IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 3430 OF 2018

RADHASHYAM BANERJEE & ORS.

VS

STATE OF WEST BENGAL AND ORS.

For the Petitioners	**:**	**Mr. Ayan Bhattacharjee, Sr. Adv.**
		Mr. Kushal Kumar Mukherjee, Adv.
For the Private respondent	**:**	**Mr. Niladri Sekhar Ghosh, Adv.**
		Ms. Laboni Sikder , Adv.
		Mr. Soumik Dey, Adv.
Reserved on	**:**	**18.06.2026**
Judgement on	**:**	**07.08.2026**
Uploaded on	**:**	**07.08.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. This revisional application is filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the proceeding of complaint case being C.R. case no. 110 of 2013 under Section 147/148/447/427/504/506 (2) IPC pending before the Court of Learned Judicial Magistrate, Additional Court, Arambagh, Hooghly.

Facts of the case

2. The petitioner nos.1 and 2 at the time of filing of the petition were aged about 68 and 61 years respectively and petitioner no. 3 is an advocate by profession. A summon was received by them in connection with the allegation mentioned in CR case 110 of 2013 pending before the Learned Judicial Magistrate, 1st Class , Additional Court, Arambagh, Hooghly to appear before the Court on the strength of the complaint lodged, alleging against them that the present petitioners along with other 15 to 20 persons went to the premises of Opposite Party no. 2 and broke his pucca boundary wall with stick, iron rod etc. and on objection being raised he was abused and assaulted and thereafter on listening to his shouting the neighbours gathered and accused persons fled away. The Learned Magistrate after considering the deposition under Section 200 Cr.P.C of P.W. 1 and 2 passed such order issuing process. Being aggrieved thereby this revision application has been filed.

Submissions

3. The Learned Senior Advocate Mr. Bhattacharya appearing on behalf of the petitioner argued that there were no convincing material to issue the process and the Learned Magistrate sent the petition of complainant to I.C. Arambagh Police Station for investigation under Section 202 Cr.P.C and to file a report with all materials on 15.11.2013. There were apparent inconsistencies in the deposition made by P.W. 1 and P.W. 2 than what the de facto complainant alleged against the present petitioners however pursuant to the direction of the learned Magistrate the police report was forwarded by I/C Arambagh Police Station dated 1st of November, 2016 and the Learned Magistrate thereafter

passed the order issuing process accepting such report without applying his judicial mind that the report was submitted by a ASI. It is further argued that the police submitted such report on 14.03.2016 and the order for issuance of summon to the petitioner was also passed on the same day but from 14.03.2016 to 27.02.2018 Opposite party no. 2 did not bother to file any requisite in spite of several order passed by the Learned Magistrate. As a result by an order dared 6.2.18 the Learned Court directed the Opposite Party no. 2 to file show cause and the requisite was filed on 02.03.2018 and the summons were issued to the petitioner on 02.03.2018 that is after lapse of 2 years.

4. It is further contended that the petitioner no. 1 gathered through RTI Act, 2005 that the right of the petitioner no. 1 is the land owner of the said land measuring about 16 Sattak of land and he has acquired an area of 0.12 acres out of total 0.16 acres land against C.S. plot no. 446 and L.R. Plot no 516 CS khatian no. 23 and LR Khatian no. 383, Mouza-Paschim Haripur J.L. no. 35. Taking advantage of the petitioner's absence due to some medical exigencies of petitioner no. 3,the Opposite Party no.2 and his wife tried to grab the said land of the petitioner no.1 by constructing a pucca drain and a boundary wall in an unauthorised manner, encroaching certain portion of land of remaining un-acquired 4 satak out of 16 satak of land of the petitioner no. 1 and also removed the demarcation pillar of petitioner no.1 of the said land.

