

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

CRR 1124 of 2018

IA No. CRAN 1 of 2024

Satyabrata Barik @ Mithu.

Vs.

The State of West Bengal & Anr.

With

CRR 4188 of 2017

Sujata Dutta

Vs.

State of West Bengal & Ors.

For the petitioner in CRR 4188 :Mr. Tapas Dutta, Adv.
of 2017 & opposite party no. 2 Mr. Mrityunjoy Halder. Adv.
in CRR 1124 of 2018

For the petitioner in CRR 1124 :Mr. Sourav Chatterjee, Adv.
Of 2018 & opposite party nos. Mr. Souvik Nandy, Adv.
2 in CRR 4188 of 2017 Mr. Soumya Nag, Adv.

For the State in CRR 1124 of :Mr. A Sinha, Ld.APP.
2018 Mr. Saryati Datta, Adv.

Heard On : :22.08.2023,01.09.2023,
26.09.2023, 07.12.2023,

07.12.2023, 11.12.2023,
21.12.2023, 25.01.2024,
01.03.2024, 01.05.2024,
13.05.2024, 21.05.2024,
24.06.2024

Judgment On : **:19.07.2024**

Bibhas Ranjan De, J. :

- 1.** Prayer for quashment of proceedings in connection with A.C.G.R. No. 7195 of 2016 presently pending before the Court of Ld. Judicial Magistrate, 6th Court, Alipore arising out of Haridevpur Police Station Case No. 715 of 2016 dated 24.12.2016 under Sections 354C/354D of the Indian Penal Code (for short IPC) has been sought in this instant revision application being no. CRR 1124 of 2018.
- 2.** The prayer for speedy disposal of the proceeding in connection with that instant case which is pending before the Court of Ld. Judicial Magistrate, 6th Court, Alipore has been made by the petitioner in connection with CRR 4188 of 2017.
- 3.** Both this revision applications are taken up together for disposal via this common judgement.

Factual Backdrop:-

4. The opposite party no. 2 herein on 24.12.2016 lodged a written complaint to the Haridevpur Police Station which gave rise to Haridevpur PS Case No. 715 of 2016 alleging inter alia that whenever the complainant with her daughter used to go to school or market or for private tuition, it came to her notice that the petitioner used to watch and follow them which disturbed the opposite party no. 2. Since apart, the accused/petitioner captured her photographs/images of the opposite party no. 2 on his camera and mobile phone on different occasions which was duly reported to the police station from time to time. But, lastly on 22.12.2016 at about 3.30 p.m. the petitioner allegedly captured photographs/images secretly from his residence, while the complainant was standing on the road in front of her residential building. After noticing a flash when the opposite party no. 2 looked at the residence of the petitioner, then he fled inside the building. After apprehending that the accused/petitioner might have used photographs of the opposite party no. 2 for any wrongful purpose, the opposite party filed the complaint.

5. On receipt of such information Haridevpur P.S. started investigation and after completion of investigation filed charge sheet against the sole accused/petitioner under Section 354C/354D of the IPC. Thereafter, the petitioner surrendered and enlarged on bail.
6. Being aggrieved by and dissatisfied with the impugned proceedings in connection with the case at hand, the petitioner has preferred this revision application.

7. Arguments Advanced:-

With respect to CRR 1124 of 2018:-

8. Ld. Counsel, Mr. Sourav Chatterjee, appearing on behalf of the petitioner has mainly contended that the entire dispute by and between the parties at best relate to disputes which are purely civil in nature and no criminal proceeding should be allowed to proceed further in connection with the instant case.
9. Mr. Chatterjee has further argued that the facts and circumstances of the instant case make it amply clear that the opposite party no. 2 has instituted this proceeding in order to create pressure upon the developer to deliver the other car parking space in favour of her for which they do not have any right, title and interest.

10. Mr. Chatterjee has also pointed towards the behavior of opposite party no. 2 which clearly shows that she is hell bent to use the process of criminal law to harass the petitioner herein with an ulterior motive to wreak vengeance.
11. Before parting with, Mr. Chatterjee has referred the impugned charge sheet wherein it was observed that during the course of investigation no evidence or witness could be found to substantiate the claim of the complainant. Through this observation Mr. Chatterjee has tried to make this Court understand that no case has been made out against the petitioners under Sections 354C/354D of the IPC.
12. In order to substantiate his claim, Mr. Chatterjee has relied on some cases which stand as follows:-
- ***Haji Iqbal alias Bala through S.P.O.A vs. State of Uttar Pradesh & Ors.*** reported in **2023 SCC OnLine SC 946**
 - ***Haji Iqbal alias Bala through S.P.O.A vs. State of Uttar Pradesh & Ors.*** reported in **2023 SCC OnLine SC 948**
 - ***State of Haryana & Ors. vs. Bhajan Lal & Ors.*** reported in **1992 Supp (1) SCC 335**
 - ***Vineet Kumar Goel vs State of Uttar Pradesh and Anr*** reported in **2017 (13) SCC 369**

