

Calcutta High Court (Appellete Side)

Afshan Meerza 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 Rai Chattopadhyay

C.R.R. 1484of 2016
With
CRAN 9 of 2018 (Old No: CRAN 1723 of 2018)

Afshan Meerza

Versus

The State of West Bengal & Anr.

For the Petitioner : Mr. Sourav Chatterjee,
Mr. Bimalendu Das,
Mr. Shomrik Das.

For the Respondent No.2 : Mr. Deepak Kumar Singh,

: Ms. Alisha Kar.

For the State : Mr. Narayan Prasad Agarwala,
: Mr. Pratick Bose.

Hearing concluded on : 19/12/2022

Judgment on : 23/12/2022

Rai Chattopadhyay, J. :

1. Petitioner has come up in this revision to challenge the proceedings being C.R. Case No.448 of 2014 under Section 500 IPC, pending before the Ld. Judicial Magistrate, 1st Court, at Berhampore, Murshidabad.

2. Petitioner claims herself to be the widow of the fifth son of late Nawab Wasif Ali Mirza of Murshidabad. She has stated that her husband namely, Sajid Ali Mirza had died on 3rd May, 2001.

As the legal heirs of said Sajid Ali Mirza, she herself and two daughters are surviving.

3. Petitioner is aggrieved of having being implicated as an accused person in the said case, i.e, C.R Case No.448 of 2014.

4. To state in a nutshell, the complaint contends inter alia that he is the grandson of Late Nawab Wasif Ali Mirza and a son of Nawab's daughter namely, Nasma Tunnessa Begum. The complainant, in the complaint has denied and disputed any relation of the present petitioner with the Nawab's family and further alleges that not being a member of Nawab's family, the present petitioner/accused person is not entitled to inherit any portion of Nawab's family property. That the petitioner's interest in the Nawab's family property is only due to her greed. It is stated further that from one of his friends from Berhampore, the complainant got information about publication of a defamatory news in the newspaper namely, 'Murshidabader Gramin Sambad' dated 25th October, 2013, addressing the complainant therein as an "illegitimate son". According to the complainant this has lowered his dignity to the public at large. That the present petitioner/accused person has made such a statement and the other accused person no.2 has published the same knowing about the same to be untrue and with the motive to lower down the dignity of the complainant to the public at large. It is stated that due to publication of such news at the instance of the present petitioner by the newspaper as mentioned above, the complainant has suffered disgrace and also hatred in the eyes of the people at large and his dignity has been belittled.

5. On this compliant the Magistrate has issued process by dint of the order dated 24.02.2015, which is also challenged in this revision.

6. Mr. Chatterjee, appearing on behalf of the complainant has submitted that the criminal proceedings against his client is liable to be quashed and he has founded his arguments on two fold grounds. Firstly, he has submitted that the complaint is devoid any specific incrementing material as to the offence as alleged , in order to compel the Magistrate to issue process as against his client, as per law. Mr. Chatterjee has specifically submitted that the mandate of the law is that the action of the petitioner/accused person must have imputation made with the intention of harming or knowing or having reasons to believe that it would harm complainant's reputation, lower his dignity in the estimation of the general public to attract provisions under Section 500/499 IPC and it would not be sufficient if due to any act or statement by the accused person, the complainant personally feels bad, hurt or insulted. He has referred to the statutory provision enumerated under 'explanation 4' in Section 499 IPC to state that in this case the said requirements of law are not at all fulfilled. He has also relied on the following two judgments to submit that the Hon'ble Apex Court and also the Co-Ordinate Benches of this court have been pleased to hold about requirement of mandatory fulfillment of the conditions as enumerated under Section 499 IPC, to attract the penal provision of Section 500 IPC against any person. The judgments are as follows:-

(i) Shatrughna Prasad Sinha vs. Rajbhau Surajmal Rathi & Ors. reported in (1996) 6 SCC 263.

(ii) M/s. Pataka Industries (Pvt.) Ltd. Vs. The State of West Bengal &Ors. reported in 2013 SCC Online Cal 19696.

7. Mr. Chatterjee has further submitted that excepting the complainant, no other witness has been examined by the Magistrate under Section 200 Cr.P.C, 1973, before issuance of the process. This, in his opinion, may bolster petitioner's case in two ways, firstly, that the prima facie case as regards existence of the materials to construe an offence under the above stated provision of law is lacking in this case. Also that no cognizable case is at all made out and secondly, absence of any independent person to have come up before the court to depose about whether there has been any imputation to cause harm and disgrace for the complainant or not, would reveal about non-existence of the necessary ingredients of offence against the present petitioner.

