

**CALCUTTA HIGH COURT CIRCUIT BENCH
AT JALPAIGURI**

**22.08.2023
Sh-12
Court No.4**

C. R. R. 104 OF 2023

**Avinaba Dutta & Another
Vs.
State of West Bengal & Ors.**

Ms. Sremoyi Mukherjee,
Ms. Esha Acharya.

For the Petitioners.

Mr. Kaushik Gupta.

For the Opposite Party.

Mr. Aditi Shankar Chakraborty, APP,
Mr. Abhijit Sarkar.

For the State.

By invoking the inherent power of this court, the instant petition has been preferred by the petitioners under section 482 of the Code of Criminal Procedure for quashment of proceeding in connection with Matelli Police Station Case No. 255 of 2022 dated-22.10.2022 under section 365 of the Indian Penal Code.

Necessary facts for disposal of the present petition in narrow compass is that the petitioner no.1 is an activist, frontline worker and a researcher working with the transgender since for a long time. Whereas Opposite Party No.3 who is a transwoman apprised petitioner no1 that she was subjected to torture, both mental and physical due to her gender crisis by her natal family home and neighbourhood. It is stated by the petitioners that the Opposite Party No.3 expressed her wishes to pursue her career and live an independent life but her family members allegedly detained her forcefully and also prohibited to pursue her career.

On 07.09.2022 the petitioners were informed by the Opposite Party No.3 about her decision to leave her home and she was

advised by the petitioners as well as other activists and the members of the West Bengal Transgender Development Board to write an intimation letter to the police regarding her situation and accordingly she dropped it in the mailbox located outside the police station but astonishingly Matelli Police Station disclosed the entire matter to her family members. It is stated by the petitioners that the Opposite Party No.3 left her home voluntarily as she was tired of harassment caused by the family members and neighbours.

Thereafter, a complaint was lodged by the defacto complainant before the police station for missing of Opposite Party No.3 and over this complaint instant case has been started.

It is submitted on behalf of the petitioners that the Opposite Party No.3 being an adult chose to leave home voluntarily to avoid violence and eventually shifted to Bengaluru with intention to start afresh. These petitioners were served with a notice under section 41(A) of the Code of Criminal Procedure in which it was mentioned that an FIR has been lodged under section 365 of the Indian Penal Code for missing incident of the Opposite Party No.3.

It is further assailed by the learned counsel appearing on behalf of the petitioners that the concerned police station without proper investigation communicated the entire matter to her family members and as such she lost faith in the police and her confidence remained with these petitioners. It is contended by the learned counsel on behalf of the petitioners that the content of the FIR is baseless and absurd because several conference calls and video calls were made between the petitioners and police authority where Opposite Party No.3 was present where she stated that she left her home voluntarily.

Learned counsel for the opposite party no.3 appearing through virtual mode also conceded about the fact of leaving home by the said opposite party no.3 voluntarily.

It appears that despite service of notice upon the opposite party no.2/ defacto complainant did not venture to appear before this court.

Learned Counsel appearing for the State leaves the matter upon the court and virtually conceded the submissions advanced by the petitioners and the opposite party no.3.

Before considering the submissions made by the parties it would be appropriate to consider the scope of powers under section 482 of Cr.P.C.

The extraordinary power under [Section 482](#) Cr.P.C should be exercised sparingly and with great care and caution. The Court would be justified in exercising the power when it is imperative to exercise the power in order to prevent injustice. [In State of Bihar v. RajendraAgrawalla](#) reported in **1996 SCC (Cri.) 628** it was held by the Supreme Court that the inherent power of the court under [Section 482](#) Cr.P.C. should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised.

