires that the dispute between the parties is regarding the said development agreement relating to a property which is owned by the opposite party no. 2's company and the petitioner's partnership firm as the developer. Admittedly there has been a dispute which occurred after the said agreement was registered, regarding possession of the property

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in question. It is the case of the complainant that the developer/petitioner's firm tried to take forcible possession of the land. On the other hand it is seen that the petitioner has filed several cases under Section 144(2) of Cr.P.C. and other provisions of the Cr.P.C. against the opposite party. It is the case of the petitioner that after execution of the development agreement the opposite party is not aligning the petitioner into the disputed site. It is submitted that the opposite party is not complying with the terms and conditions as laid down in the development agreement. On the other hand it is the case of the complainant that the petitioner's company and its men and agent tried to take forcible possession of the complaint's site (admittedly owner) by breaking lock and key of the office and causing other damage including manhandling of staff.

From the materials on record and the nature of dispute between the parties it is clear that the dispute between the parties is related to the land which admittedly belongs to the opposite party no. 2.

The petitioner admittedly is the developer who was to be handed over the said land for developing. Which for some reason or the other was not done. Disputes of such nature are to be settled/decided by a Civil Court. The dispute being civil in nature based on an agreement. Taking the law in one's hand by allegedly trying to take forcible possession of the land amounts to a criminal offence. Allegedly trying to

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take possession of the land by allegedly manhandling the staff including a woman gives rise to presence of ingredients of a cognizable offence.

It is the admitted case of the petitioner that he has filed several cases under Section 144(2) of the Cr.P.C. and other provision of the Cr.P.C. against the opposite party no. 2. Finally the alleged incident took place which compelled the opposite party no. 2 to file the present case.

The Supreme Court in *Mitesh Kumar J. Sha vs. The State of Karnataka & Ors.* (Criminal Appeal no. 1285 of 2021) while considering an appeal against an judgment and order of the High Court of Karnataka in an application under Section 482 of the Cr.P.C. wherein the prayer of the petitioners for quashing of proceedings of offence punishable under Section 406, 419, 420 read with Section 34 of the IPC was dismissed, held:-

"26. Having perused the relevant facts and contentions made by the Appellants and Respondents herein in our considered opinion, the

following three key issues require determination in the instant case:

- Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?

- Whether sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating?

- Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?

37. Although, there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case could be pursued in the presence of a civil suit, but whether the relevant ingredients for a criminal case are even prima facie made out. Relying on the facts as discussed in previous paragraphs, clearly no cogent case regarding a criminal breach of trust or cheating is made out.

".....Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

41. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of M/s Indian Oil Corporation Vs. M/s. NEPC India Ltd & Ors.7, as under :-

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such

7. (2006) 6 SCC 736 misconceived criminal proceedings, in accordance with law."

42. It was also observed:-

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors....There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal

prosecution should be deprecated and discouraged."

43. On an earlier occasion, in case of G. Sagar Suri and Anr. Vs. State of UP and Ors.8, this Court has also observed:-

"8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

8. (2000) 2 SCC 636

44. Furthermore, in the landmark judgment of State of Haryana & Ors. Vs. Ch. Bhajan Lal and Ors. 9 regarding exercise of inherent powers under section 482 of CrPC, this Court has laid down following categories of instances wherein inherent powers of the can be exercised in order to secure the ends of justice. These 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 F.I.R. 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;

9. (1992) SCC (Cri) 426 (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."

45. Applying this dictum to the instant factual matrix, it can be safely concluded that the present case clearly falls within the ambit of first, third and fifth category of the seven categories enlisted in the above said judgment. The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the Appellants under section 482 CrPC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it.

46. Recently, this Court in case of Randheer Singh Vs. The State of U.P. & Ors.¹⁰, has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:-

"33.There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint

10. Criminal Appeal No. 932 of 2021 (decided on 02.09.2021) discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above."

47. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.

48. In view of the above facts and discussions, the impugned order dated 13.08.2019 passed by the High Court of Karnataka is set aside. The impugned F.I.R. No. 185 of 2016 dated 29.03.2016 and proceedings in C.C.No. 20609 of 2017 on the file of VI Additional CMM, Bengaluru, in pursuance of charge sheet dated 29.03.2017 against the appellants for offences under Sections 406, 419, 420 read with Section 34 IPC stands quashed."

In the present case the offence alleged is under Section 323, 354, 504, 506, 427, 461 read with Section 34 of the Indian Penal Code.

Admittedly there is a development agreement between the parties.

Wherein it has been alleged by the petitioner that the opposite party who are the owners of the property have not complied with the terms and conditions of the development agreement and only to harass the petitioner/company and to take advantage of having not complied with the said terms and conditions has filed the false case against the petitioner/company inspite of there being an arbitration proceedings.

The case of the petitioner in the proceedings initiated by them under Section 144(2) of the Cr.P.C. is that the opposite party is not allowing the petitioner to continue the construction on the scheduled property as agreed. It is further contended that the petitioner's company has invested huge amount of money for the development as per agreement but the opposite party is hampering the work of the petitioner and causing irreparable loss and injury to the petitioner. The opposite party has been not allowing the petitioner into the site and not allowing them to take any construction equipment to the scheduled property and has threatened the petitioner with dire consequence. It has come to the knowledge of the petitioner that the opposite party now wants to transfer the said property for promoting the same to some other developer.