8. The second ground and the alternative argument of Mr. Chatterjee is that while issuing process in this case, the Magistrate has overlooked mandatory provisions under Section 202, Cr.P.C, 1973 and that has been left not complied with in this case. He says that issuance of process by the Magistrate without complying with the provisions under Section 202 Cr.P.C, 1973 in this case, would result the entire proceeding to vitiate. On this point he has relied on a Division Bench judgment of this court which was delivered upon reference, i.e, S.S. Binu vs. State of West Bengal &Anr. (with various other revision cases) reported in 2018 Cri LJ 3769. He has further referred to two Co-Ordinate Bench judgments of this Court, one is an unreported one (order dated 24.11.2022, CRR 4525 of 2009 with CRAN 1 of 2010) and the other is reported in 2022 SCC Online Cal 1941 (Modi Industries Ltd. Vs. State of West Bengal &Anr.). It is submitted that the Hon'ble Division Bench in the said judgment under reference, i.e, reported in 2018 Cri LJ 3769 (S.S.Binu's case), has categorically held the requirement of compliance by the Magistrate of the provisions of Section 202 Cr.P.C, 1973, to be mandatory before issuance of process in an appropriate case and also that such dictum is followed in the judgment/order of the Co-Ordinate Benches as mentioned above. According to him in this case the Magistrate has ignored and failed to comply with the provisions under Section 202 Cr.P.C, 1973, which is a mandate under law and non-compliance of the same has resulted into issuance of process by Magistrate, not in confirmation with law and also prejudiced to the petitioner. Thus, according to him on this score too, the impugned order of issuance of process and the proceedings in its entirety in connection with C.R. case no.448, is liable to be quashed.

9. No one is appearing on behalf of the opposite party though service is now completed. Hence, the case is taken up for disposal.

10. Mr. Agarwal, who represents the State in this case, is not supporting the petitioner. Instead, he says that materials including the FIR are indicating about necessary ingredients of offence as alleged to be available against the petitioner and also the sufficient extent of her involvement therein. According to him it is a fit case to be gone into trial.

11. Law is now well settled that the inherent and extraordinary jurisdiction under Section 482 Cr.P.C, 1973, can be exercised by a revision court in case it finds that allegations made in the first information report or the complaint, do prima facie constitute an offence or make out a case against the accused, the allegations disclose a cognizable offence justifying an investigation. The much celebrated judgment of State of Haryana vs. Bhajanlal reported in AIR 1992 SC 604, may be referred to in this regard. It is also a trite law that ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of

activities. The inherent power of the court under Section 482 Cr.P.C, 1973 is, however, recognised to secure the ends of justice or prevent the abuse of the process. Trailblazing verdict of the Privy Council, reported in AIR 1945 PC 18 (King emperor vs. Khawja Nazir Ahmed) may be referred in the context.

12. In view of laws settled as mentioned above, it is required in this case that the complaint may be examined as to whether it is in coherence with the above stated settled principles of law, to ensure that proceedings pursuant thereto, would not amount to abuse of the process of court.

13. Section 500 IPC is the penal provision for the offence of 'defamation' as enumerated in Section 499 IPC. It states as follows:-

"499. - Defamation - Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1 -

Explanation 2 -

Explanation 3 -

Explanation 4 - No imputation is said to harm a person's reputation, unless that imputation directly or indirectly in the estimation of others lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state or in a state generally considered as disgraceful."

14. Therefore 'defamation' would be imputation intending to harm the reputation of one with knowledge or reason to believe the same to result into that. Explanations appended to the section are the exceptions to this stipulation. Petitioner in this case has relied on the 'Explanation 4' appended to section 499 IPC, to submit that in her case this exception would apply. It is stated that there is no material to find any harm to have been caused to the complainant, due to the alleged publication of the news, as stated above.

15. In this respect findings of the Hon'ble Apex Court may be relied on in its judgment of Shatrughna Prasad Sinha vs. Rajbhau Surajmal Rathi & Ors. Reported in (1996) 6 SCC 263, in the following words:-

"11. Explanation 4 provides that no imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the

moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

12. A reading of the complaint does not contain any of the allegations constituting the offence of defamation punishable under Section 500 IPC. The contents of the magazine are alleged to be defamatory against the Marwari community, lowering them in the estimate of the public or their reputation is lowered in the society. But we do not find any allegation made in the complaint. Accordingly, we hold that the complaint filed in the Court of the Judicial Magistrate, First Class in Court No. 4 at Pune does not contain any of the allegations so as to constitute the offence of defamation defined in Section 499 and punishable under Section 500. Consequently, the Magistrate was not justified in issuing the process against the appellant. The complaint is accordingly quashed."

