

Pratima Chowdhury & Anr Vs State Of West Bengal & Anr

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 10, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 482

Indian Penal Code, 1860 – Section 34, 195A, 498A, 506

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 – Section 3(x), 7

Hon'ble Judges: Shampa Dutt (Paul), J

Bench: Single Bench

Advocate: Milon Mukherjee, Soumyajit Das Mahapatra, Soumya Basu Roy Chowdhuri, Bitasok Banerjee, Sreeparna Das

Final Decision: Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revisional application has been preferred praying for quashing of the proceedings in connection with Special Case No. 20/2022 arising

out of Shibpur P.S. Case No. 26/2022 dated 31.01.2022 under Sections 506/34 of the Indian Penal Code and Section 3(x) of the Scheduled Caste and

Scheduled Tribe (Prevention of Atrocities) Act, 1989, pending before the learned Special Judge (SC & ST Act, 1989),
Howrah whereby charge sheet

vide charge sheet no. 50/2022 dated 28.02.2022 under Sections 195A/506 of the Indian Penal Code and Section 3(x) of the Schedule Caste and

Scheduled Tribe (Prevention of Atrocities) Act, 1989 has been filed against the petitioners.

2. The petitioners herein are the mother-in-law and husband of the de facto complainant.

3. In the petition of complaint, in the present case which was registered on 31.01.2022, the complainant has stated that she has also filed another case

being Shibpur P.S. Case No. 302/21 under Sections 498A/406/313/307 of the Indian Penal Code against the petitioners herein.

4. It is further stated in the written complaint that her ÄöœstreedhanÄöœ articles were not recovered in spite of search being conducted on 05.09.2021

in the house of the petitioners herein.

5. The allegation in the present case is that:-

On 29.01.2022 at about 10.30 a.m., the de facto complainant had gone to the Court of learned CJM, Howrah in the afternoon. When she was returning from

meeting her advocate, at that time in front of the gate of Zila Parisad, the petitioners allegedly threatened her to withdraw the said case under Section 498A

along with other sections. As she raised protest the petitioners pounced on her and used defamatory, vulgar, derogatory and filthy languages by saying 'आँसू' (tears) and 'सूँ' (smell).

i.e. Scheduled Caste and they further abused her and, as such, the present case has been registered. 'आँसू' (tears) and 'सूँ' (smell).

6. The State has placed the case diary.

7. It appears that there is only the statement of one witness in the case diary wherein it appears that the said witness does not claim that he heard

utterance of any word which was derogatory or capable of insulting the complainant as regards her 'आँसू' (tears) and 'सूँ' (smell).

8. Learned senior counsel appearing for the petitioner has further submitted that Section 7 of the Scheduled Caste and Scheduled Tribe (Prevention of

Atrocities) Act, 1989 has not been complied with in the present case.

9. In Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022, LiveLaw, (SC), 993, Criminal Appeal, No(s),

'आँसू' (tears) and 'सूँ' (smell), of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022), the Supreme Court held:-

'आँसू' (tears) and 'सूँ' (smell) "15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings

in Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369 decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and

41 of the above judgment where the following was stated:

'आँसू' (tears) and 'सूँ' (smell) "22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the

High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or

to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern

the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC

699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the

process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

'आँसू' (tears) and 'सूँ' (smell) "7. 'आँसू' (tears) and 'सूँ' (smell) In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to

continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's

inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to

degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which

the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher

than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these

observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do

justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. ¶102

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is

sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go

on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process

is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a

criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in

exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1)

SCC 335 which is to the following effect :

¶102. (7) Where a criminal proceeding is manifestly attended with mala fides 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. ¶103 Above Category 7 is clearly attracted in the facts of the

present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts

of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to

have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings. ¶104

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under

Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds

of cases wherein such power should be exercised. This Court has held in para 102 in State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335

as under :

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this

Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which

we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent

abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently

channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 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.

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in Neeharika Infrastructure Pvt. Ltd. v. State of

Maharashtra and Others, 2021 SCC Online SC 315.

10. The present case falls under category 1, 3 and 7 of Para 102 of Bhajan Lal (Supra).

11. In Hitesh Verma vs The State of Uttarakhand & Anr., Criminal Appeal No. 707 of 2020, on 05.11.2020, held:-

14. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public

view" had come up for consideration before this Court in the judgment reported as *Swaran Singh & Ors. v. State through Standing Counsel & Ors.*, (2008) 8

SCC 435. The Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is

committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the

lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not

merely relatives or friends) then it would not be an offence since it is not in the public view. The Court held as under:

28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood

near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a

place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view.