Section 323 IPC lays down:-

"323. Punishment for voluntarily causing hurt.--Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Ingredients of offence.--The essential ingredients of the offence under Sec. 323 are as follows:

(1) Accused voluntarily caused bodily pain, disease or infirmity to the victim. (2) The accused did so with intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim."

Section 354 IPC lays down:-

"354. Assault of criminal force to woman with intent to outrage her modesty. -- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ingredients of offence.-- The essential ingredients of the offence under Sec. 354 are as follows:

(1) A woman was assaulted or subjected to use of assault criminal force;

(2) The intention of the accused was to outrage her modesty; or (3) The accused knew that her modesty will be outraged thereby."

Section 504 IPC lays down:-

"504. Intentional insult with intent to provoke breach of the peace.--Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ingredients of offence.-- The essential ingredients of the offence under Sec. 504 are as follows:

- (1) The accused intentionally insulted someone;
- (2) He thereby intended to give him provocation;
- (3) He knew that it was likely that such provocation would cause that person to commit a breach of the peace or to commit any other offence."

Section 506 IPC lays down:

"506. Punishment for criminal intimidation.--Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

Ingredients of offence.-- The essential ingredients of the offence under Sec. 506 are as follows:

- (1) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;
- (2) The accused did so with intent to cause alarm to the victim of offence;
- (3) The accused did so to cause the victim to perform any act which he was not legally bound to do."

Section 427 IPC lays down:

"427. Mischief causing damage to the amount of fifty rupees.--Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ingredients of offence.-- The essential ingredients of the offence under Sec. 427 are as follows:

(1) Accused committed mischief. (2) Such mischief caused loss or damage amounting to not less than Rs. 50."

Section 461 IPC lays down:

"461. Dishonestly breaking open receptacle containing property.-- Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ingredients of offence.--The essential ingredients of the offence under Sec. 461 are as follows:-

- (1) The subject-matter of offence was a closed receptacle;
- (2) The receptacle contained the property or the accused believed that it contained the property;
- (3) The accused broke open or unfastened receptacle;
- (4) He did so dishonestly or with the intention of committing mischief."

The offence alleged by the opposite party in their written complaint is that on 10.08.2019, the petitioner and his men and agents took forceful occupation of the site of the opposite party no. 2 by breaking lock and key of the site office and ransacked the stock/ materials and damaged the property of the office valued at Rs. 10 lakh and drove away the office and security personnel and displayed the banner of the company of your petitioner.

The said case has ended in a charge sheet. On careful perusal of the materials in the case diary it is very clear before this Court that the case diary containing ten pages including the charge sheet does not make out a prima facie case of any cognizable offence present against the petitioner.

The dispute between the parties is clearly a civil dispute relating to the non-compliance of terms and conditions in the development agreement executed between the parties. The materials in the case diary does not show any evidence to support the ingredients required to constitute the offences as alleged. In a case of such nature the parties should approach the Civil Courts and not come before the Criminal Courts making false acquisitions against each other. The parties both being companies/partnership firm are aware that the dispute between them is civil in nature and necessary relief has to be prayed for before the Civil Court.

The materials in the case diary clearly show that absolutely no evidence could be collected by the investigating officer to show that a prima facie case for the offences as alleged has been made out against the petitioner.

As to why and how the case has ended in a charge sheet is a big surprise to the Court and as such proceedings of such a nature should not be permitted to continue.

The Supreme Court in M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021), in Criminal Appeal No. 330 of 2021, 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).

vi) Criminal proceedings ought not to be scuttled at the initial stage;

ix) The functions of the judiciary and the police are complementary, not overlapping;

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;

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;

* * * * *"

In Ranveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave petition (CRL.) No. 2953 of 2022, the Supreme Court held :-

"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 Atrocities 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."

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 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 levelled 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) "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 charge- sheet 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/alterd 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."

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. Thereafter the trial shall commence.

The Supreme Court in *State of Maharashtra vs. Salman Salim Khan* (2004) 1 SCC-525, also 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 do not make out a cognizable offence against the accused/petitioner and there is no materials for proceeding against the accused/petitioner towards trial and this is a fit case where the inherent power of the court should be exercised.

The Charge Sheet and the evidence placed in support thereof, form the base to take or refuse to take cognizance by the competent court.

The ultimate test therefore, is whether the allegations have any substance (*Prakash Singh Badal Vs State of Punjab*, AIR 2007 SC 1274).

In the Present case there is no substance in the allegations and no material exists to prima facie make out the complicity of the applicant in a cognizable offence, as such the proceedings in this case should be quashed and this is a fit case where the inherent powers of the Court should be exercised.

Accordingly, the criminal revisional application being CRR 1576 of 2020 stands allowed.

The proceedings being in New Barrackpore Police Station Case No. 335 of 2019 dated 02.09.2019 corresponding to G.R. Case No. 5059 of 2019 under Sections 323, 354, 504, 506, 427, 461 read with Section 34 of the Indian Penal Code, 1860 pending before the learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas, is hereby quashed.

No order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

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

(Shampa Dutt (Paul), J.)