

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 505 of 2020

Dr. Raunak Hajari @ Raunak Hajari & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Milon Mukherjee, Sr. Adv.
Mr. Usaf Ali Dewan,
Mr. Asif Dewan.

For the State : Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan.

For the Opposite Party No. 2 : None.

Heard on : 10.01.2023

Judgment on : 20.02.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred praying for quashing of proceeding in G.R. No. 6458 /19 arising out Belgharia P.S. Case No. 30/2019 dated 14.01.2019 under Sections 377/506/120B of the Indian penal Code including F.I.R., Charge Sheet No. 355/19 dated 28.08.2019 and order dated 05.01.2019 for taking cognizance, now pending before the Court of Ld. A.C.J.M. at Barrackpore, District- North 24 Parganas.

The petitioner's case is that on 14.01.2019 one student of 1st Year DMLT (Diploma in Medical Lab Technology) of Sagar Dutta Medical College, Belghoria, North 24 Parganas lodged a written complaint before the Officer-in-Charge, Belghoria Police Station and on the basis of the said complaint Belghoria P.S. Case No. 30/19 dated 14.01.2019 under Section 377/506/120B of the Indian Penal Code was registered for investigation.

The allegations levelled in the said complaint are inter-alia that on 10.01.2019 one Dr. Raunak Hajari and a DMLT interneer Mr. Suman Dey forced him to go to Amta to attend a meeting of Dr. Nirmal Majhi. After coming back, Dr. Raunak Hajari asked the complainant to go to the Doctor's quarter inside the hospital campus at around 6 pm, and then Dr. Raunak locked the door. Dr. Raunak Hajari then undressed himself and forcefully undressed the complainant. Then he forced the

complainant to massage his private part with several creams. The complainant was sexually tortured till 08.20p.m. The accused threatened the complainant not to disclose this fact to anybody otherwise he would spoil the complainant's career. Next morning, the DMLT internee Suman Dey also threatened the complainant not to tell about the incident to anybody.

On the next day in the afternoon, Dr. Raunak Hajari was again forcing the complainant to go to his house with him, but the complainant refused. Even after that he called the complainant several times asking the complainant to give him sexual pleasures. Finally the complainant blocked his number.

Later, the complainant came to know that Dr. Raunak Hajari and Mr. Suman Dey and their team used to do the same with many others and Dr. Raunak Hajari has sexually harassed many others. The accused used to threaten showing his power. The complainant made this complaint before many other authorities including the Officer in Charge, Belghoria, Police Station.

Mr. Milon Mukherjee Learned Senior Counsel for the petitioner has submitted that the F.I.R. shows the incidents alleged to have been committed on 10.01.2019 at night between 06.00pm to 8.20 pm but the F.I.R. was lodged on 14.01.2019. On 11.01.2019 at around 9 am, both the complainant and the accused person Dr. Raunak Hajari

attended a function at the Medical College & Hospital, Kolkata and the complainant did not disclose the alleged incident which took place on 10.01.2019 to any authorities of Sagar Dutta Medical College & Hospital.

At the relevant point of time petitioner No. 1 was R.M.O. of Anaesthesia Department of Sagar Dutta Medical College & Hospital. At present, the petitioner is R.M.O. cum clinical tutor of Anaesthesia Department of SSKM Hospital and also holding the post of State Working President, Progressive Junior Doctor's Association and for that reason the rival group of the petitioner's organization had implicated the petitioner no. 1 along with Petitioner No. 2 who at the relevant time was an intern of D.M.L.T (Diploma in Medical Lab Technology) of Sagar Dutta Medical College and Hospital, through the complainant by making a concocted and false story.

The incident allegedly happened on 10.01.2019 in between 6 pm to 8.20 p.m. but the complainant lodged the F.I.R. on 14.01.2019 without disclosing the reason for delay in lodging the complaint and the said complaint was made before number of authorities including the Hon'ble Chief Minister, Govt. of West Bengal only to create pressure on the Police authorities.

At the relevant time the complainant had no connection with the Anaesthesia Department of the said Medical College or with the petitioner No. 1.