5. The petitioner no. 1 lodged a General Diary stating all these facts on 19.04.2013 before the I/C Arambagh Police Station against the Opposite Party no. 2 and his wife. The Arambagh Police Station took no step and then a demand of justice notice was issued by petitioner no. 1 through his advocate to the District Magistrate, Hooghly, I/C Arambagh Police Station and

Arambagh Municipality and Ors. asking them to demolish the illegal pucca construction. After receiving the said demand of justice notice a criminal case was initiated against the present Opposite Party no.2 and two others on 05.07.2013 under Section 143/447/506 IPC. After completion of investigation the Investigating Officer, Arambagh Police Station also submitted charge sheet against the Opposite Party no. 2 and his wife on 31.07.2013. After submission of charge sheet the Opposite Party no. 2 filed the instant complaint falsely implicating the petitioner as a counter blast to the same.

6. The Learned Senior Advocate took the preliminary point of non-compliance of Section 202 Cr.P.C and put reliance upon the decision reported in ***Mohammad Ataullah vs. Ram Saran Mahato***[1]. Further contended that the complaint was bereft of any ingredients of Section 427 of IPC and relied upon the decision reported in ***Bihar State Electricity Board & Anr. vs. Nand Kishore Tamakhuwala***[2]**.** It is vehemently argued that no ingredients were there to attract section 504 or section 506 of the IPC on the point and put reliance upon the decision reported in ***Om Prakash Aambedkar vs. State of Maharashtra & Ors***[3]**.** It is further argued that Evidence under Section 200 of Cr.P.C must be corroborative and put reliance in the decisions reported in ***S.R. Sukumar Vs. S. Sunad Raghuram.***[4]**,** ***Mira Ghosh Vs. Mira Ghosh***[5]**.** Further point raised on the judicial responsibility of the court issuing process and put reliance in the decisions reported in ***Mahendra Singh Dhoni***

[1] (1981) 2 SCC 266
[2] (1986) 2 SCC 414
[3] (2026) 2 SCC 622
[4] (2015) 9 SCC 609
[5] 2009 SCC Online Cal 1964

Vs. Yerranguntla Shyamsundar & Anr.[6], Vikas Chandra Vs State of Uttar Pradesh & Anr.[7], Pepsi Foods LTd & Anr. Vs. Special Judicial Magistrate & Ors[8].

7. On the point of quashing Vis-a-vis in specific averment the Learned Senior Advocate put reliance upon the decisions reported in ***Aruna Dhanyakumar Doshi Vs. State of Telangana & Ors.[9] Ravindranatha Bajpe Vs. Mangalore Special Exonomic Zone Ltd & Ors.[10], GHCL Employees Stock Option Trust Vs. India infoline Ltd[11].*** It is further contended that while invoking section 202 Cr.P.C investigation vis-a-vis delegation of Power is not sustainable in the eye of law and put reliance in the decisions of ***Saurabh Jhunjhunwala Vs. M/s Piyarellal Iron & Steel Pvt. Ltd.[12], Rakesh Singhal Vs Travolt Engeneering Co. Pvt. LTd[13].***

8. Per Contra the Learned Advocate representing the Opposite Party raised objection to the contention made on behalf of the petitioner and argued that only on the basis of filing of a complaint against the present complainant, the allegations levelled against the petitioner do not ipso facto becomes not maintainable for quashing the entire proceeding can be quashed. It is further contented that there is no bar to lodge counter complaint if an allegation is found for committing an offence which attracts various provision of the Indian Penal Code by a person against whom a complaint is initiated by the accused.

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[6] (2017) 7 SCC 760
[7] 2024 SCC Online SC 1534
[8] (1998) 5 SCC 749
[9] (2025) 1 SCC 485
[10] (2022) 15 SCC 430
[11] (2013) 4 SCC 505
[12] 2014 SCC Online Cal 7253
[13] 2025 SCC Online Cal 1263

9. The Learned Advocate put reliance upon the decision reported in ***Pramila Devi and Ors. vs State of Jharkhand and Anr[14],*** and further submitted that cognizance order requires no expressive reason while taking cognizance in summoning order under Section 204 Cr.P.C. In this case the process was issued under Section 204 Cr.P.C. A complaint was lodged with the specific allegations against the present petitioners and no corroboration need to be made while taking cognizance excepting to ascertain whether a prima facie case exists for proceeding with the same or not. The Learned Magistrate satisfied about prima facie existence of materials and passed the order and hence warrants no interference. Accordingly prayed for dismissal of this revisional application.

