

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble **Justice Kausik Chanda**

**C.R.R. No.1316 of 2020**

**With**

**I.A. No. C.R.A.N.1 of 2020**

**SHIB PRAKASH**

**-VERSUS-**

**THE STATE OF WEST BENGAL AND ANOTHER**

For the petitioner : Mr. Sidharth Luthra, Sr. Adv.,  
Mr. Vikash Singh, Adv.,  
Mr. Ayush Kaushik, Adv.

For the State : Mr. Swapan Banerjee, Adv.,  
Ms. Purnima Ghosh, Adv.

Hearing concluded on : 20.05.2022

Judgment on : 05.09.2022

**Kausik Chanda, J.:-**

This is an application for quashing of G.R. Case No.4231 of 2018, arising out of Behala Women Police Station Case No.01 of 2018 dated August 31, 2018, under Sections 417/376/406/313 and 120B of the Indian Penal Code, 1860, pending before the learned Additional Chief Judicial Magistrate, 24-Parganas (South), Alipore.

2. The police had filed the charge sheet on May 07, 2019, against one co-accused namely, Amalendu Chattopadhyay under Sections 417/376/406/313 and 120B of the Indian Penal Code, 1860, and during pendency of this application, they filed a supplementary charge sheet, wherein the petitioner has been implicated under Sections 354/34 of the Indian Penal Code, 1860.

3. The said F.I.R. was registered on the basis of a complaint of opposite party no.2/victim lady dated August 31, 2018.

4. In her complaint, opposite party no.2 alleged, *inter alia*, that she was a widow with a major son. She joined a political party in the year 2013 and as such, she had to often interact with said Amalendu Chattopadhyay, who was the General Secretary (Organization) of the said party at that point of time.

5. The petitioner was the All India Joint Secretary (Organization) of the said political party with whom she used to hold meetings in Kolkata. On June 19, 2015, the petitioner attended a dinner at the house of the

opposite party no.2 along with Amalendu and Subrata Chatterjee, who was the then General Secretary (Organization) of the said political party. The petitioner wanted to develop an illicit relationship with her. The petitioner used to call her at hotels on different pretexts in the name of holding meetings, but no such meetings were held. Thereafter, one-day Amalendu put vermilion on her forehead and promised that he would legally marry her soon. She became pregnant thrice but Amalendu forcefully got her aborted.

6. In the month of June 2016, the then President of the said political party and Subrata Chatterjee asked the petitioner to attend a meeting at a hotel in Kolkata. When opposite party no.2 reached there, she found that only the petitioner and Bidyut Mukherjee (another leader of the said political party) were present. She wanted to come out from the hotel room but Bidyut prevented her, and the petitioner along with Bidyut tried to rape her. At that point of time, Amalendu reached there so no further harm was caused to her. Amalendu advised her not to say anything regarding the incident before the police. Amalendu also advised her not to go anywhere without informing him in the future. She wanted to leave politics but Amalendu encouraged her to remain with the said political party.

7. The F.I.R. further alleges that thereafter said Amalendu and opposite party no.2 developed intimacy. Opposite party no.2 was not ready to be in an illicit relationship with Amalendu. Amalendu, therefore, one day put

vermillion of Kamakhya Temple on her forehead and promised to marry her subsequently. She became pregnant thrice as she developed a physical relationship with Amalendu. Each time Amalendu aborted the pregnancy to save her prestige. Amalendu continued the physical relationship with her and compelled her to have contraceptive pills but avoided the proposal of social marriage. The relationship between opposite party no.2 and said Amalendu was known to the Central and the State leaders of the said political party for which Amalendu was removed from the said political party and he was given the responsibility of another organisation. Amalendu wanted to return back to politics. Since she was much more acceptable to the Central leaders of the said political party, Amalendu took her to Delhi to meet the Central leaders and the Ministers to request them to bring back Amalendu to the said political party in the State. Both of them stayed in the same room of a hotel in Delhi. After returning back from Delhi, Amalendu started to avoid her and refused to receive her phone calls over mobile. She alleged in the F.I.R. that Amalendu has made physical relationship with her on the false promise of marriage and to wipe out evidence got her aborted thrice. She lost her prestige and dignity in the society due to the betrayal of Amalendu.

