

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**CRR 1420 of 2019
Debarati Banerjee
Vs.
The State of West Bengal & Anr.**

For the petitioner : Mr. Ayan Bhattacharya
Mr. Arindam Dutta
Mr. Kausik De
Mr. Mohini Majumder
Mr. Raghav Munshi

For the Opposite Party No.2 : Mr. Prosenjit Mukherjee
Mr. Nirmalya Kumar Das
Ms. Poulami Dutta

Finally heard on : 17.07.2023

Judgment on : 17.08.2023

Ajoy Kumar Mukherjee, J.

1. This application under section 482 of the Code of Criminal Procedure 1973 (Cr.P.C.) has been preferred seeking quashing of the proceeding in respect of present petitioner being complaint case no. 632 of 2018, pending before learned Judicial Magistrate 3rd Court, Suri, Birbhum. Petitioner states that petitioner is the Manager of Human Resources department of IDBI Bank, Shakespheare Sarani Branch. Ms. A.Dutta, being a Grade-A employee in course of her employment was posted at the Suri Branch. Said Ms. Dutta made a complain against opposite party no. 2 herein and on

receipt of such complain the Branch Head had forwarded the same to the Regional Head and thereafter Regional Head forwarded the same to the higher authority. Said complain was in the nature of sexual harassment at work place and an internal complaint committee in terms of law, started enquiry into the complain made by Ms. Dutta against opposite party No. 2 herein. Petitioner submits that he was neither a part of said internal complaint committee nor he was a decision-making authority in respect of findings of such committee. In the meantime said opposite party no. 2 was transferred from Suri Branch, West Bengal to a Branch in the state of Tripura on an administrative basis. Petitioner further contended as per the transfer policy of IDBI Bank, officers with more than five years of stay in a station, would normally be liable for transfer outside the station. Since opposite party no. 2 herein has completed his six years service at Suri Branch and as there was an urgent requirement of an experienced officer in the Tripura Branch, the transfer was effected as an administrative measure.

2. Petitioner's further case is he was surprised to receive a summon in the month of December, 2018, wherefrom she came to know that said opposite party no. 2 has filed suit for defamation before the Civil Judge (Senior Division), Durgapur on an absolute false and concocted story alleging that petitioner herein has hatched up conspiracy for ensuring the transfer of opposite party no. 2 herein and prayed for passing decree for Rs. 5,00000/- against each of the defendants including the petitioner herein in the said suit. In the midst of such event, the petitioner was further surprised to receive another summon wherefrom it appeared that opposite party no.2 has filed aforesaid criminal proceeding against present petitioner and other accused persons.

3. In the said written complaint opposite party no. 2 herein contended that he was posted as Assistant Manager of IDBI Bank, Suri Branch, and accused no. 1 to 4 (present petitioner is accused no.2) have an unholy nexus to cause removal of opposite party no. 2 from the said Branch. In pursuance of such conspiracy the accused no. 1 (aforesaid Ms. Dutta) on instruction of the other accused persons had lodged a false complaint of physical molestation. It is further alleged that upon complain made against the opposite party no. 2, the accused persons caused assassination of the character of the opposite party no.2 herein. Accused No. 3 had forwarded complaint of Ms. Dutta to accused no. 2 (petitioner herein) and opposite party no. 2 had sent the said complain to accused no. 4 and accordingly the impugned transfer was effected. Further allegation is that accused no. 1 and 3 have caused physical and mental torture upon opposite party no. 2 and due to such illegal activities of the accused persons and the conspiracy, the opposite party no. 2 has been transferred to Tripura.

4. Learned court below after considering the allegations made in the written complaint took cognizance and after taking initial deposition, has been pleased to issue summon under section 204 of the Cr.P.C. Summons were issued upon accused no. 1 and 3 under section 323/506/120B of the Indian Penal Code (IPC) and summon was issued upon the present petitioner herein (who is accused no.2) under section 506/120B IPC and the complaint against accused no. 4 was dismissed by the same order.

5. Mr. Ayan Bhattacharya learned counsel appearing on behalf of the petitioner submits that the impugned order is not only illegal and untenable in law but also based on arbitrary misuse of law. The petitioner is innocent and has been falsely implicated as she has not done anything which may be

termed as an offence punishable under the penal law of India. He further submits that on plain reading of the impugned petition of complaint, it is evident that no charge of criminal intimidation or conspiracy in any manner has been brought against the petitioner by the opposite party no. 2. In fact said complaint has been filed as a counter blast to the transfer and Disciplinary Proceeding initiated against the opposite party no. 2 herein and the petitioner has been made a scapegoat of the wrath of the opposite party no. 2. Learned court below relying upon Xerox copy of a transfer order (which is the only allegation in support of the purported contention of opposite party no. 2 to substantiate the charges as alleged by him in the petition of complaint), had issued process against the petitioner under section 204 of Cr.P.C.