The first sentence of the [Section 482](#) of Cr.P.C. ensures that nothing in this code shall be deemed to limit or affect the inherent powers of this Court. Amongst the ingredients, the third ingredient viz. to otherwise secure the ends of justice, does have wider amplitude and its plenitude connotes the meaning that the Court's hands should be long enough to sub-serve the ends of justice. Courts have been constituted to implement the law laid down by the legislators. It is common judicial parlance that while implementing the law, the Courts are required to interpret it. That the criminal proceedings can be quashed when the complaint on the basis of which FIR was registered does not disclose any act of the accused or their participation in the commission of crime.

It is profitable to quote the observation of Hon'ble Apex Court rendered in case of **ParbatbhaiAahir vs State of Gujarat and**

Another reported in **(2017) 9 Supreme Court Cases 641** wherein Hon'ble Court **referred to various precedents and summarised the following principles which ought to govern the power of High Court under Section 482 of CrPC,**

In ParbatbhaiAAhir (supra) the Hon'ble Apex Court has summarised the following propositions-

1. *Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.*
2. *The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.*
3. *In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.*
4. *While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.*
5. *The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.*
6. *In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High*

Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

7. *As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.*
8. *Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*
9. *In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*
10. *There is yet an exception to the principle set out in propositions 8 and 9 above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.*

While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great

oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases. As observed by the Apex Court that when allegations made in the complaint even if taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused or where allegations made in the complaint and the evidence produced in support of the same do not disclose the commission of any offence and make out a case against the accused, it is open to the High Court in exercise of extra ordinary inherent powers to quash the complaint or the FIR.

Before reaching at any conclusion let the relevant section i.e. 365 [IPC](#) be reproduced which are as under:

Whoever kidnaps or abduct any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The essence of the offence under section 365 of IPC embodies an aggravated form of offence of kidnapping as defined in section 360 and 361 and of abduction as defined in section 362 IPC. Section 365 is attracted when the kidnapping or abduction is committed with intent to secretly and wrongfully confine the victim. [Section 365](#) IPC lays down that where a person was abducted in order to that he might be held to ransom by his abductors, it was held that this section is applicable. The prosecution must prove:

(i) Kidnapping or abduction by the accused.

(ii)The accused thereby intended that the person kidnapped or abducted should be kept in wrongful or secret confinement.

To prove the ingredients of [section 365](#) IPC, it is essential that there should be abduction, if no abduction is there; the offence under [section 365](#) is not made out. To prove charge of wrongful

confinement, proof of actual physical restriction is not essential. It is sufficient if the evidence shows that such an impression was produced in the mind of the accused as to create a reasonable apprehension in the mind of the victim. The intention can be inferred from the subsequent acts and conduct of the kidnapper or abductor.

Coming to the case, learned counsel appearing for the victim/opposite party no.3 submitted that she left her house voluntarily and presently residing at Bengaluru. The learned counsel submitted that circumstances and facts of the present case warrant interference of this court under the inherent power provided under section 482 Cr.P.C. to quash the FIR lodged before the police station against the present petitioners.

It is brought to the notice of the court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused persons would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to court that the trial would likely to be ended in acquittal. There is neither any case of abduction nor kidnapping prevails with regard to the petitioners as the opposite party no.3 left home voluntarily by her own choice. So, I am of the opinion that the offence under section 365 of the Indian Penal Code does not attract in terms of the facts and circumstances of the case and the ingredients of the offence under section 365 of IPC can be said to be totally absent on the basis of allegation in the complaint.

Consequently, First Information Report in connection with Matelli Police Station Case No. 225 of 2022 dated 22.10.2022 for the offences punishable under Sections 365 of IPC and all proceedings emanating there from are hereby quashed qua the petitioner.

In view of the above, the present petition is allowed with no order as to costs.

Thus CRR being no. 104 of 2023 is hereby allowed and disposed of.

Connecting applications if any, are also hereby disposed of accordingly.

Certified website copy of this order, duly downloaded from the official website of this Court, if applied for, be supplied to the learned counsel appearing for the parties on compliance of all requisite formalities.

(Prasenjit Biswas, J.)