That according to the F.I.R. lodged by the complainant the alleged offence does not constitute the ingredients required for the commission of offence under Section 377/506/120B of the Indian Penal Code.

After completion of investigation of the instant case, the Investigating Officer submitted Charge Sheet vide CS No. 355/19 dated 28.07.2019 under Section 377/506/120B of the Indian Penal Code against 2(Two) accused persons namely Dr. Raunak Hajari and Suman Dey. On 05.11.2019, learned Magistrate took cognizance of the case.

Mr. Mukherjee further submitted that the investigation in-connection with the instant case was done in a perfunctory manner and was done with an intention to implicate the present petitioners and Charge Sheet was submitted for offence punishable under Section 377/506/120B of I.P.C. though there is no ingredients for such offence which transpired in the First Information Report.

That the allegations made in the F.I.R. as well as in the charge sheet vide C.S. No. 355/19 dated 28.09.2019 does not constitute the offences prescribed under Section 377/506/120B of I.P.C. As such the continuation of proceeding in G.R. Case no. 6458 of 2019 now pending

before the Court of Ld. A.C.J.M. at Barrackpore, is an abuse of the process of law and should be quashed.

That continuation of the proceeding in G.R. case No. 6458 of 2019 pending before the Court of Ld. A.C.J.M. at Barrackpore has caused miscarriage of justice to the petitioners and the same should be quashed and/or set aside.

The Charge Sheet has been submitted in the instant case but the said case is not yet committed.

The impugned proceeding in G.R. Case No. 6458/19 pending before the court of Ld. A.C.J.M. at Barrackpore is harrassive and vexatious in nature and has been instituted against the petitioners with an ulterior motive.

The continuation of proceeding in G.R. Case No. 6458/19 is otherwise bad in law and should be quashed.

A written notes of argument has been filed on behalf of the petitioners, which goes like this:-

- *Inordinate delay in lodging the First Information Report ;*

- *Date of alleged incident -10.01.2019, date of F.I.R.-14.01.2019.*

Be it mentioned that the complaint in respect of which Belghoria Police Station Case No. 30/19 was lodged, it was addressed to the Hon'ble Chief Minister of the State and to various other dignitaries.

- *O.P. 2 alleges that the present petitioners and their team had sexually harassed many others before him and also threatened them with dire consequences; on perusal of the charge sheet, it would appear that none of those persons could be traced out by the Investigating Agency who were previously harassed by the petitioners, nor the alleged team of the present petitioners could be unearthed by the Investigating Agency. This also clearly indicates to the falsehood of the prosecution case.*
- *On perusal of statement u/s 161 Cr.P.C. of CSW 2, Sarojit Biswas, CSW 3, Ajoy Mondal and CSW4, Suvadeep Paul it would be evident that the O.P.2 had informed them about the alleged incident on 14.01.2019 itself which according to him occurred on 10.01.2019. The conduct of the O.P.2 is obviously suspicious in the sense that he did not divulge to anyone about the alleged incident till 14.01.2019.*
- *In order to prove its charge beyond reasonable doubt the prosecution requires to indicate certain facts i.e. :-*
 - i) Intention to commit an offence,*
 - ii) Preparation to commit an offence,*
 - iii) Attempt to commit an offence; and*
 - iv) Commission of the offence.*

In the instant case, on perusal of the charge sheet, it would be palpably evident that the prosecution has miserably failed to indicate the aforesaid facts. In order to bring home the aforesaid facts, the prosecution must conclusively indicate as to how the accused prepared himself i.e. seizure of incriminating articles, attempting to commit an offence, commission of the offence (being corroborated by both medical and ocular evidence).

Be it also mentioned that in the instant case the medical report can be broadly classified in two parts. The first part

wherein description/nature of injuries are mentioned on the various organs, on perusal of which, it would transpire, that the victim did not sustain a single scratch of injury and furthermore. His anal orifice appears to be healthy and no fresh and recent injuries were detected. The second part of the said report provides for the opinion given by the Doctor. It was opined that no injury or evidence of complete anal intercourse could be detected. In this regard, it would be pertinent to mention herein that an opinion in a medical report is not a substantive evidence of a particular fact in issue, it is merely advisory in nature.

