

**HIGH COURT OF TRIPURA
AGARTALA
CRL.PETN. NO.04 OF 2024**

1. Shri Naresh Chandra Deb,

Son of Late Pramod Chandra Deb ,
Aged about 65 years resident of 79 Tilla,
Opposite of Housing Board Quarter Complex,
P.O- Kunjaban, Sub-Division- Sadar, Agartala,
P.S.- New Capital Complex, District- West Tripura,
Tripura, Pin-799006.

2. Shri Dulal Chandra Deb,

Son of Late Pramod Chandra Deb, aged about 63 years,
Resident of 79 Tilla, Opposite of Housing Board Quarter
Complex, P.O.- Kunjaban, Sub- Division- Sadar, Agartala,
P.S.- New Capital Complex, District- West Tripura, Tripura,
Pin- 799006.

.....**Petitioner(s)**

Versus

1. State of Tripura,

2. Sri Jahar Lal Debbarma,

TPS GR-II, Investigating Officer of NCC P.S. Case No.2022 NCC
167, New Capital Complex Police Station, P.S.- Kunjaban-799006,
Agartala, West Tripura, Attached as A/C (DAR) West, A.D. Nagar
Police Lines, Agartala, District- West Tripura.

3. The Officer-in-Charge, New Capital Complex Police Station ,
P.S.- Kunjaban 799006, Agartala, West Tripura.

4. The Officer-in-Charge,

Dhumacharra Police Station, Unttar Dhumachhara, Dhalai,
Tripura, Pin-799275.

5. Smt. Chinamuni Marak, wife of late Rakesh Marak, D/o late
Satish Marak, resident of Prabhatdangshu Para, P.O- Kanchanpur,
P.S.- Damcherra, District- Dhalai Tripura.

.....**Respondent(s)**

For the Petitioner(s) : Mr. S. Lodh, Advocate.
Mr. S. Majumder, Advocate.

For the Respondent(s) : Mr. S. Sarker, Sr. Advocate.
Mr. R. Datta, P.P.
Mr. V. Poddar, Advocate.

Date of hearing : 19.03.2024.

Date of delivery of
Judgment & Order : 21/03/2024

Whether fit for reporting : YES.

HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R

This present criminal petition has been filed under Section 482 of the Code of criminal procedure, 1973, for invoking the inherent powers of this Court, for quashing/setting aside the FIR of New Capital Complex P.S. Case No. 2022 NCC 167, dated 24.12.2022 registered under Sections 465, 468, 471, 420 and 120B of the Indian Penal Code and Section 3(1)(f)(g) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, against the petitioners and others.

2. The brief fact of the case is that respondent No.5 lodged a written complaint before respondent No.4, alleging *inter alia* that she belongs to the member of Scheduled Tribe community and her grand-father, namely, Sakindra @ Makindra Garo, is the owner of a land located at Nandannagar, Agartala. She alleged that the land was mutated as C.S. Plot no. 54 under Khatian no. 12,

corresponding to Hal Plot No. 140 and Hal Khatian no.5053/1 and 5053/2 of Mouja- Indranagar, Tehsil- Indranagar, Revenue Circle- Agartala East, measuring 03.23 acres. She also stated that on 01.01.1959 her grand-father expired leaving behind four sons and three daughters. Thereafter about 5/6 months ago, it has come to their knowledge that FIR named accused persons i.e., the petitioners herein in connivance with the revenue staff committed forgery and changed the map and mutated the land in their name even though the land is under their possession. She also alleged that she contacted the accused persons and asked them to produce the Deed, but they refused to produce the same. Thereafter, vide letter dated 25.10.2022, she asked the petitioners to produce the Sale Deed whereby they purchased the land from the legal heirs of Sakindra Garo. She also alleged that she issued another notice, but the accused persons did not give any reply to her notice. Thereafter, she approached the Settlement Authority to know how the land was recorded in the name of the accused persons, but the Settlement Authority did not give any reply. She also alleged that she approached the In-charge of the Map Section for correction of the map, but after elapse of 15 days, the same was not corrected.