6. Mr. Bhattacharya further submits that the order of cognizance is bereft of any reasoning, thereby showing non-application of mind. Moreover in view of intrinsic hollowness in the impugned complaint, no cognizance could have been taken by the concerned Magistrate. The law is well settled that order of cognizance which is the basis of initiation of proceedings must be preceded with proper application of judicial mind and court is not supposed to act as a post office. He further contended that under section 200 of Cr.P.C. examination of public servant is exempted but in case of section 190(1)(a) for taking cognizance by a magistrate, such examination is not exempted even in case of a public servant and as such taking cognizance under section 190 of the Cr.P.C is not a mechanical process and before passing such order magistrate must determine whether prima facie case exists or not.

7. Mr. Bhattacharya strenuously argued that it is apparent from the petition of complaint that the petitioner herein/accused no. 2 is a resident of a place lying outside the territorial jurisdiction of the concerned magistrate and under section 202 of the amended Cr.P.C, any magistrate on receipt of a complaint, shall in 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 person and either enquire the case himself or direct an investigation to be carried out 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. Such mandatory provision has to be scrupulously followed by the Magistrate. Accordingly under section 202 (as amended), the concerned Magistrate is to ward off false complaints against such person, who reside at far off places with a view to save them from unnecessary harassment and learned Magistrate is under obligation to find out, if there is any matter which calls for investigation by an criminal court. In the present case there is no cogent material against the petitioner which can constitute criminal intimidation or criminal conspiracy. Learned Court below had issued summon upon petitioner herein who is posted at a responsible post, without appreciating that summoning of an accused of a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. The court below not even considered that the transfer order was not issued by the petitioner herein but only communicated by the petitioner herein to the opposite party no. 2 and he never participated in the decision of transfer and as such there cannot be any allegation far less substance in the allegation of the conspiracy against the petitioner herein. The basic ingredients of criminal conspiracy or

criminal intimidation is totally absent in the present context. Accordingly petitioner has prayed for quashing the impugned criminal proceeding so far as it relates to present petitioner/accused no. 2.

8. Learned counsel appearing on behalf of the opposite party no. 2 submits that the petitioner herein without conducting any enquiry and at the instigation of accused no. 1 had passed the transfer order alleging that the opposite party no. 2 was involved in such allegation made by the accused no. 1. The petitioner also for the purpose of initiating disciplinary proceeding initially has accepted the genuinity of complaint made by accused no. 1 and she had taken steps to put a stigma in the character of opposite party no. 2. The petitioner herein having knowledge of the fact that the opposite party no. 2 has submitted an application to the effect that he is physically ill and his wife has given birth to a new baby and doctor has advised him not to stay at hilly areas, the petitioner intentionally and purposefully upon giving a bad imputation against the good image and reputation of the opposite party no.2, has transferred him from West Bengal to the state of Tripura in a remote hilly area. No step in terms of relevant provisions of the law has been taken as yet in terms of provisions of sexual harassment at work place Act, 2013 but at the instance of other accused persons, petitioner had issued transfer order as punishment, holding that opposite party no. 2 has committed the offence. The activities of the petitioner obviously are within the meaning of punishable offence under section 506/120B of I.P.C. The petitioner being the superior authority, without conducting any enquiry put the opposite party no. 2 in fear and forced him to join in his new place of posting. The petitioner has threatened the opposite party no. 2 for taking penal action on the basis of allegation

made by accused no. 1. From the information received under RTI Act 2005, it appears that opposite party no. 2 has been transferred on receipt of complaint from the accused no. 1 which was forwarded by the petitioner to the member secretary for taking necessary action and at the instigation of the petitioner herein, the transfer order was issued but neither any departmental enquiry nor any proceeding under the Act of 2013 has been initiated. On the contrary information received under RTI Act shows that concerned authority decided that in view of the fact that opposite party No.2 has already been transferred, no action on pending enquiry against opposite party No.2 is necessary. Due to such false allegation and due to the conspiracy of the accused persons, the opposite party no. 2 has suffered irreparable loss and injury in respect of the character imputation against the good image and reputation of the opposite party no.2 and thus the petitioner as well as other accused persons have committed offence within the meaning of section 506/120B of the IPC. By way of supplementary affidavit, opposite party no.2 further contended that in terms of “officers place and transfer policy” (OFTP), the transfer of opposite party no.2 does not fall within the guideline of the above named policy and as such present transfer is an outcome of the conspiracy against the opposite party no.2 by the petitioner and other accused persons. The opposite party no.2 tried to seek information, whether the transfer order is an administrative transfer or not but the concerned authority has not given any reply to that effect. Accordingly it is clear that transfer is not an administrative transfer but has been issued at the behest of the present petitioner as petitioner is the sole authority for issuance of such transfer order on the basis of complaint lodged by accused no.1. The C.C.T.V. footage dated 23.07.2018 clearly