8. Appearing for the petitioner, learned senior advocate, Mr. Sidharth Luthra, has argued that there is an unexplained delay in registering the F.I.R. as the alleged incident took place in June 2016, whereas the F.I.R.

was registered on August 31, 2018. Relying upon a judgment reported at **(2010) 8 SCC 775 (Kishan Singh v. Gurpal Singh)** Mr. Luthra has argued that such delay in registration of the F.I.R. is a good ground for quashing this criminal case.

9. It has further been argued by Mr. Luthra that the petitioner has filed multiple complaints before multiple police stations and various authorities alleging rape on her by many leaders at different times. The falsity and absurdity of the allegations levelled against the petitioner are evident from the inconsistent conduct of the victim. She had been constantly changing her version of her complaints.

10. It is further argued that the petitioner has been targeted. Such a fact would be apparent from the manner in which the investigation has been conducted by the police by registering multiple complaints filed by opposite party no.2 on a similar set of facts in violation of Section 162 of the Code of Criminal Procedure, 1973.

11. Mr. Luthra submits that any further complaint by the same complainant against the same accused, subsequent to the registration of a case is prohibited because further complaints against the same accused will amount to an improvement on the facts mentioned in the original complaint. In this regard, Mr. Luthra relied upon a judgment reported at **(2021) 5 SCC 435 (Krishna Lal Chawla v. State of Uttar Pradesh)**.

12. Mr. Luthra has drawn the attention of this Court to the Whatsapp chat between the victim with the petitioner from the year 2011 to 2019, whereby she has offered to withdraw her complaint filed against the petitioner on the condition that the petitioner would have to arrange for her marriage with a rich and powerful Member of Parliament. Mr. Luthra suggests that the said messages clearly show that the impugned proceeding registered against the petitioner is completely false and fabricated and made with the sole intention to harass the petitioner.

13. Mr. Swapan Banerjee, learned advocate appearing for the State, on the other hand, argues that sufficient materials have been collected against the petitioner to suggest the commission of offence under Section 354 of the Indian Penal Code, 1860. He further submits that necessary ingredients of Section 354 of the Indian Penal Code are present in this case and therefore, the case cannot be quashed at this stage. Mr. Banerjee has relied upon the judgments reported at **(1995) 6 SCC 194 (Rupan Deol Bajaj (Mrs) v. Kanwar Pal Singh Gill)** and **AIR 2016 SC 4486 (S.P.S. Rathore v. C.B.I.)** in this regard.

14. Mr. Banerjee has produced the case diary before this Court to demonstrate the fact that materials collected against the petitioner establish a charge under Section 354/34 of the Indian Penal Code, 1860.

15. A copy of the case diary has been retained with the records of this case.

16. After going through the materials collected against the petitioner as apparent from the case diary the judicial conscience of this Court is, prima facie, satisfied to exercise the power under Section 482 of the Code of Criminal Procedure, 1973, by passing an interim order of stay.

17. The Supreme Court in the case reported at **(2013) 3 SCC (Cri) 158 (Rajiv Thapar v. Madan Lal Kapoor)** has discussed the jurisdiction of the High Court under Section 482 of Cr.P.C. in quashing the initiation of prosecution or at the stage of committal or even at the stage of framing of the charges. The relevant paragraph of the said judgment is quoted below:

“**29.** The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the

accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

**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 CrPC:

**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?

**30.5.** If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as



proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

18. It has been already noted that the present criminal case was initiated on the basis of a complaint of opposite party no.2 dated August 31, 2018. It appears from the case record that on the same date i.e. on August 31, 2018, she lodged another complaint against the same accused persons before the same police station with a completely different version of the incident that allegedly took place in the month of June 2018 in the hotel at Kolkata.

19. Her version, in the said complaint, insofar as it relates to the incident at the hotel in Kolkata was, *inter alia*, as follows.