3. On receipt of the aforesaid written complaint, respondent No.4 registered Zero FIR dated 20.12.2022 under Sections 465, 468, 471, 420, and 120B of the Indian Penal Code

and Section 3(1)(f)(g) of the SC & ST Act, 1989, and forwarded the same to the respondent No.3. On receipt of the same, the respondent No.3 registered a case vide NCC PS case No. 167 of 2022 under Sections 465, 468, 471, 420 and 120B of the Indian Penal Code and Section 3(1)(f)(g) of the SC & ST Act, 1989.

4. After registration of the case, the police started the investigation, and the first Investigating Officer issued a notice dated 20.02.2023 under Sections 41A(1) Cr.P.C. and asked the petitioners to appear before him between 26.02.2023 and 28.02.2023. In furtherance thereof, they appeared before him. Thereafter respondent No.2 was entrusted with the investigation of the case as Investigating Officer. After his appointment as Investigating Officer, on several occasions, petitioners were asked to appear before him. The petitioner thereafter approached the learned Sessions Judge by filing an application under Section 438 Cr.P.C. for granting pre-arrest bail and the said application was registered and marked as B.A. 227 of 2023. After hearing the parties, learned Sessions Judge vide order dated 19.09.2023 rejected the bail prayer holding that the application under Section 438 Cr.P.C. is not maintainable as the same is prohibited under Section 18 of the SC & ST Act. Thereafter, both the petitioners jointly filed another application under Section 438 Cr.P.C. before this Hon'ble High Court, and the same was registered and marked

as A.B. 27 of 2023. On 29.09.2023, when the pre-arrest bail application was first time listed before this Hon'ble High Court, after hearing both parties, this Court granted interim anticipatory bail to both petitioners. Thereafter, on 16.10.2023 when the pre-arrest bail was again listed before this Hon'ble High Court, the said pre-arrest bail was allowed.

5. After granting of pre-arrest bail, respondent No.2, issued several notices under Section 41A(1) of Cr.P.C., and asked both the petitioners to appear before him. It is further stated that in connection with the disputed land, there was a civil litigation between the petitioners in one hand and Sri Biru Chandra Saha and Sri Niru Chandra Saha in other hand. In the said Civil suit, the petitioners contended that the petitioners were the owners of the suit land and Biru Chandra Saha and Niru Chandra Saha are illegally occupying the land and prayed for eviction. The said suit reached up to this Hon'ble High Court in a Second Appeal which was registered and marked as RSA 5 of 2021. The same was disposed of vide judgment and order dated 26.08.2021. This Hon'ble High Court vide its judgment and order dated 26.08.2021 in RSA 5 of 2021 held that Biru Chandra Saha and Niru Chandra Saha are in possession of the suit land and the appellants failed to prove their title and hence no order of recovery can be passed in favour of the petitioners.

6. The petitioners by filing this petition prayed before this Court to set aside and quash the FIR of New Capital Complex P.S. Case No.2022 NCC 167, dated 24.12.2022 registered under Sections 465, 468, 471, 420 and 120B of the IPC and Section 3(1)(f)(g) of the Scheduled Caste and Scheduled Tribe(Prevention of Atrocities Act, 1989 against the petitioner and discharge them from the liability of the instant case.

7. Heard Mr. S. Lodh, learned counsel assisted by Mr. S. Majumder, learned counsel appearing for the petitioners as well as Mr. R. Datta, learned Addl. P.P., appearing for the State-respondents and Mr. S. Sarkar, learned Sr. counsel assisted by Mr. V. Poddar, learned counsel appearing for respondent No.5.

8. Mr. S. Lodh, learned counsel appearing for the petitioners submits that the present case is a civil dispute and that police ought to not have registered the criminal case against the petitioners and others. As stated by respondent No.5, there are some corrections in the record of rights, and the same was rejected by the appellate authority. As such, the present matter comes under revenue proceeding.