Analysis

10. Heard the submissions of both the Learned Advocate and perused the materials on record .The complaint was lodged by the present Opposite Party no. 2 before the Learned Additional Judicial Magistrate Arambagh , Hooghly on 1st April 2013 alleging an incident occurred on 31st July, 2013. The allegations levelled against the present petitioners that the petitioners with sticks and other offending deadly weapons tried to demolish the boundary wall situated within the personal and Ejmal possession of the property of Opposite Party no. 2 and raised objection and then the accused persons abused him with filthy languages with the threatening to kill him and tried to attack him when he somehow managed to get inside kaliapur house and started shouting when local people reached and the accused persons who had a vehicle with them fled away.

[14] 2025 SCC Online SC 886

11. The complainant also said that because of throwing broken bricks, the common wall got damaged and he suffered damaged to the tune of Rs. 2000/. The Learned ACJM after perusing the complainant took cognizance and transferred the matter to the Learned Judicial Magistrate, Additional Court Arambagh for disposal. The Learned Magistrate took initial deposition as per Section 200 Cr.P.C. on oath on 26.09.2013 where the de facto complainant stated that there were 5/6 other persons and on the relevant date all the accused persons illegally entered into his premises and broke his boundary wall and when he objected he was assaulted and abused accused persons fled away after the neighbour reached there hearing his shouting.

12. Thereafter the complaint was sent before the concerned police station by the Learned Magistrate for due investigation under Section 202 with a direction to file a report on 26.09.2013. The record transpires that on various occasions thereafter the no report was filed and several adjournments sought for on behalf of the complainant and lastly on 06.05.2015 the P.O. was transferred. Before the Learned 3rd Court of Judicial Magistrate who was in-charge the date was fixed on 14.03.2016 for receiving report and after receiving the report the Learned Magistrate held that there is prima facie case and accordingly directed to issue summons.

The first objection raised by the appellant is whether the Learned applied his judicial mind while issuing process and followed the law laid down in this regard. In the judgement relied upon of ***Mahendra Sing Dhoni vs. Yerraguntla shyam Sundar and Anr(supra)*** it was observed in paragraph 13 which is as follows:-

> *"**13:** Before parting with the case, we would like to sound a word of caution that the Magistrates who have been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinise whether the allegations made in the complaint meet the basic ingredients of the offence, whether the concept of territorial jurisdiction is satisfied and further whether the accused is really required to be summoned. This has to be tried as the primary judicial responsibility of the Court issuing process."*

13. In the decision of ***Vikash Chandra vs State of UP and Anr. (supra)*** the Hon'ble Supreme Court discussed various judicial pronouncements including the decision of ***Sunil Bharti Mittal Vs CBI***[15]**,** where the Court interpreted the "sufficient grounds for proceeding" and held that there would be sufficiency of materials against the accused concerned before proceeding under Section 204 Cr.P.C and it was held in paragraph 53 as follows :-

> ***"53.*** *However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein and while coming to the conclusion that there is prima facie case against the accused, though the order need not contend detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie in correct'".*

[15] (2015) 4 SCC 609

In the decision of ***Pepsi foods and Another vs. Special Judicial Magistrate and other (supra)*** regarding summoning of accused under Section 204 was discussed where it was held that the order must show that Magistrate applied his mind to the facts of the case and law applicable thereto. He should carefully scrutinise the evidence brought on record and may himself put questions to the complainant and his witnesses to find out the allegations.

14. The decision relied upon before this Court by the Learned Advocate representing the Opposite Party in ***Pramila Devi and others (supra)*** the Additional Judicial Commissioner took cognizance against the appellants in SC/ST case and the High Court in the impugned judgement focussed on the cognizance taking order dated 13.06.2019 .The matter went up to the Hon'ble Supreme Court. The Hon'ble Supreme Court discussed two basic issues, firstly whether the Additional judicial Commissioner while taking cognizance has to record detailed reasons for taking cognizance, secondly whether the FIR itself was instituted with mala fide intention and was liable to be quashed.