- *Section 377 I.P.C. requires the following ingredients:*
 - a) *The accused must have carnal intercourse with a man or a woman or an animal.*
 - b) *The act was against the order of nature.*
 - c) *The act was done voluntarily by the accused.*
 - d) *There was proof of penetration.*

In the instant case, on perusal of the report prepared by the Department of Forensic Medicine and Toxicology, CMSDH it would appear that so far as 'anal orifice' of the O.P. 2 is concerned, the same was healthy and there was no fresh or recent injury, and it was opined that no injury or evidence of complete anal intercourse could be detected.

- *J.B. Mukherjee's Forensic Medicine and Toxicology; page 744:*
Per rectal examination with speculum may reveal the following :-
 - a. *Externally there **may be bruise** and some **swelling of anus**, the **anal orifice dilated**, evidence of **seminal discharge in and***

around the anal orifice with or without any bleeding from the locally injured tissues.

- b. The **anal muscles may be found irritable, inflamed and tender** and the patient may complaint of **difficulty on walking, defecation** as well as during examination.
- c. There may be **multiple linear abrasions extending from any side of anal margin** into the anus or between the anus and the tip of coccyx.

In case of great disproportion in size between **the anal orifice and the male organ, there will be more injuries locally.**

- d. In case of application of sudden force with violence, on a tender subject, there **may be triangular bruised tear at the posterior part of anus with its base situated externally**, but with gradual but forcible over stretching, there may be a radial fissure of whole thickness of mucus membrane. Of the anus. **The fissure will take several days to heal.**
- e. Similarly forcible introducing of **a bigger size male organ through a narrow anus, may cause tearing of the sphincter ani with extra vacation of blood around.**
- f. Evidence of **lubricating material**, seminal fluid with pubic hair of accused **in and around the anus or on the underclothing of the victim specially when he is a boy, will be strong presumptive proof of the crime.**

On perusal of the aforesaid principles enunciated in the medical jurisprudence, it would be evident that in the instant case, the anal orifice of the victim was healthy, no fresh or recent injury, suggesting falsehood in the prosecution case.

- On the face of the record it is apparent that the victim has tried to gain certain political score by addressing his complaint to the Hon'ble Chief Minister and in the said complaint, he narrated about attending a

meeting of Dr. Nirmal Majhi who incidentally happens to be a Member of the West Bengal Legislative Assembly. The said narration about attending the said meeting bears absolutely no relevance in so far as the alleged incident is concerned, but still the same was mentioned.

• **Principles of Section 482 Cr.P.C. :**

- a. F.I.R. even if taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case.*
- b. Allegations in the F.I.R. and other materials accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation or continuation of a trial.*
- c. Uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same, do not disclose the commission of the offence.*
- d. Allegations in the F.I.R. do not constitute a cognizable offence.*
- e. Allegations made in the F.I.R. or complaint are so absurd or inherently improbable on the basis of which no prudent can ever reach a just conclusion for proceeding against the accused.*
- f. When a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused with a view to spite due to personal grudge.*

In the instant case, on perusal of the statements recorded u/s 161 Cr.P.C. medical report and letter of complaint it could be safely presumed that the instant proceeding is a malafied one.

Mr. Arijit Ganguly, Learned advocate for the State has produced the case diary and submitted that there are several

statements recorded under Section 161 Cr.P.C. which support the case of the complaint. It is further submitted that the offence in this case is very serious and the accused should be made to face the trial in the interest of Justice and if the proceedings are quashed there shall be miscarriage of Justice and as such the revisional application should be dismissed.

It is further submitted that on proper investigation and there being evidence making out a prima facie case of a cognizable offence against the petitioners the charge sheet filled is in accordance with law.

In spite of due service there is no representation on behalf of the opposite party no. 2.

On hearing the submissions of both sides and on perusal of the materials on record and the case diary, it is before the court that the incident allegedly occurred on 10th January, 2019 between 6 p.m. to 8.20 p.m. The complaint was admittedly made on 14th January 2019, 3 days after the alleged incident.

