

**HIGH COURT OF CALCUTTA****Bench: Shampa Dutt (Paul), J.****Date of Decision: 10 April 2024**

CRR 2496 of 2022

**Sujay Kutty****Vs.****The State of West Bengal & Anr.****Legislation:**

Sections 354A(1)(iv)/34, 509/120B/34 of the Indian Penal Code  
(IPC)

Sections 397/399 of the Code of Criminal Procedure

Section 202 of the Code of Criminal Procedure

Section 65B(4) of the Indian Evidence Act

**Subject:** Revision against order dismissing a criminal motion, challenging the taking of cognizance and issuance of process against the petitioner for offences under the IPC, with emphasis on procedural fairness and principles of natural justice.

**Headnotes:**

Quashing of Cognizance and Process – Criminal Revision against dismissal of petition to quash cognizance and process – Petitioner accused of offenses under Sections 354A(1)(iv)/34 IPC – Allegations by actress against petitioner – Cognizance and process issued without proper application of judicial mind and procedural requirements – Petitioner challenges orders before Sessions Judge – High Court’s dismissal of similar revisions against co-accused cited as ground for dismissal – Sessions Judge dismisses petitioner’s revision solely based on High Court’s order – Petitioner not heard in High Court’s proceedings – Violation of fundamental principle of hearing and natural justice – Abuse of process of law – Order of Sessions Judge set aside – Matter restored for proper hearing and disposal – Criminal Revision allowed.

Referred Cases:

- Mary Pushpam vs Telvi Curusumary & Ors., (2024) 3 SCC 224.
- State of Punjab & Anr. vs Devans Modern Breweries Ltd. & Anr., (2004) 11 SCC 26.
- Central Board of Dawoodi Bohra Community & Anr. vs State of Maharashtra & Anr., (2005) 2 SCC 673.
- Kunhayammed & Ors. vs State of Kerela & Ors., (2000) 6 SCC 359.

Representing Advocates:

Petitioner: Mr. Milon Mukherjee, Sr. Adv., Mr. Sourav Chatterjee, Mr. Meghajit Mukherjee, Mr. Vikash Tewary.

Opposite Party No.2: Mr. L. Vishal Kumar, Ms. Manaswita Mukherjee.

**JUDGMENT**

1. The present revision has been preferred against the Judgment and Order dated 30.04.2022 passed by the Learned Sessions Judge Alipore, South 24 Parganas in Criminal Motion No. 222 of 2016 thereby dismissing the same and affirming thereby the order dated 26.02.2016 passed by the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas in Case No. C/827 of 2016 pending before the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas whereby the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas took cognizance and issued process against the Petitioner under Sections 354A(1)(iv)/34 of the Indian Penal Code.
2. The petitioner states that the Opposite Party No.2 is an actress in the film industry and is the complainant in the impugned Case No. C/827 of 2016 under Sections 354A(1)(iv)/509/120B/34 of the Indian Penal Code.
3. The Learned Chief Judicial Magistrate, Alipore, South 24 Parganas illegally, without application of his judicial mind and without resorting to the mandatory provisions of Section 202 of the Code of Criminal Procedure by the impugned order dated 26.02.2016 took cognizance and issued process under Sections 354A(1)(iv)/34 of the Indian Penal Code against the Petitioner and others.
4. The Petitioner challenged the said order dated 26.02.2016 passed by the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas before the Learned Sessions Judge, Alipore, South 24 Parganas by preferring a revisional application under Sections 397/399 of the Code of Criminal Procedure which was numbered as Criminal Motion No. 222 of 2016, wherein an interim order of stay was passed vide order dated 8<sup>th</sup> December, 2016.
5. The Original Accused no.1 to 4 also preferred Criminal Revisional Applications being CRR No. 1204 of 2016 and CRR 1212 of 2016 before this Hon'ble High Court for quashing of the impugned complaint. **The present Petitioner was not a party to the said CRR No. 1204 of 2016 and CRR No. 1212 of 2016.** The said accused Nos. 1 to 4 had also filed Criminal Revision Applications being CRR No. 1205 of 2016 and CRR No. 1213 of

2016 challenging the orders passed in another Criminal Case instituted by the same complainant i.e. the Opposite Party No. 2 herein being Complaint 827 of 2016.

6. By an order dated 04<sup>th</sup> November 2016, this Hon'ble High Court, dismissed the CRR No. 1204 of 2016 and CRR No. 1212 of 2016 preferred by the Original Accused No. 1 to 4.
7. The order dated 4<sup>th</sup> November, 2016 was brought on record by Opposite Party No. 2 before the Learned Sessions Judge, Alipore in the proceedings ensuing from Criminal Motion No.222 of 2016.
8. By the impugned judgment and order dated 30.04.2022 the Learned Sessions Judge, Alipore, South 24 Parganas dismissed the said Criminal Motion No.222 of 2016 and affirmed the order dated 26.02.2016 passed by the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas.
9. The Petitioner submits that the Learned Sessions Judge, Alipore, South 24 Parganas **dismissed the Criminal Motion No.222 of 2016 relying on the Order dated 04<sup>th</sup> November 2016 passed by this Hon'ble Court.**
10. From the materials on record it is seen that admittedly **the petitioner was not a party in the Criminal revision before the High Court** in which the order dated 04.11.2016 was passed dismissing the revision.
11. The revision was preferred praying for quashing of the proceedings before the trial Court.
12. **In the Judgment dated 04.11.2016, the High Court in Paragraph 16:-**  
*“..... Without considering the compact disc (DVD) for non-compliance of the provision of Section 65B(4) of the Indian Evidence Act, Learned Magistrate would have been justified in taking cognizance and issuing process **against the petitioners and other accused persons for the offence punishable under Sections 354A/34 of the Indian Penal Code.....”***
13. The Learned Sessions Judge, (S) 24 Parganas at Alipore vide an order dated 30.04.2022 in Criminal Appeal No. 222 of