shows no such incident of sexual harassment took place at workplace. The enquiry under the Act of 2013 has not been completed as yet inspite of passing much more than 90 days and disciplinary proceeding against opposite party No.2 has been stayed by City Civil Court and as such, it is nothing but a conspiracy which requires thorough trial before the Magistrate and as such dismissal of the present proceeding against present petitioner does not arise at all. Opposite party No.2 in support of his argument relied upon principles laid down by Apex Court in **Bhajanlal's Case**, reported in **AIR 1992 SC 604** and **R.P. Kapoor's Case** reported in **AIR 1960 SC 866**.

9. At the very outset I need to refer written complaint filed by the complainant against the present petitioner namely Mr. Debarati Banerjee who has been shown as accused no.2 in the complaint. In the written complaint the relevant portion which relates to the present accused no. 2/ petitioner runs as follows:

(a) In paragraph 3 it has been alleged owing to honest and diligent works of the complainant had created some obstacle to the accused persons 1 to 4 in their unholy nexus of misdeed and just to remove complainant by the process, illegal transfer had come into a concerted criminal conspiracy.

(b) In paragraph 4 it is alleged, as a part of the aforesaid sinister design of conspiracy, first of all they (accused persons) initiated accused no. 1 for playing the game of removal from Suri Branch, of IDBI to another far reaching Brach of the Bank and accused No.1 as per active instruction of the rest of the accused persons had lodged an unfounded and false allegation of physical molestation against complainant to the local banking authority/accused no. 3

- (c)** In paragraph 5, it is also alleged, as the complainant had been obstructing to the unholy deeds of the all accused persons no.1 to 4 and as such the complainant became helpless victim of the aforesaid criminal conspiracy
- (d)** Allegation levelled in paragraph 6 of complaint is all the accused persons 1 to 4 had woven a cock and bull story against the complainant where she had alleged blatant falsehood by assassinating the character and good image of the complainant to the society as well as to the members of his family for which complainant has been suffering from serious mental trauma.
- (e)** In paragraph 7, allegation levelled is out of the 4 accused persons accused no.3 had accepted the baseless and fabricated complaint petition of accused no.1 with *malafide* intention and oblique motive as a part of their criminal conspiracy and thereafter accused no. 2(present petitioner) had consented to send it for further misdeeds and finally it had reached to the accused no.4 and an impugned transfer order came to the complainant after 3 days of lodging complaint by accused no.1.
- (f)** Allegation levelled in paragraph 9 is that the accused persons have been doing imputation against good images and reputation of complainant and thereby complainant had got transferred from Suri Branch West Bengal, to far away in Tripura State and this was made so that no one may disturb them from their illegal activities and unholy nexus.

10. Learned Court below took cognizance of such complaint and took initial deposition of two witness namely the complainant/opposite party no.

2 herein and his wife. Relevant portion of initial deposition of the complainant against the present petitioner in support of complaint may be referred herein for better understanding of the allegation:-

“Accused no. 1 has complained of serious charges of molestation against me to accused no. 2 & 3. These two accused did not cross verify and did not even give me notice or hear me. Accused no.3 threatened that I will be transferred to be far off place. On 29th July, 2018, I received a transfer order without any scope of hearing at 7p.m. to Tripura , Killa District in Gomoti which is 2,000 Kilometre from this place. I have been suffering with medical disabilities which are known to the office. I am alleging conspiracy against me as committed by the accused persons by giving false allegation and are circulating the allegations in open in every Branch. The accused persons have defamed me and are ruining my name and career. I am praying for justice. The accused persons have also threatened me with dire consequences”

11. The wife of the complainant in her initial deposition in support of the complaint stated as follows: -

“Complainant is my husband. He told me about some incidents recently. On 30th August, he told me that he had been transferred. My husband was working at IDBI Bank Suri, Branch. He had told me about a serious false allegation raised against him by his colleague Smt. A. Dutta (accused no.1 in the complaint). He also showed me the allegation. He had stated that he was being pressurized for giving work relaxation which he could not legitimately give. The false allegation was about physical molestation and inside the Branch premises and in CCTV surveillances. In a conspiracy against him, the accused persons transferred him to a distant place. The

accused person also threatened and assaulted my husband. This was told to me by my husband and so he has filed this case”

