

**CALCUTTA HIGH COURT CIRCUIT BENCH
AT JALPAIGURI**

**03.2.2023
Sh-13
Court No.3**

**C. R. R. 239 OF 2022
With
CRAN 1 of 2022**

**In Re: An Application under Section 482 of the Code of Criminal
Procedure, 1973;**

In the matter of: Abhijit Saha

Petitioners.

Mr. Sabir Ahmed,
Mr. Hillol Saha Poddar,
Ms. Mousumi Das.

For the petitioners.

For the State.

Mr. Debajit Kundu.

For the Opposite party no.2..

The petitioner is the Deputy Superintendent of Police, Government Railway Police, against whom the defacto complainant/opposite party No.1 has filed a complaint dated 29th April 2022, in the Court of Additional Chief Judicial Magistrate at Siliguri, under sections 420 and 406 of the Indian Penal Code 1860. A proceeding being CR Case No. 547 of 2022 under the aforesaid provisions of law was started in the Trial Court of which the petitioner is aggrieved and in this revision has prayed for quashing of the said proceedings.

According to the petitioner, he is the superior and enquiry officer of the defacto complainant/ opposite party No.1 who is entrusted to conduct a departmental proceeding as to the

allegations levelled against the said defacto complaint. It is submitted on his behalf that the instant criminal case is only an outcome of malice and vengeance against the said petitioner, taken **out due to grudge. Learned Advocate appearing on his behalf would** submit that so far as the ingredients of offence as alleged against the petitioner are concerned, those would not be found available in this case against his client. By referring to section 197 of the Code of Criminal Procedure, it has further been submitted on behalf of the petitioner, that he being a public servant by dint of his office, the Trial Court ought not have taken cognizance of offence against him without the 'sanction' from the concerned authority, in due compliance with the mandatory provision of law. Ld. Advocate appearing for the petitioner has relied on the judgment of **State of Haryana &Ors vs Bhajanlal&Ors [reported in 1992 Supp (1) Supreme Court Cases 335]**, to submit that the criteria settled therein for interference of this Court in exercise of its extraordinary jurisdiction under section 482 CRPC is duly satisfied in the case and the Court shall have no impediment to interfere with the proceeding pending against his client in the Trial Court and set aside the same.

State is represented and would have objection as to such contention and prayer of the petitioner in this case as discussed above.

At this juncture one can find from the written complaint dated 29th April 2022 of the defacto complainant/opposite party No.1

about the gravamen of the allegations. Complaint was lodged against the three accused persons where in the present petitioner has been named as accused person No.1 in the said complaint. The complainant has alleged of being assaulted by the other co accused person. He has conceded to the fact of a department enquiry being conducted against him though allegedly on vexatious allegations. Complainant says that the petitioner being the enquiry officer has repeatedly humiliated him being aided by the other accused person, that he has persuaded the other accused person to lie in the enquiry against the complainant, intimidated the complainant with threats of false implication of him in the case, did not allow his counsel to defend him and ultimately without appreciating his genuine ground of indisposition, for absence in the enquiry, has struck off his defence. Every sort of non cooperation, biasness and motivated action on the part of the petitioner as the enquiry officer, has been alleged in the complaint. Allegedly he was locked inside the room where the enquiry was taking place, intimidated and threatened and also forced by all the accused persons including the petitioner resulting into his severe physical disorders. Allegedly he was also subjected to assault by fists and blows by all the accused persons in the said room. Allegation is of torture by all the accused persons including the present petitioner so much so that the life of the complainant was at stake and that he was recovered only after

primary care by the hospital. Allegation of wrongful restraint even after this has also been mentioned along with the allegation against the petitioner of snatching valuable documents from the custody of the complainant.

The complainant was examined by the Trial Court under section 200 of the Code of Criminal Procedure and thereafter by dint of its order dated May 30, 2022, the Court has issued summons against the accused persons including the present petitioner for offences under section 420 and 406 Indian Penal Code, after taking cognizance of the offence and finding that a prima facie case has been made out against the accused persons including the present petitioner. The petitioner is aggrieved with this finding of the court and has come up to seek interference of the court by exercise of its extraordinary jurisdiction under section 482 of the Code as to the order of the Trial Court dated 30.5.2022, of taking cognizance of offence against the petitioner by it and also against continuance of the criminal proceeding against him.