20. In the month of May 2016, she was asked to meet the petitioner at the said hotel. As soon as she had entered the room, Bidyut locked the door. Thereafter, the petitioner and Bidyut dragged her to bed and forcefully raped her. The petitioner raped her first and thereafter, the petitioner and Bidyut both repeatedly raped her. She lost her consciousness. When she had regained her sense, she found Amalendu in the room. In front of Amalendu, again the petitioner and Bidyut raped her. The petitioner and Bidyut threatened her not to disclose the incident to anyone. After a lot of trouble, she could go back to her residence, but she felt severe pain in her abdomen and vagina. She bled profusely and visited the doctor, who prescribed her medicines. The doctor advised her to see a

gynecologist but she preferred not to go. She also annexed a photocopy of the said prescription with the F.I.R. Since the rest of the said complaint relates to Amalendu, it is not necessary to advert to the same to consider this quashing application.

21. It is quite alarming to note that while in one complaint she made a simple one-line allegation of an attempt to commit rape against the petitioner and Bidyut, in the other complaint, on the same date she, in detail, brought the specific allegations of repeated gang rape on her against them. It is not a mere attempt to improve a case subsequently, in fact, an altogether different story was told at the same time.

22. It is extremely difficult to comprehend how opposite party no.2 on the same date approached the police station with said two completely different versions of the alleged incident of June 2016, by writing two separate complaints in her own handwriting. The case diary also does not justify or indicate as to how the police chose one of the said two complaints to register the formal F.I.R.

23. The case diary would further reveal that after the charge sheet was filed against Amalendu, opposite party no.2 went on filing several complaints against the petitioner and the other leaders of the said political party.

24. On November 27, 2020, she lodged a complaint before the Joint Commissioner of Police Crime, Lalbazar, Kolkata, alleging, *inter alia*, that

the accused persons were trying to kill her and she had been raped by two Central leaders and one State leader of the said political party.

25. Again on August 4, 2020, she lodged another complaint before the Officer-in-charge, Behala Women Police Station alleging, *inter alia*, that for the last one and half years she had been attacked 37 times by the leaders of the said political party. She further alleged that the petitioner raped her in the month of May 2016 in a hotel in Kolkata. It was again alleged that she was raped also on June 17, 2016, by the petitioner in Siliguri. It was alleged that on August 9, 2018, she was again raped by another Central leader of the said political party.

26. The multiple subsequent complaints inculcating various national and State leaders of the said political party with repeated allegations of rape have undermined the credibility of opposite party no.2 to a great extent as they give rise to a grave suspicion as to the truthfulness of the allegations made in the said complaints.

27. The police do not appear to have been able to gather any credible material to implicate the petitioner. For the reasons as discussed above, the acceptability of the statement of opposite party no.2 under Section 164 of the Cr.P.C. is shaken to a great extent. The statement of Amalendu being a statement of a co-accused also cannot also be relied upon.

28. In the aforesaid factual backdrop, it is not necessary to discuss the judgments cited by the respective parties separately as I have no quarrel

with the propositions of law as advanced by the petitioner as well as by the State.

29. In view of the aforesaid, *prima facie*, findings, I am inclined to stay all further proceedings of the present criminal case for a limited period.

30. Accordingly, there shall be a stay of all further proceedings as against the petitioner following the supplementary charge sheet filed against him vide charge sheet no.162 of 2021, pending before the learned Judge, 2<sup>nd</sup> Fast Track Court, Alipore, South 24-Parganas under Sections 354/34 of the Indian Penal Code, 1860, in connection with Behala Women Police Station Case No.01 of 2018 dated August 31, 2018, for a period of two months after the ensuing Puja Vacation.

31. The opposite parties are at liberty to file the affidavit-in-opposition within one week after the ensuing Puja Vacation; reply, if any, may be filed by the petitioner within three weeks thereafter. The matter will appear one month after the ensuing Puja Vacation under the heading "For Hearing."

32. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

**(Kausik Chanda, J.)**