12. Accordingly on the basis of the allegation made in the written complaint and from the initial deposition of the witness no.1 it can be said that the allegation against defendant no. 2 & 3 is that they did not cross verify the allegation of accused no.1 and did not give complaint herein notice to hear and in the last part he made an omnibus allegation that all the accused persons have defamed him and ruined his family and career and the accused persons have threatened with dire consequences though in the written complaint in paragraph 8 he had alleged about assault and threat against accused no. 1 and 3 but not against the present accused no. 2. Similarly initial witness no. 2 who is the wife of complainant has not made any specific allegation against the petitioner herein but only stated that the accused persons had transferred her husband to a distant place and also accused persons threatened and assaulted her husband though no such allegation against accused no. 2 (petitioner herein) has been made in the written complaint.

13. However on the basis of the aforesaid written complaint and initial deposition as quoted above, learned court below had passed a lengthy order being impugned order dated 19.03.2019, by which he issued process against present petitioner/accused no.2 under section 506/120B I.P.C. In the order impugned the court below in support of its issuance of process under section 506 contended that section 506 may be the more applicable section under which cognizance may be taken and no other observation made in the said order as to why the allegation and the initial deposition makes out a case under section 506 against the present petitioner.

14. 506 of the I.P.C. deals with punishment for criminal intimidation. The terms criminal intimidation has been defined in section 503 of the I.P.C. and the essential ingredients of the offence is that the accused threatened someone with injury to his person reputation or property and the accused had done so with intent to cause alarm to the complainant and that the accused had done so to cause complainant to perform any act which he was not legally bound to do.

15. The term “injury” has been defined in section 44 of the I.P.C which states that the word “injury” denotes any harm whatsoever illegally caused to any person, in body, mind, reputation or property. Accordingly injury must not have only caused harm to the victim but also such injury caused illegally to that person either in his body, mind, reputation or property. In the present case the legality and validity of the transfer order cannot be the subject matter of consideration before a criminal court. However the opposite party no. 2 in his supplementary affidavit has filed the relevant “officers placement and transfer policy(OPTP)” which defines transfer as a movement or relocation of an officer from one position/ location/ centre in India and it should necessarily involve a change of posting enabling a change in the place/centre/station. In clause 16 of the said policy it has been clearly stipulated

“16.1 “OTHER PROVISIONS OF PLACEMENT AND TRANSFER notwithstanding anything mentioned above, bank shall reserve the right to retain /transfer any officer at/to any of its branches/centres at any point of time for meeting any exigencies and administrative requirements and need not be bound by the provisions of this placement and Transfer Policy.”

16. The petitioner submitted that the transfer was effected as the newly opened Branch at Tripura requires an experienced officer. Accordingly the order of transfer as effected can hardly impute the charge of criminal

intimidation against the accused no.2/ petitioner herein and in fact such order of transfer even if signed by the petitioner does not fall within realms of an offence as defined under the penal law. There was nothing to show that the petitioner had participated in the decision of transfer and as such the allegation of conspiracy against the present petitioner hardly attracts. On bare reading of section 503 of I.P.C. it is evident that there must be element of threat to cause injury to his person reputation or property in order to attract the ingredients of section 503 of I.P.C. There is not even an allegation of threat which has been caused by the petitioner herein upon the complainant in respect of his personal reputation or property for which section 506 may attract. The petitioner herein according to complaint has only communicated the previous complaint to his higher authority.

17. The OPTP clearly defines “transfer” as a movement or relocation of an officer from one position/location/centre in India. Transfer is an usual incident concerning service and does not generally require the consent of the employee. Under the aforesaid transfer policy an officer is liable to be transferred in different station and he cannot claim to remain in a particular place unless his appointment itself is to be specified non-transferable post.

18. Section 120B prescribes punishment for the offence of criminal conspiracy which can be said to have committed when two or more person agrees to do or caused to be done

(a) an illegal Act

(b) An Act which may be legal but has been done by illegal means.

In the present case the order of transfer is neither an illegal act nor such order has been passed by adopting any illegal means by the petitioner herein.

19. Ingredients of offence of criminal conspiracy suggests an agreement to commit an offence. There is nothing in the allegation that the present petitioner /accused no.2 has made any agreement with other accused persons to commit any offence. In fact in the present case there is absolutely nothing to establish that there was any agreement with the petitioner herein to commit any illegal act or any legal act by illegal means. If the bank authority decided to transfer any of it's employee from one place of posting to another branch, may be in a distant state, which is permissible under the transfer policy, that must not constitute any offence punishable under section 506 of I.P.C, since it does not amount to threat to cause any "injury" to the complainant's reputation or property.