16. The Co-Ordinate Bench of this court in the judgment of M/s. Pataka Industries (Pvt.) Ltd. Reported in 2013 SCC Online Cal 19696 has also dealt with the similar point in the following manner:-

"In order to justify a charge under Section 500 IPC it is required that the allegations satisfy requirement of Section 499 IPC as also the explanations appended thereto. It is thus required to be shown by an aggrieved person that the imputation which has harmed his reputation, directly or indirectly lowered his moral and intellectual character in the estimation of others. In the event, the moral or intellectual character of the aggrieved person is not lowered in the estimation of other persons, making of the imputation cannot per se lead to commission of offence of defamation. In the instant case, neither the petition nor the statement of the Opposite Party No. 2, recorded on solemn affirmation before the learned Magistrate, allege that the reputation and/or moral or intellectual character of the Opposite Party No. 2 was lowered in the estimation of any other person. The Opposite Party No. 2 had also failed to adduce any person, as witness on his behalf, in support of the fact that his moral or intellectual character has been lowered in the eyes of the said person subsequent to publication of the alleged defamatory statements. It is thus apparent that the Opposite Party No. 2 has failed to make out a case within the parameters as provided under Section 499 IPC and as such the charge of defamation as alleged against the petitioner is without any merit. The petitioners simply ventilated the alleged activities of the Opposite Party No. 2. The petitioners denied that they gave permission to use their address for "Future Freedom Foundation" attempted to be set up by the Opposite Party No. 2 or the petitioner were ever associated with such concern."

17. Defamation in law, means attacking another person's reputation by a false publication (communication to a third party), tending to bring the person into disrepute. It is trite to say that to

constitute to an offence within the meaning of Section 499 of the IPC, there has to be imputation which is basic requirement and such imputation shall have to be made into manner as provided in the said provision, i.e, with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. To sustain a proceeding in a court of law, under the said provisions, such intentional harm caused to the reputation of the complainant should be inferred from the expressed words of the complaint.

18. The criminal offence emphasizes on the intention of causing harm. Therefore available materials in a case should also show presence of mens rea of the accused person, i.e, his having intention, knowledge or belief regarding injury to be caused to the concerned person. Presence of such criminal intent would amount to be the foundation of the 'harm' being caused to the other person within the purview of the provisions in law. In absence of any such ingredient as to prima facie show the mens rea on part of the accused person should restrain a court from proceeding further in the criminal case against the said person.

19. Under the law of defamation the test of defamatory nature of a statement is its tendency to incite and adverse opinion or feeling of other persons towards the person concerned. The statement is to be judged by the standard of ordinary/right thinking members of society at the relevant time. The words must have resulted in that person to be shunned or evaded or regarded with the felling of hatred, contempt, ridicule, fear, dislike or disrespect (with reference to M/s. Pataka Industries's case reported in 2013 SCC Online Cal 19696)

20. When one looks into the complaint in this case it appears that the reason of the de-facto complainant being aggrieved is publication of news in the newspaper named above on the specified date, mentioning him as an "illegitimate son". However, firstly the complaint is not annexed with copy of any such publication and secondly, that the complainant has not put forward any specific averments as regards to whom and in what manner he has been disgraced or his dignity has been lowered as alleged. Instead, on perusal of the complaint it appears that the allegations are made in very generic terms showing as if it is only the conjecture of the de-facto complainant about his dignity being degraded by the publication as alleged. The criteria of 'harm' caused by lowering character in the estimation of others, that too intentionally and knowingly, appear to be vacuous. The complainant having failed to produce in court the concerned publication, the same should be treated as a lacuna in the complaint to establish the allegations vide any prima facie material. There would not have been any material available to the Magistrate at least prima facie, at this stage, to formulate a decision as to availability of criminal intent of the petitioner, for executing the alleged action.

21. Therefore on the basis of such a compliant, issuance of process by the Magistrate in this case appear to be not in conformity with law. More so, as it has been rightly pointed out by Mr. Chatterjee appearing for the petitioner that before issuance of process neither the 'friend' as mentioned in the complaint or any of the witnesses mentioned therein have been examined by Magistrate excepting the complainant himself. In this case, where the Magistrate had to form an opinion as to the existence of a prima facie case of imputation of the complainant to cause intentional harm, lowering complainant's character by the offensive act as alleged, in the estimation

of others, he could not have successfully done so, examining only the complainant and without examining any other witness. Without the same the Magistrate would not have come to a conclusion, of availability of prima facie material against the present petitioner so that the case against her might be tried before him. He would not have lawfully embark upon exercising power under section 204 Cr.P.C, 1973, by issuance of process. Here, non application of mind by the Magistrate is apparent in assessing the the complaint qualitatively, before it issued process in the case.