- ***Ahmad Ali Quarashi & Anr vs. State of Uttar Pradesh and Anr*** reported in ***2020 (13) SCC 435***
- ***Raj Kumar Mondal vs. State of West Bengal*** reported in ***2021 SCC OnLine Cal 2069***

13. Per contra, Ld. Counsel, Mr. Tapas Dutta, appearing on behalf of the opposite party no. 2 has mainly contended that if merely a Civil Suit is pending or there is prima facie civil dispute, it does not absolve the accused from criminal proceeding. In a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the complainant that itself cannot be a ground to quash a criminal proceeding. It is a settled proposition of law that both civil and criminal proceedings can run concurrently.

14. While exercising jurisdiction under Section 482 of the Cr.P.C the real test for the High Court is to assess whether the allegation made in the complaint discloses a cognizable offence or not. If the complaint prima facie discloses commission of the same then the High Court should not interfere by exercising extra ordinary power as there is hardly any scope to assess credibility of the allegation made in the complaint.

15. Before parting with, Mr. Dutta has argued that the High Court should not generally exercise power under Section 482 of the Cr.P.C. after order of taking cognizance and issuance of process against the accused is being given by the Court below.
16. In order to substantiate his argument, Mr. Dutta relied on a following cases:-
- ***Rakhi Mishra vs. State of Bihar*** reported in **(2017) 16 SCC 772**
 - ***Vijayander Kumar & Ors. vs. State of Rajasthan & Anr.*** reported in **(2014) 3 SCC 389**
 - ***Mahant Abhey Dass vs. Gurdial Singh & Ors*** reported in **AIR (1971) SC 834**
 - ***Syed Askari Hadi Ali Augustine Imam & anr. vs. State (Delhi Administration) & Anr.*** reported in **(2009) 5 SCC 528**
17. Ld. APP, Mr. A. Sinha, appearing on behalf of the State has relied on the case diary and stated that there is sufficient evidence collected during investigation to establish a prima facie case against the petitioner herein.

Ratio of the cases relied on behalf of the parties:-

18. From careful scrutiny of the cases relied on behalf of Mr. Chatterjee following ratios have come up for consideration which can be summarized as follows for brevity of discussion:-

- Inherent power given to the High Court under Section 482 of Cr.P.C is with the purpose and object of advancement of justice. In case the process of Court is tried to be abused by any person, the Court has to thwart that attempt at the very threshold.
- If the Court is satisfied that the criminal proceeding initiated by the complainant is with an ulterior motive due to private and personal grudge then that proceeding is liable to be quashed.
- If the petitioner comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance,

then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely.

- In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines in order to exercise jurisdiction under Section 482 of the Cr.P.C.

19. Per contra, Mr. Dutta has also relied on some cases mentioned above in order to swing the attention of this Court in his favour. After careful perusal of the referred cases the following ratios have been highlighted which are as follows:-

- At the stage of cognizance and summoning, the Ld. Magistrate is required to apply his judicial mind only with a view to ascertain whether a prima facie case is made out for summoning the accused persons. At this stage, the Magistrate is not required to consider the defence version nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not.

- A given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a cognizable offence or not.
- It is settled proposition of law that a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the Criminal Court upon arriving at the satisfaction that there exists a prima facie case.
- If the allegations made in the complaint prima facie suggest that there can be a slightest possibility that the accused might have committed the offence alleged then he must stand trial and no order of quashment should be given while adjudicating matters of similar nomenclature.

Analysis:-

20. Before delving into the merit of this case, I think it would be profitable to refer Sections 354C & 354D of the IPC which run as follows:-

“354C. Voyeurism. - Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanations

1. For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim’s genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.
2. Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

354D.-

(1) Any man who—

1. follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
2. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking;

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

1. it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
2. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
3. in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be

liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.”

21. So, in order to establish the commission of the offense under Section 354C of the Indian Penal Code, the following elements must be present:-

• Intent to Outrage Modesty-

The accused must have intentionally assaulted or used criminal force against a woman with the intention of outraging her modesty or knowledge that his act is likely to outrage her modesty. The intention and knowledge of the accused are essential elements to constitute the offense.