20. I have already stated above that the contents of allegation in the written complaint do not come within the ambit of threat with an intention to cause any injury to the opposite party herein in his reputation or property. Similarly by asking an employee to join in his place of posting immediately, cannot come within the mischief of criminal intimidation or criminal conspiracy. The complainant might have other kind of remedy in the form of representation on the ground of his health or for some other reason as alleged by him but entire contents of written complaint so far relates to present petitioner, even if presumed to be correct, such version cannot be brought within the criminality (criminal intimidation or criminal conspiracy).

21. It is settled law that the order of cognizance which forms the very basis of initiation of proceeding cannot be made in a mechanical way but it requires great exercise of judicial mind. Court must not act as a delivery system in the post office i.e. only to give approval on a complaint without

application of proper Judicial mind and without considering as to whether complaint itself constitutes any offence against any particular accused or not. It is well settled in ***Pepsi Foods Limited and another Vs. Special Judicial Magistrate and another*** reported in (1998) 5 SCC 749 and even thereafter in catena of decisions that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. In paragraph 28 of the ***Pepsi Foods Limited (Supra)*** it is observed by the Apex Court as follows:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

22. Even the taking of cognizance under section 190 is a judicial act which requires proper application of judicial mind. It is not at all a formal action on the part of Magistrate. As soon as the court applies it's mind to the suspect of commission of offence, cognizance is said to have taken to commence a criminal proceeding. From a perusal of the order of Magistrate it is evident that he has not given any reason for taking cognizance of offence against present petitioner, thereby showing non-application of judicial mind.

23. Accordingly before issuing process, the learned Magistrate has to record his satisfaction about prima facie case against petitioner/accused no.

2 and role played by her which is sine qua non for initiating the criminal proceeding against her. Magistrate's role is not like a silent spectator at the time of recording of preliminary deposition before issuance of process under section 204 of the Cr.P.C. The Magistrate is duty bound to carefully scrutinize the deposition to find out the truthfulness of the allegation and then to examine if any offence is prima facie committed by the accused. The order does not speak that the learned Magistrate has recorded his satisfaction about prima facie case against the petitioner. In the absence of specific allegation merely because petitioner holds a higher post so she cannot be vicariously liable, unless specific allegation and averments against her has been imputed with respect of her specific role. Accordingly issuance of process against the present petitioner by the impugned order, either under section 506 or under section 120B is perverse and not sustainable in the eye of law.

24. There is another important aspect in the present proceeding. From the written complaint alleged by the opposite party no.2 before the court of Chief Judicial Magistrate Suri, at Birbhum, address of the accused party no.2 is shown as "Manager (HRD) Kolkata, Zonal officer, IDBI Bank, House, 44 Shakespear Sarani Kolkata-17" which is not within the jurisdiction of the learned Chief Judicial Magistrate Birbhum. In such view of the matter, the amended provision of section 202 of the Cr.P.C. makes it clear that in such cases where accused is residing at a place beyond the area, in which the court concerned exercises his jurisdiction shall postpone the issue of process against the accused and either enquiry into the case himself or direct investigation to be made by a police officer or by such other persons as he thinks fit for the purpose of deciding whether or not there is sufficient

grounds for proceeding. Accordingly such investigation is a must under the provision of section 202 before issuance of process, in deciding whether or not there is sufficient ground for proceeding. Such amendment has been incorporated by the criminal procedure (amendment) Act 2005 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” in section 202 makes it mandatory before the summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate. In the present case inspite of the fact that the accused no. 2 is admittedly residing outside territorial jurisdiction of the concerned Magistrate, Magistrate had issued summon against the petitioner without ordering any investigation as mandated under section 202 of the Cr.P.C.

25. In view of the aforesaid discussion I find that the opposite party no. 2 herein failed to make out a prima facie case against the present petitioner and he had filed present complaint to wreck vengeance by abusing the process of court in a case where the dispute relates to service condition of an employee in a Private Bank, which has it's specific transfer policy. In such view of the matter continuation of the present proceeding against the present petitioner being complainant case no. 638 of 2018 under section 506/120B of the I.P.C. would be an abuse of process of court and therefore is liable to be quashed.

26. Accordingly Complaint case no. 632 of 2018, pending before the learned Judicial Magistrate 3rd Court at Suri, Birbhum is hereby quashed in respect of present petitioner/ accused no. 2 only.

27. C.R.R 1420 of 2019 is thus allowed. Connected Application accordingly disposed of.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJAY KUMAR MUKHERJEE, J.)