Such an incident, if has to be faced by a student, it takes a lot of courage to make the situation he faced public, that too against a senior doctor. The nature of allegation is not heard of everyday. The experience if true, is horrifying, which can lead to mental break down and leave a person scarred for life.

Thus the nature of the alleged incident is unfortunate if it has at all occurred.

It has been submitted on behalf of the petitioners that a false complaint has been lodged due to political rivalry.

In a case of such nature the medical report becomes an important piece of document.

Three observations in the injuries report are important.

Injuries: No fresh or recent injury could be detected anywhere on the body.

Anal orifice : Healthy, no fresh or recent injury.

Opinion: No injury or evidence of complete anal intercourse could be detected. Regarding presence of foreign body in the anus, opinion will be given on receipt of FSL report.

Section 377 of the Indian Penal Code, lays down:-

“377. Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

The contents in the petition of complaint is as follows:-

“On 10th January Dr. Raunak Hajari and a DMLT Internee Mr. Suman Dey forced me to go to AMTA to attend a meeting of Dr. Nirmal Majhi.

After coming back, Dr. Raunak Hajari asked me to go to his Doctor’s quarter inside the Hospital campus at arrived 6.00p.m. Then the room was locked and Dr. Raunak Hajari undressed himself and forcefully undressed me. Then he forced me to massage his private part with several creams. I was sexually tortured till 8.20 p.m. He threatened me not to disclose this fact to anybody otherwise he will spoil my career. Next day morning the DMLT internee Suman Dey also threatened me not to tell to anybody.

On next day afternoon Dr. Raunak Hajari was again forcing me to go to his house with him. Which I refused. Even after that he called me several times asking me to give him sexual pressure. Finally I blocked his number.”

The **relevant statement** being “Dr. Raunak Hajari undressed himself and forcefully undressed me. Then he forced me to massage his private part with several creams. I was sexually tortured till 8.20 p.m.”

The **important words** here are “forcefully”, “forces” etc. The ordeal alleged took place for two and half hours.

The **medical officer**, who conducted the medical examination of the complainant/victim is needed to be examined and cross examined regarding the medical report, in which the opinion, “*No injury or evidence of **complete anal intercourse** could be detected,*” is required

to be clarified by the doctor for proper adjudication of the case for which is a trial is necessary in the interest of justice.

There are several statements in the case diary which support the case of the complainant.

Considering the said statements and other materials, charge sheet has been submitted and cognizance taken.

In the present case cognizance has been taken is awaiting commitment and there after the matter shall be fixed for consideration and framing of charge. The petitioners will also get an opportunity of hearing at that stage of trial.

Another contention of the petitioners is that the complaint has been lodged due to political rivalry.

In **Ramveer Upadhyay Vs. The State of Uttar Pradesh, on 20 April, 2022, SLP (Crl.) No. 2953 of 2022**, the Supreme Court held that:-

*“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. **It is possible that a false complaint may have been lodged at the behest of a political opponent.** However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the*

*petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, **would have to be decided in the trial.** In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No.19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C. 13 (2008) 1 SCC 474.”*

A Five Judge Bench of the Supreme Court struck down Section 377 of the Indian Penal Code in **Navtej Singh Johar vs. Union of India** on 6th, September, 2018 in Writ Petition (Criminal) No. 76 of 2016, **decriminalizing same sex relations between consenting adults.** The Court in the concluding paragraphs, of the judgment authored by the Chief Justice Dipak Mishra on behalf of self and Justice A.M. Khanwilkar, held:-

“(xvii) Ergo, Section 377 IPC, so far as it penalizes any consensual sexual relationship between two adults, be it homosexuals (man and a man), heterosexuals (man and a woman) or lesbians (woman and a woman), cannot be regarded as constitutional. However, if anyone, by which we mean both a man and a woman, engages in any kind of sexual activity with an animal, the said aspect of Section 377 is constitutional and it shall remain a penal offence under Section 377 IPC. Any act of the description covered under Section 377 IPC done between

two individuals without the consent of any one of them would invite penal liability under Section 377 IPC.”