2016, preferred by the petitioner held as follows:-

*“..... In the case in hand, since the Hon'ble Court was pleased to affirm the impugned Order **against all accused**, being the subordinate Court under judicial discipline this Court is of the view that this Court has no authority to interfere with the said order of Hon'ble High Court and any differences of opinion expressed by this Court would amount to breach of such discipline, which certainly in no manner can be allowed to be made by this Court. **In view of the above scenario the entire facts of the case is not found relevant to be discussed and also the judgment cited before this court by the petitioner.....”***

- 14. As such the Learned Court then not finding the facts of the case relevant to be discussed, dismissed the case.**
- 15. It is thus seen that the said case was not disposed of on merit but only on the basis of the order of the High Court which stated that the impugned order was affirmed against all the accused, though all the accused persons were not before the High Court.**
- 16. Affidavit in opposition has been filed objecting to the prayer of the petitioner, by stating that the Judgment/Order revision, being in accordance with law, it being passed on the strength of the High Court's order, the present revision was thus liable to be dismissed.**
- 17. The opposite party/complainant has relied upon the following judgments:-**
  - i. Mary Pushpam vs Telvi Curusumary & Ors., (2024) 3 SCC 224.*
  - ii. State of Punjab & Anr. vs Devans Modern Breweries Ltd. & Anr., (2004) 11 SCC 26.*
  - iii. Central Board of Dawoodi Bohra Community & Anr. vs State of Maharashtra & Anr., (2005) 2 SCC 673.*
  - iv. Kunhayammed & Ors. vs State of Kerela & Ors., (2000) 6 SCC 359.*

**(Principle herein relied upon by the learned Sessions Judge in the order under revision).**

- 18. It is seen that the said judgments relied upon are not applicable to the present case, as the point for consideration in the present revision is entirely different.**
- 19. The right of hearing is a fundamental principle in legal systems, ensuring individuals have the opportunity to present their case and be heard fairly in court proceedings. It's a cornerstone of due process, guaranteeing a fair trial and the opportunity to respond to accusations or evidence presented against them.**
- 20. The principle of natural justice, often referred to as the principles of procedural fairness, encompasses the idea that individuals should be treated fairly and justly in the decision-making process by authorities or adjudicators. This includes the right to be heard, the right to a fair and unbiased decision-maker, and the right to a fair hearing. It serves as a fundamental aspect of legal systems worldwide, ensuring that decisions are made fairly, impartially, and without bias.**
- 21. Admittedly the petitioner not being an applicant in the revision before the High Court, in which the order dated 04.11.2016 was passed, **was not heard**. Nor was his case considered on the basis of materials on record by the Court.**
- 22. The petitioner has thus suffered an abuse of the process of the Court/law as the Learned Sessions Judge without considering the petitioner's case on merit dismissed his application only on the basis of the High Court's order, wherein it appears that due to inadvertence, the Court used the phrase "all the accuseds" even though they were not parties before the High Court. The said order under revision has been passed without the case of the petitioner being considered on merit thus causing prejudice to the petitioner herein is liable to be set aside.**
- 23. Accordingly, the order under revision dated 30.04.2022 passed by the learned Sessions Judge, Alipore, South 24 Parganas, in Criminal Motion No. 222 of 2016 being not in accordance with law and against the interest of justice is thus **set aside**.**

- 24.** The Criminal Motion No. 222 of 2016 is restored to its file and the petition shall be heard by the Learned Sessions Judge, Alipore, **within two months** from the date of communication of this order and disposed of in accordance with law, on giving proper hearing to both sides.
- 25. CRR 2496 of 2022 is allowed.**
- 26.** The Judgment and Order dated 30.04.2022 passed by the Learned Sessions Judge Alipore, South 24 Parganas in Criminal Motion No. 222 of 2016 thereby dismissing the same and affirming thereby the order dated 26.02.2016 passed by the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas in Case No. C/827 of 2016 pending before the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas whereby the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas took cognizance and issued process against the Petitioner under Sections 354A(1)(iv)/34 of the Indian Penal Code, **is set aside.**
- 27.** Learned Session Court to act as directed herein.
- 28.** All connected applications, if any, stand disposed of.
- 29.** Interim order, if any, stands vacated.
- 30.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance with all requisite formalities.

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