The cult classic Bhajanlal's case (supra) would guide this Court to first derive understanding if in this case any cognizable offence is made out against the petitioner under the afore stated provisions of law or the allegations made in the FIR at all make out any case against him, thereafter to formulate a decision whether to allow the criminal proceedings against the petitioner to continue or struck it

down to prevent any abuse of the process of the Court. Relevant portion of the judgment may be profitably quoted :

"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."

The gravamen of allegations have already been discussed earlier in this order. Now it is necessary that the ingredients of offence as alleged against the petitioner may be discussed, existence of which are necessary to buttress Court's findings, if any, that a prima facie case against the accused person has been made out to justify court processes to be exhausted, for the trial being conducted.

Section 420 IPC is the provision for punishment for cheating and dishonestly inducing delivery of property, whereas 'cheating' is enumerated under section 415 IPC, as follows :

415. Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation- A dishonest concealment of facts is a deception within the meaning of this section.

Also there are various 'explanations' appended to the section.

Section 406 IPC provides for criminal breach of trust. A judgment of the Hon'ble Apex Court may be mentioned that is, **S.W. Palanitkar v. State of Bihar, 2002 (1) Crimes 146 (SC)**, wherein Their Lordships have held that every breach of trust may

not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent mis-appropriation.

It would also be profitable to mention the judgment of the same Court reported in **(2000) 4 SCC 168 [HridayaRanjan Prasad Verma&Others vs State of Bihar & Another]**. While discussing sections 420 and 415 IPC, the Court was pleased to hold that

14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do

anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

Therefore, in order to make out a prima facie case against the petitioner here and to suggest existence of a cognizable offence, the materials, particularly the FIR, were required to bring out inducement by the petitioner of the complainant with the intention from the very inception of any transaction, to deceive him. Also he should have possessed the intention of fraudulent misappropriation of any property entrusted by the complainant to him, in order to find the prima facie ingredients of offence under section 406 IPC.

Peculiarly enough in this case the complaint discloses alleged acts of biasness, not affording opportunity of hearing to the complainant by the present petitioner and at the worst, of assault and intimidating him and subjecting him to wrongful confinement.

None of these acts would ever fall within the purview of the ingredients of the offence alleged against the accused person/petitioner. There are no allegations of inducement or inducement for the purpose of deception of the complainant, or any culpability of intention of the present petitioner to fraudulently misappropriate any of the entrusted properties of the complainant. Surprisingly enough the complainant's allegations are founded and rooted on some different perspective all together. Wild and atrocious imagination only could find any association or bearing of the alleged acts as mentioned in the complaint, with ingredients of the offence as alleged against the present petitioner. The order of the Trial Court dated 30.05. 2022, is possibly the result of only that. This court cannot but with frustration and hopelessness be constrained to observe that the finding of the Trial Court of a prime facie case having been made out against the present petitioner, suffers from brazen perfunctory and negligent discourse of the power vested in the Trial Court by law. It is not only an wide power but an enormous responsibility too for the Trial Court to weigh the prima facie chartering of the offence, through the compliant, for which the said Court is the key to induct the entire state machinery to prove the guilt of the offender, on the substratum of the narratives of the complaint sketching the offence, prima facie. Its failure to do so shall not only prejudice the petitioner but also jeopardize the rule of law.

The complainant may even be aggrieved, though has not been able to lay the foundation of any offence or culpability of the present petitioner in this case. A person may be aggrieved at his emotional level by the behaviour or conduct of any other person, but not every such action would amount to be culpable or criminal unless satisfied to be so, on the anvil of the settled provisions of law justifying necessary ingredients of the offence alleged against that person. In this case the allegations against the petitioner are grabbling to find any sanction of law, having failed to depict any cognizable offence or even any case to have been made out against the petitioner.

On the premises as above, in this case it is found that further proceedings would only amount to gross abuse of the process of law and the court as well. This is a case where interference of this Court, by exercising power under section 482 is direly warranted.

Hence, the revision succeeds. The complaint being CR Case No. 547 of 2022, dated 29.4.2022 pending in the court of the Additional Chief Judicial Magistrate Siliguri and all the proceedings subsequent thereto are hereby quashed and set aside.

CRR 239 of 2022 along with application, if any, is disposed of with the above direction.

(Rai Chattopadhyay, J.)