The views in the concluding part of the judgment authored by Justice Indu Malhotra is as follows:-

CONCLUSION :-

i. In view of the aforesaid findings, it is declared that insofar as Section 377 criminalises consensual sexual acts of adults (i.e. persons above the age of 18 years who are competent to consent) in private, is violative of Articles 14, 15, 19, and 21 of the Constitution.

It is, however, clarified that such consent must be free consent, which is completely voluntary in nature, and devoid of any duress or coercion.

ii. The declaration of the aforesaid reading down of Section 377 shall not, however, lead to the reopening of any concluded prosecutions, but can certainly be relied upon in all pending matters whether they are at the trial, appellate, or revisional stages.

iii. The provisions of Section 377 will continue to govern non-consensual sexual acts against adults, all acts of carnal intercourse against minors, and acts of bestiality.

iv. The judgment in Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors., (2014) 1 SCC 1, is hereby overruled for the reasons stated in paragraph 19.....

Definition of Anal Sex or Anal inter course as per Wikipedia.

“.....Although anal sex most commonly means penile – anal penetration sources

sometimes use anal intercourse to exclusively denote penile-anal penetration, and anal sex to denote any form of anal sexual activity, especially between pairings as opposed to anal masturbation.”

Penetration, however little is an offence. In the present case the opinion in the medical report is “No injury or evidence of complete anal intercourse could be detected” (so penetration however little (incomplete) in this case).

The Supreme Court in **Suresh Kumar Koushal & Anr. Vs Naz Foundation & Ors., Civil Appeal No. 10972 of 2013, on 11 December, 2013**, held that:-

Para 38. “.....*In Calvin Francis v. Orissa* 1992 (2) Crimes 455, the Orissa High Court outlined a case in which a man inserted his genital organ into the mouth of a 6 year old girl and observed:

“8. In order to attract culpability under Section 377 IPC, it has to be established that (i) the accused had carnal intercourse with man, woman or animal, (ii) such intercourse was against the order of nature, (iii) the act by the accused was done voluntarily; and (iv) there was penetration. Carnal intercourse against the order of nature is the gist of the offence in Section 377. By virtue of the Explanation to the Section, it is necessary to prove penetration, however little, to constitute the carnal intercourse.....”

No injury or evidence of “Complete anal intercourse” could be detected “is to be proved in trial as even **incomplete anal intercourse**

prima facie proves penetration however little and is thus an essential ingredient (evidence) to prove the commission of offence under Section 377 IPC in this case and accordingly the said evidence and materials in the case diary makes out a prima facie case of commission of the cognizable offences as alleged.

As such there is sufficient materials to move towards trial in this case as a prima facie case of commission of cognizable offence in the present case has been made out against the petitioner no. 1 and interfering or quashing would be an abuse of the process of Court/law and this is a fit case where the inherent powers should not be exercised.

The ingredients required to constitute the offence under Section 377 IPC is prima facie not present in respect of petitioner no. 2. But there is prima facie materials against him in respect of Section 506/120B IPC. The arguments advanced in the written notes on behalf of the petitioner are all subject to trial.

Filing a complaint of such nature on having to face the ordeal for two and half long hours by a student against a superior who is in a position of influence (here in a doctor) in a Medical College requires extreme courage and mental strength and in the interest of justice, the case should proceed towards trial so that the parties have the opportunity to access the protection of justice.

The opinion of the Doctor herein is prima facie covered by the judgments of the Supreme Court referred herein and is subject to examination and cross examination.

In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). 2060 of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

*“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:*

“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 :*

'7. ... 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.'

*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.' 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."

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.*”

Thus from the materials on record a prima facie case of committing cognizable offences as alleged is present in respect of Dr. Raunak Hajari. There is no prima facie materials in respect of Section 377 IPC against the petitioner no. 2. But there is materials against him in respect of Section 506/120B IPC and the petitioners will face trial accordingly.

CRR 505 of 2020 is accordingly disposed of.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

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

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

(Shampa Dutt (Paul), J.)