• Assault or Use of Criminal Force-

The accused must have assaulted (i.e. intentionally put another person in fear of immediate and unlawful personal violence) or used criminal force (i.e. intentionally used force against another person without that person's consent) against a woman. Mere words, however indecent or annoying, do not amount to an assault. There must be some active physical contact or violence.

- Against a Woman-

The assault or criminal force must have been directed against a woman. The provision aims to protect the modesty of women.

- Takes Place in Public-

The alleged act must have taken place in some public place or institution. The provision aims to protect the modesty of women in public spheres.

22. Therefore, observing and photographing a women engaging in a private act will amount to an offence punishable under Section 354C of the IPC. Section 354C of the IPC intends to protect the modesty and decency of women and secure public order. It aims to create a safe environment for women in public places by penalizing acts that violate their modesty and instill fear in them. The provision should be interpreted broadly to advance its objectives.

23. At the same time, the offence of stalking under Section 354D of the IPC involves a man as the perpetrator and a woman as victim. To constitute any offence under this Section the man must try to contact a woman against her interest.

24. The essentials of the offence of stalking under Section 354D of the IPC require specific elements to be established for a violation to occur. These elements of Section 354D of the IPC include:-

- **Perpetrator's Gender:** Stalking must be committed by any man. The offence is gender-specific, meaning it involves a man as the perpetrator and a woman as the victim.
- **Unwanted Contact:** The man must try to contact or contact a woman against her interest. This element involves any form of communication, be it in person or through electronic means, where the woman has expressed disinterest and the man persists in trying to establish contact.
- **Repetition:** The act of stalking must exhibit a certain degree of repeatedness. It's not a one-time occurrence but rather involves a pattern of persistent and unwanted attention or contact. This pattern is essential to distinguish stalking from isolated or accidental interactions.
- **Absence of Interest:** There should be a clear indication of disinterest on the part of the woman. This element is crucial to ensure that the woman's lack of consent or interest is evident and that the man is persisting despite her objections.

25. In the case at hand the allegation leveled against the petitioner/accused is that the accused secretly captured complainant's photographs from his residence while she was standing on the road in front of her residential building. It is also alleged when complainant noticed flash then accused entered into his building. Such allegations do not attract any of the penal provision either under Section 354C or 354D of the IPC in respect of the discussion made hereinabove relating to the essential elements required to constitute those offences.

26. The principle enunciated in *Haji Iqbal* (supra) by the Hon'ble Apex Court regarding exercise of jurisdiction by this Court under Section 482 Code of Criminal Procedure (for short Cr.P.C) is to the effect that the Court owes a duty to look into the contents of the written complaint and other attending circumstances as well as evidence collected during investigation with due care and circumspection.

27. On scrutiny of the case diary, particularly charge sheet, it has come to the notice of this Court that during investigation no specific evidence has been collected attributing any of the ingredients of Section 354C & 354D of the IPC.

28. To exercise the inherent power under Section 482 of the Cr.P.C is not the rule but it is an exception which can be applied only if it appears to the Court that miscarriage of justice would be committed if the trial is allowed to proceed further. This Court is also not oblivious to the settled proposition of law that this Court cannot function either is a Court of appeal or revision and this power can only be exercised to prevent abuse of the process of the Court.

29. In the celebrated judgment of ***Bhajan Lal*** (supra) Hon'ble Apex Court channelized the seven parameters including the parameter no. 1 which runs as follows:-

“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.”

30. The discussions made in the foregoing paragraphs, in my humble view, leads to a position that the aforesaid parameters squarely attracts to the case at hand. As a result, the proceeding in connection with Haridevpur Police Station Case

No. 715 of 2016 pending before the Court of Ld. Judicial Magistrate, 6th Court, Alipore is liable to be quashed.

- 31.** As a sequel, the revision application being no. CRR 1124 of 2018 stands allowed.

With respect to CRR 4188 of 2017:-

- 32.** Pursuant to the decisions in CRR 1124 of 2018, question of speedy disposal of the proceeding in connection with Haridevpur Police Station Case No. 715 of 2016 dated 24.12.2016 does not arise.

- 33.** Thus, the revision application being no. CRR 4188 of 2017 stands dismissed being infructuous.

- 34.** Interim order, if there be any, stands vacated.

- 35.** Connected applications, if there be any, stand disposed of accordingly.

- 36.** All parties to this revision application shall act on the server copy of this order downloaded from the official website of this Court.

- 37.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]