15. The Learned Advocate of the Opposite party no 2 pressed paragraph 15 of judgement where the Hon'ble Supreme Court took note of decision report in ***Kanti Bhadra Sha vs. State of West Bengal***[16] which is as follows:-

> ***"12.*** *If there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge, why should already burdened trial courts be further burdened of such an extra work, the time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all road blocks causing avoidable*

[16] (2000) 1 SCC 722

delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in Trial Courts would further be slowed down .We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed order at other stages, such as issuing process, remanding the accused the custody, framing of charges, pass over to next stages in the trial."

16. In this regard the Learned Senior Advocate put reliance on the decision of ***Md. Ataulla vs. Ram saran mahato (Supra)*** where the Hon'ble three Judges Bench of the Supreme Court observed:-

".....Therefore, when the Chief Judicial Magistrate took cognizance of the case and ordered issue of process against the accused there was no additional material before him except what was already there when he ordered an investigation under Section 202, Criminal Procedure Code . Obviously the Learned Chief Judicial Magistrate without any reference to any further material took cognizance of the case and ordered the issue of process to the accused merely on the basis of opinion expressed by the Executive Officer, Samastipur Municipality".

Accordingly the said order was quashed.

17. In the instant case from the record it is evident that the complaint was lodged on 1st of August, 2013 and the Learned ACJM , Arambagh , Hooghly examined P.W. 1 and P.Ws on S/A as per Section 200 Cr.P.C ,1973 on 26.09.2013 and found certain contradiction in the deposition not convincing for the Court to issue any process. Accordingly the complaint copy was sent to the O/S before J/C Arambagh for investigation under Section 202 Cr.P.C 1973 and to file a report with all material details and fixed 15.11.2013 for report. After a gap of 2 years on 14.03.2016 such report was submitted by an ASI of Arambagh Police Station. The Learned Court perused the report and observed there is prima facie case to issue process under Section 147/148/447/427/504/506 (2) IPC and directed to issue summon. The Learned Magistrate even did not consider that the report was submitted by an Officer to the rank of ASI. Nothing is expressed in the order as to why he was considering such report and found a prima facie case when initially the Learned Magistrate was not satisfied with the deposition of the complainant and other P.Ws.

18. On close scrutiny of the complaint and the deposition the glaring inconsistencies found in the written complaint where the allegation was made of abuse and attempt to injure by the accused with deadly weapons which was subsequently narrated as only illegally entering into his premises and breaking his boundary wall and he was assaulted and abused and the report submits there was an altercation and the accused tried to assault but despite that the Learned Magistrate expressed no opinion regarding his satisfaction over the prima facie case. In the decision of Saurabh ***Jhunjhumwala (Supra)*** the Leaned Single Bench took note of the case of ***Surindra Mohan Mujumdar***

Vs Babulal Tudu reported[17] where the question came before the Court for determination as to whether the person who was directed by the Magistrate to cause the investigation under Section 202 Cr.P.C, had any authority to delegate the said power to another person. The Hon'ble Court held that it was decided in the negative. The said proposition of law was reiterated by this court again in the case of ***Krishna Chandra Paul (supra).*** Therefore it is well settled that a person who was directed to make an investigation under Section 202 Cr.P.C had no authority to delegate the said power and the Learned Magistrate cannot act upon the said report of investigation under Section 202 Cr.P.C filed by another person.

19. In the case of ***Rakesh Singhal and Ors. (Supra)*** also the direction was given by the Trial Court to the Officer-in-charge Boubazar Police Station to enquire the matter and to report under Section 202 of Cr.P.C. Thereafter the report was submitted and the Trial Court issued process which was challenged before the Learned Single Bench and it was held that the report submitted by Sub-Inspector of Police Boubazar Police Station which is bad in law and on the basis of such report the Magistrate concerned ought not to have decided to proceed under Section 204 of Cr.P.C. In that case the direction was given to the Bowbazar Police Station but the report was submitted by the Sub-Inspector of Police attached with Bowbazar Police Station. Furthermore the Learned Single Bench held that the order of the Learned Magistrate was so cryptic that it hardly discloses that the Magistrate had at all any reason to believe that there are sufficient grounds for proceeding.