However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the

boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are

there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place

within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place

would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the

State, and not by private persons or private bodies.

15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member

of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered "in any place

within public view" is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were

the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the

judgment of this Court in *Swaran Singh*, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as

per the FIR and/or charge-sheet.

12. The Supreme Court in *Ramawatar vs State of Madhya Pradesh* reported in AIR 2021 SC 5228, wherein the Court categorically held:-

“16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, primarily private or civil in nature,

or where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse

of the process of law, the Court can exercise its power to quash the proceedings. On similar lines, when considering a prayer of quashing on the basis of

compromise/settlement, if the Court is satisfied that the underlying objection of the Act would not be contravened or diminished even if the felony in question goes

unpunished, the mere fact that the offence is covered under a special statute would not refrain this Court or the High Court, from exercising their

respective powers under Article 142 of the Constitution or Section 482 Code of Criminal Procedure.”

13. The Learned counsel for the petitioner has further relied upon the judgment of the Hon’ble Supreme Court in *Ramesh Chandra Vaishya vs.*

The State of Uttar Pradesh & Anr. in Criminal Appeal No. 1249 of 2023 (arising out of SLP(CRL) No. 1249 of 2023) in which Paragraph 18 reads

as follows:-

“18. That apart, assuming arguendo that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same

does not advance the case of the complainant any further to bring it within the ambit of section 3(1)(x) of the SC/ST Act. We have noted from the first F.I.R. as well

as the charge-sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the

complainant belonged, except for the allegation/observation that caste-related abuses were hurled. The legislative intent seems to be clear that every insult or

intimidation for humiliation to a person would not amount to an offence under Section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is

targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief

(chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by use of abusive or offensive language. Even if the

same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words

are laced with casteist remarks. Since section 18 of the SC/ST Act bars invocation of the court’s jurisdiction under Section 438, Cr.P.C. and having regard to the

overriding effect of the SC/ST Act over other laws, it is desirable that before an accused is subjected to a trial for alleged commission of offence under section 3(1)

(x), the utterances made by him in any place within public view are outlined, if not in the F.I.R. (which is not required to be an encyclopaedia of all facts and

events), but at least in the charge-sheet(which is prepared based either on statements of witnesses recorded in course of investigation or otherwise) so as to

enable the court to ascertain whether the charge sheet makes out a case of an offence under the SC/ST Act having been committed for forming a proper opinion in

the conspectus of the situation before it, prior to taking cognizance of the offence. Even for the limited test that has to be applied in a case of the present nature,

the charge-sheet dated 21st January, 2016 does not make out any case of an offence having been committed by the appellant under section 3(1)(x) warranting

him to stand a trial.

14. In *Randheer Singh vs The State of U.P. & Ors.*, Criminal Appeal No. 932 of 2021, on September 02, 2021, the Supreme Court held:-

“23. Even though an FIR need not contain every detail, an offence has to be made out in the FIR itself. It is the case of the Private Respondents that Bela Rani

has no title. Bela Rani executed a false Power of Attorney in favour of Rajan Kumar (since deceased). Alternatively, the Power of Attorney, in itself, was a forged

document.

33. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of

repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is

involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. 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 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.

15. It appears that there are no materials in the case diary to prima facie support the offences alleged and continuing the present criminal proceeding

shall clearly be an abuse of the process of law.

16. CRR 1548 of 2022 is thus allowed.

17. The proceedings in connection with Special Case NO. 20/2022 arising out of Shibpur P.S. Case No. 26/2022 dated 31.01.2022 under Sections

506/34 of the Indian Penal Code and Section 3(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, pending before

the learned Special Judge (SC & ST Act, 1989), Howrah whereby charge sheet vide charge sheet no. 50/2022 dated 28.02.2022 under Sections

195A/506 of the Indian Penal Code and Section 3(x) of the Schedule Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 has been filed

against the petitioners, is hereby quashed in respect of the petitioners namely Pratima Chowdhury and Partha Chowdhury.

18. All connected Applications, if any, stand disposed of.

19. Interim order, if any, stands vacated.

20. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

21. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.