22. Regarding the other aspect argued in this case, let us first note as to the statutory provision under Section 202 Cr.P.C, 1973:-

" 202 - Postponement of issue of process - (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if thinks fit, take evidence of witness on oath;

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section 1 is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

23. Amendment as to the provisions of Section 202, has been inserted in the Code, vide the Amendment Act 25 of 2005 (w.e.f 23.06.2006) as a safeguard against filing of frivolous complaints and abuse of the process of court. Section 202 Cr.P.C, 1973, thus, makes provision for enquiry by the Magistrate or the police of the alleged facts to gather prima facie material so far as the alleged offence is concern. This provision has been introduced in the statute as a pre-cautionary measure to prohibit frivolous complaint being filed and the court process being misused. No doubt the

petitioner being a permanent resident of Park Street, Kolkata, should be considered to be residing beyond the area within which the Magistrate exercises his jurisdiction that is Behrampur, Murshidabad. In such circumstances, it was imperative for the Trial Court to cause an enquiry under the provisions 202 Cr.P.C, 1973, which is not done in the present case. Accordingly the Magistrate has failed to exercise its jurisdiction vested upon it by laws. In this regard the judgment as mentioned above of S.S. Binu vs. State of West Bengal & Anr. and those of the Co-Ordinate Benches of this court may be referred to find that the courts have decided about the mandatory nature of the provision under Section 202, Cr.P.C, 1973. The relevant portion from the judgment of S.S. Binu is quoted below:-

"110. To sum up, the reference made by the Learned Single Judge on the five issues are answered as follows:-- I. According to the settled principles of law, the amendment of subsection (1) of Section 202 Cr.P.C. by virtue of Section 19 of the Criminal Procedure (Amendment) Act, 2005, is aimed to prevent innocent persons, who are residing outside the territorial jurisdiction of the Learned Magistrate concerned, from harassment by unscrupulous persons from false complaints. The use of expression "shall", looking to the intention of the legislature to the context, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.

II. Keeping in mind the object sought to be achieved by way of amendment of sub-section (1) of Section 202 Cr.P.C., the nature of enquiry as indicated in Section 19 of the Criminal Procedure (Amendment) Act, 2005, the Magistrate concerned is to ward off false complaints against such persons who reside at far off places with a view to save them from unnecessary harassment and the Learned Magistrate concerned is under obligation to find out if there is any matter which calls for investigation by Criminal Court in the light of the settled principles of law holding an enquiry by way of examining the witnesses produced by the complainant or direct an investigation made by a police officer as discussed hereinabove.

III. When an order of issuing summon is issued by a learned Magistrate against an accused who is residing at a place beyond the area in which he exercises his jurisdiction without conducting an enquiry under Section 202 Cr.P.C., the matter is required to be remitted to the learned Magistrate concerned for passing fresh orders uninfluenced by the prima facie conclusion reached by the Appellate Court.

IV. Keeping in mind the object underlined in Section 465 Cr.P.C. that if on any technical ground any party to the criminal proceedings is aggrieved he must raise the objection thereof at the earliest stage. In the event of failure on the part of an aggrieved party to raise objection at the earliest stage, he cannot be heard on that aspect after the whole trial is over or even at a later stage after his participation in the trial. V. In cases falling under Section 138 read with Section 141 of the N.I. Act, the Magistrate is not mandatorily required to comply with the provisions of Section 202 (1) before issuing summons to an accused residing outside the territorial jurisdiction of the learned Magistrate concerned."

24. On the discussion as above it is found that the complaint in this case is devoid of the ingredients to constitute the offence against the accused person/petitioner atleast prima facie and the complaint

as above has not disclosed a cognizable offence, so far as the present petitioner is concerned.

25. It is also found that the materials are not enough to construe about existence of the necessary ingredients of offence, so far as the above provisions of law is concerned, against the petitioner. It is also found in this case that the Magistrate was duty bound to firstly assess as to whether the complaint at all discloses any offence or make out any case against the petitioner and also to comply with the provision under Section 202 Cr.P.C, 1973, before issuance of process, which is a mandatory provisions of law. Though this may be considered as a curable irregularity and breach of legal provision committed by the Magistrate, in this case an order of 'remand' would not be necessary and proper, in view of the fact that the complaint in this case could not fortify justification of a court proceeding on the basis of the same. All these prompt this court to find that allowing the criminal case to proceed against the petitioner would amount to gross abuse of the process of the court and shall not be lawful. On this ground this revision case is found legible to be allowed.

26. Hence, CRR 1484 of 2016 is allowed. All the proceedings/further proceedings with respect to the present petitioner, in connection with C.R Case No. 448 of 2014, in the court of Judicial Magistrate, 1st Court, Berhampore, Murshidabad is quashed and set aside.

27. Connected application being CRAN 9 of 2018 (Old No: CRAN 1723 of 2018) is disposed of.

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

(Rai Chattopadhyay,J.)