[17] (1988) 3 Crimes 143

20. It further transpires from the decision of ***S.R. Sukumar (supra)*** where it was held by the Hon'ble Supreme Court that on examination of complainant the Magistrate cannot be said to have ipso facto taken the cognizance when he is merely gathering material to decide whether a prima facie case is made out for taking cognizance or not. In plethora of decision it is held that 'taking cognizance of an offence' means applying judicial mind to contents of complaint and materials filed therewith and taking judicial notice of an offence. It is no more res integra that summoning is a serious issue and the Magistrate is conferred with power of taking cognizance and issuing summons must carefully scrutinise whether the allegations made in the complaint meet basic ingredients of offence or whether the territorial jurisdiction is satisfied and whether accused needs to be summoned.

21. In summation of supra it is well settled that there must be some reflection in the order about the satisfaction of the Learned Magistrate about existence of prima facie materials to issue process against the accused persons but in the instant case the Learned Magistrate being not satisfied about the prima facie case due to inconsistencies found in the deposition made during examination of the complainant and with other witness under Section 200 Cr.P.C forwarded it for enquiry before the Police Station but passed a cryptic order on the basis of a report submitted by an Officer who was not directed to furnish the report and without reflecting the mind of the Learned Magistrate regarding issuance of process on the basis of such report .

22. That apart the fact of the case further unveils that on 19.4.2013 the present accused persons lodged complaint against the present Opposite Party no. 2 alleging construction of boundary wall and pucca drain in respect of the same

disputed property an on the basis of such complaint on completion of investigation a charge sheet has been submitted against the Opposite Party no. 2 on 31.07.2013. The instant complaint has been lodged on 01.08.2013 in respect of alleging an incident on 31.07.2013. Therefore it is glaringly visible that the parties have an inimical relation with regard to construction of boundary wall and pucca drain in the disputed plot of land and possibility of false implication cannot be ruled out.

23. The Learned Magistrate mechanically passed the order issuing summon without taking into considerations about the existence of a prima facie case against the petitioners and therefore is not legally sustainable and liable to be set aside. Admittedly disputes exists between the parties and they have a strained relationship but no materials are found to attract any of the offences alleged to be committed as made in the written complaint. No specific role played by the present petitioners are found out of whom petitioner no. 1 and petitioner no. 2 are senior citizens and petitioner no. 2 is the wife of petitioner no. 1 .The depositions and the police report both manifest the falsity of the narration of carrying deadly weapons by all the petitioners or demolishing the boundary wall or even assault on the Opposite Party.

24. The power under section 482 Cr.P.C is to be exercised when there are abuse of the process of law and to secure the ends of justice. It is a settled propositions of law that when and where such power is to be exercised the court should be more careful and circumvent while exercising such power. In the decision reported in ***Bhikhubhai Govindbhai Patel & Anr. Versus The***

State Of Gujrat & Anr.[18]**,** the Court took note of ***Mohd. Wajid vs Sate of UP***[19] and held that-

> *"36. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (Cr.P.C) 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.*
>
> *37. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.*
>
> *38. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case*

[18] 2026 INSC 532
[19] 2023 INSC 683

over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 Cr.P.C. or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

It was observed that even the courts owes a duty to look into the other attending circumstances where the maliciousness is apparent . In the instant case on consideration of the entire facts and circumstances this court is of the view that if the proceeding is further allowed to be continued it would be sheer abuse of the process of law.

Conclusion

25. Accordingly this Revisional application stands allowed. The order passed by the Learned Magistrate issuing summons is hereby set aside and the entire proceeding pending before the learned Magistrate stands quashed.

26. All connected applications are hereby disposed of.

27. Urgent certified copy Urgent of the order if applied for be provided to the parties upon observance of all necessary requirements.

[CHAITALI CHATTERJEE (DAS), J.]

High Court
सत्यमेव जयते
Calcutta