To support his argument, learned counsel relied upon **para-6** of the latest Hon'ble Supreme Court Judgment titled as ***Naresh Kumar and anr. Vs. The State of Karnataka and***

anr., dated **March 12 of 2024**. The same is produced here-in-under:-

"6. In the case of Paramjeet Batra v. State of Uttarakhand (2013) 11 SCC 673, this Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

(emphasis supplied)

Relying upon the decision in Paramjeet Batra (supra), this Court in Randheer Singh v. State of U.P. (2021) 14 SCC 626, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In Usha Chakraborty & Anr. v. State of West Bengal & Anr. 2023 SCC OnLine SC 90, relying upon Paramjeet Batra (supra) it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure."

Learned counsel further submitted that some of the land in question was sold out and his client purchased the same.

9. On the other hand, Mr. Raju Datta learned P.P., countered the submission made by learned counsel appearing for the petitioners and presented before this Court Order dated 04.03.2024 wherein the Sub-Divisional Magistrate, Sadar, West Tripura observed that the Opposite parties i.e. the petitioner herein are unauthorizedly occupying the land measuring 4.45 acre under Khatian No.5053/1 and 5053/2 of Mouja T.K. Indranagar without

any valid document and they were directed to vacate the land completely from their possession with 30(thirty) days from the date of that order and to hand over the possession of the land at aforesaid khatian No.5053/1 and 5053/2 to the petitioners i.e. respondent No.5. Learned P.P., further submits that notices under Section 41A of Cr.P.C were issued against the petitioners thrice.

To support his argument, learned P.P., appearing for the State-respondents cited paras-7, 8 & 9 of the Hon'ble Apex Court Judgment reported in **(2019) 14 SCC 350** titled as **Kamal Shivaji Pokarnekar Vs. State of Maharashtra and ors.** The same is produced here-in-under:-

"7. Relying upon the aforementioned judgments of this Court, Mr. M. N. Rao, learned Senior Counsel appearing for the Appellant submitted that the High Court acted in excess of its jurisdiction in setting aside the order of the Trial Court by which process for summoning the accused was issued. He further submitted that the evaluation of the merits of the allegations made on either side cannot be resorted to at this stage.

8. Mr. R. Basant, learned Senior Counsel appearing for the Respondent Nos.2 to 6 and 8 to 11 submitted that a proper evaluation of the material on record would disclose that the complaint is frivolous. He submitted that the dispute is essentially of a civil nature and the ingredients of the offences that are alleged against the Respondent are not made out. By making the above statement, Mr. Basant commended to this Court that there is no warrant for interference with the judgment of the High Court.

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted.

10. Heard both sides and perused the evidence on record.

11. In terms of the above submission and arguments as advanced by both parties, it is clear that disputed questions of fact are involved in this present case and proper investigation needs to be done. Notices have been issued under Section 41A of Cr.P.C. and the petitioners herein are expected to cooperate with the investigating officer and submit sufficient records.

12. Admittedly, the petitioners are non-Scheduled Tribe persons, and the subject land and the complainant belong to the Scheduled Tribe category. Accordingly, the land in question is protected under Section 187 in *The Tripura Land Revenue And Land Reforms Act, 1960*. The said Section is produced here-in-under:-

"187. Special provision regarding Scheduled Tribes.

No transfer of land by a person who is a member the Scheduled Tribes shall be valid unless-

(a) the transfer is to another member of the Scheduled Tribes;
or (b) where the transfer is to a person who is not a member of any such tribe, it is made with the previous permission in writing of the Collector;
or (c) the transfer is by way of, mortgages to a co-operative society."

13. In view of the above fact, this Court is of the view that prima facie it is a case which needs investigation. At this stage of complaint and investigation, this Court feels that in the backdrop

of the present case, it is not proper for quashing the impugned FIR. Accordingly, this present criminal petition stands dismissed.

14. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

suhanjit

RAJKUMAR
SUHANJIT
SINGHA

Digitally signed by
RAJKUMAR
SUHANJIT SINGHA
Date: 2024.03.22
13:39:06 +05'30'

