

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 709 of 2014

**Milan @ Bulbul Bajpayee
-Vs-
The State of West Bengal**

For the Petitioner : Mr. Souvik Ganguly
Mr. Supriyo Shasmal

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Heard on : 17.02.2023, 21.03.2023, 08.06.2023.

Judgment on : 27.09.2023.

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application is filed by the petitioner praying for quashing of proceedings in G.R. No. 336 of 2002 pending before the Learned Sub-Divisional Judicial Magistrate, Raghunathpur, arising out of Neturia Police Station Case No. 54 of 2002 dated 18.2.2002 under Sections 413/414 of the Indian Penal Code.
2. Neturia Police Station Case No. 54 of 2002 dated 18.2.2002 under Sections 413/414 of the Indian Penal Code had been registered for investigation on the basis of a suo moto complaint lodged by one Arun Kumar Bagdi, Sub-Inspector of Police of Neturia Police Station, inter alia, alleging commission of

offences by the petitioner punishable under Sections 413/414 of the Indian Penal Code.

3. The allegations as leveled in the said complaint are, inter alia, to the effect that on 18.02.2002 the complainant received a credible source of information that one truck being No. WB-55/0496 loaded with steam coal was approaching from Gram Pabellia side under Neturia Police Station. Based on such information the complainant and other police personnel reached at Dhrubeswari More. At 1.05 hrs. on reaching Gram Parbellia they divided into two groups for intercepting the loaded truck from two different sides by keeping the P.S. vehicle at a safe distance, hiding themselves at a distance. At 2.45 hrs. the complainant intercepted one truck bearing No. WB-55/0496 near Pandey Hotel and stopped the truck and on checking the same steam coal was found. On demand, the driver failed to produce any valid documents paying challan in respect of the loaded coal. During interrogation the driver confessed that he loaded the steam coal from the open field adjacent to the village Gram Parbellia and also confessed that the driver had no challan/documents/papers in respect of the loaded coal. The complainant was on the opinion that the driver of the truck in connivance with the owner of the truck and others procured the coal by stolen means and were transporting the same illegally for their wrongful gain. The complainant seized the truck and coal weighing 14.970 MT along with relevant papers of the truck and arrested the driver of the truck namely, Shyamapada Roy.

4. The coal and the truck was released by the Learned Court below by his order dated 28.01.2003 and 25.02.2003.
5. After completion of a purported investigation the Investigating Agency submitted its report in final form vide Charge-Sheet No. 24 of 2003 dated 30.04.2003 under Sections 413/414/471 of the Indian Penal Code against the petitioner and two others. The investigation revealed that after verification of the registers and also the challan of ECL etc. it could be gathered that the document of the factory were forged.
6. Learned Advocate for the petitioner submitted that:
 - i. The impugned proceeding is a gross abuse of the process of court which if allowed to continue for a single day more beyond the stage it has already reached will degenerate itself into a weapon of harassment and persecution and as such the same is liable to be quashed for the ends of justice.
 - ii. The false implication of the petitioner is apparent from the fact that there no one has claimed the ownership of the seized coal. Moreover, it transpires from the materials on record that the coal was seized at the sweet will of the police authorities without any complaint of theft made by the owner of the property. In such circumstances, it is perceptible that criminal proceeding is manifestly attended with mala fide and/or ulterior motive for wrecking vengeance with a view to spite him due to private or personal grudge. As such this Hon'ble Court should exercise its

powers to quash the malicious proceedings to prevent abuse of the process of Court.

- iii. The police authorities of Neturia Police Station out of their personal grudge implicated the petitioner in the aforesaid criminal case with a view to fulfill their demand and vested interest. However, it is specific case of the petitioner that the First Information Report does not make any specific case as provisions of those Sections like Sections 413/414 of the Indian Penal Code do not attract so far the present petitioner is concerned and as such the impugned is liable to be quashed forthwith by this Hon'ble High Court.
- iv. In order to establish a case under Section 414 of the Indian Penal Code the prosecution has to establish at least that the coal seized by the police are stolen property but in the instant case, it is crystal from a bare perusal of the First Information Report that the complainant of the instant case is a police officer and moreover the witnesses are also police officers of Neturia Police Station and there in no mention of any independent person who is an actual claimant of the seized coal. In such circumstances the provisions of Section 414 of the Indian Penal Code, so far as the present petitioner is concerned initiated at the behest of the prosecution is liable to the quashed.

- v. So far Section 417 of the Indian Penal Code is concerned, question of cheating and/or any such offence is not applicable in the instant case.
- vi. To establish a prima facie case under Sections 410/414 of the Indian Penal Code it has to be established first that the property in question was a stolen property. What is a stolen property has been defined under Section 410 of the Indian Penal Code as “The property is a stolen property when it is transferred by theft or by extortion or by robbery or by a criminal breach of trust or by criminal misappropriation”. There is no whisper in the four corners of the First Information Report as also the Charge-Sheet against the present petitioner to the effect the said coal was obtained by them in any of the manner as contemplated under Section 410 of the Indian Penal Code. The petitioner was never arrested by the police at any point of time and no prima facie material has been established to the effect that the alleged coal has been transferred by theft or by extortion or by robbery or by criminal breach of trust or criminal misappropriation. The above criteria as required under Section 410 of the Indian Penal Code is very much wanting against the petitioner and as such, the interference of this Hon’ble Court is highly solicited.
- vii. The allegations made in the complaint do not prima facie constitute any offence or make out a case against the petitioner

and as such the initiation and continuation of the instant proceeding is liable to be quashed for the ends of justice.

viii. The allegations made in the FIR and the Charge-Sheet 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 petitioner. Hence, on the basis of the First Information Report as also the Charge-Sheet in question continuation of the instant proceedings will be gross abuse of the process of Court and as such the same is liable to be quashed.

ix. The instant proceeding is manifestly attended with mala fide and/or the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the petitioner and with a view to spite him due to private and personal grudge and as such, the proceeding in question and the complaint which is the origin of the institution of the instant case are liable to be quashed.

x. It is expedient in the interest of justice to uphold the dignity of law that the impugned proceeding is quashed forthwith.

xi. The impugned proceeding is otherwise bad in the eye of law and is liable to be quashed.

7. The Learned Advocate for the State submitted the involvement of the petitioner in the alleged crime required recording of evidence and adjudication thereof. At this premature stage the instant revisional application shall not be dismissed.

8. In **State of Haryana and Others v. Bhajan Lal and Others**¹, the Hon'ble Supreme Court held 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.

¹ 1992 Supp (1) SCC 335

(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.”

9. The case diary revealed the following facts :-

- i. The statements recorded under Section 161 Cr.P.C. do not absolve the prima facie involvement of the petitioner in the alleged offence.
- ii. The carriage truck was allegedly hired by the petitioner from the person who was not the valid owner of the truck and claimed to have purchased the same from the original owner a price, pending transfer of ownership from the concerned motor vehicles dept. The aforesaid person stated to have been granting the truck on hire to the present petitioner earlier occasions too.

- iii. The driver of the truck stated to have acted on the direction of the petitioner and could not produce valid documents concerning carriage of coal at the time he along with the truck were apprehended, which was released to the recorded owner vide an order of the Learned Trial Court.
 - iv. The petitioner seemed to have been following the truck and on witnessing the raiding team diverted and escaped.
10. There are sufficient materials on record to proceed with the trial to unravel the role of the alleged perpetrator.
 11. Accordingly, the instant criminal revisional application being CRR 709 of 2014 is dismissed.
 12. There is no order as to cost.
 13. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
 14. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)