

27.01.2021
tkm/ct 35
sl no. 45

C.R.R. No. 754 of 2019
(Via video conference)

In Re : Sanat Chatterjee

.....petitioner

Mr. Angshuman Chakraborty

Mr. S S Saha

..... for the petitioner

Mr. Rana Mukherjee

Ms. D Sahu

..... for the State

This is an application for quashing of a proceeding being GR case no. 2260 of 2018 arising out of New Town P.S case no. 269 of 2018 dated 30.6.2018 pending before the learned Chief Judicial Magistrate, Barasat, North 24 Parganas.

The contention of the petitioner, in brief, is that the petitioner is a retired officer of the State Bank of India and while in service, purchased a 3 BHK flat at New Town from the West Bengal Infrastructure Development Finance Corporation Limited (hereinafter referred to as WBIDFC Ltd.) in 2011 and took possession of the said flat on 31.5.2011. The petitioner has been paying maintenance for the said flat till date.

By virtue of a joint resolution taken by the co-owners of the complex named "Sankalpa" in the year 2018, the petitioner was appointed as the Secretary of the Apartment Owners Association Sankalpa-IV and was requested to take charge of the relevant documents of the association. In course of such responsibility, the petitioner learnt that some of the flat owners were aggrieved with

the quality of service and other issues relating to their respective flats and such complaints were mailed to the office of the WBIDFC Ltd. The petitioner was also informed by the opposite party no. 2 regarding a list of flat owners who had defaulted in payment of maintenance for the period 31.3.2018 to 8.1.2019. The opposite party no. 2 being deputed to visit the site for collection of dues, tried to enter the housing complex but was obstructed by the security guards from entering therein. He waited for about 20 minutes after which he was allowed entry into the premises by the petitioner and on contacting two of the defaulting residents Rituparna Das and Dhrituman Banerjee over telephone, such residents hurled abuse over telephone and treated the representative/opposite party no. 2 in a most disrespectful manner, threatening him with dire consequences and abusing him in filthy language. As a consequence, opposite party no. 2 lodged complaint before New Town PS which was registered as New Town PS case no. 269 of 2018 dated 30.6.2018 under section 186/189/339/352/353/506/34 IPC against the present petitioner and others. The complaint was investigated upon and charge sheet was submitted against the petitioner and another on completion of investigation on 29.7.2018.

Being aggrieved by and dissatisfied with the impugned charge sheet, the petitioner has filed present application praying for quashing of the said charge sheet along with the case pending before the learned Chief Judicial Magistrate, Barasat, North 24 Parganas.

It is submitted by the opposite party no. 1/State of West Bengal that the opposite party no. 2, representative of WBIDFC Ltd was abused and ill-treated by Rituparna Das and Dhrituman Banerjee, owners of separate flats in the apartment and the said owners were instigated to do so by the petitioner.

I have considered the rival submissions made on behalf of the parties as well as documents placed before me.

It is trite law that the provision of section 482 Cr.P.C. should be invoked with abundant care, caution and circumspection and should not be exercised to axe down a legitimate prosecution. The test is whether the uncontroverted allegations made in the complaint constitute an offence and whether continuation of the complaint shall amount to an abuse of the process of the Court.

In the case in hand, it transpires from the written complaint lodged by opposite party no. 2 that he was denied entry into the premises in question by the security guards of the premises and faced hostility from two of the residents Rituparna Das and Dhrituman Banerjee. No specific overt act on the part of the petitioner is reflected in the complaint or in the statements under section 161 Cr.P.C. and the main thrust of the allegation is against the other two residents of the complex. The contents of the complaint do not make out a prima facie case against the petitioner as alleged. It is crystal clear from the entire material on record that the petitioner was arrayed as an accused in the case primarily on the ground of having certain conversation with opposite party no. 2 over telephone and causing detention of the said opposite party at

the gate for some time before he was allowed entry therein. No ingredient of offence under section 186/189/339/352/353/506/34 IPC has prima facie been made out against the petitioner in the complaint.

Upon consideration of the entire material on record, I have no impediment to hold that continuing the present proceeding against the petitioner shall be a futile exercise and shall amount to abuse of the process of the court.

As such, the proceeding being GR case no. 2260 of 2018 arising out of New Town P.S case no. 269 of 2018 dated 30.6.2018 pending before the learned Chief Judicial Magistrate, Barasat, North 24 Parganas qua the petitioner be quashed.

However, the proceeding with regard to other accused shall continue in accordance with law.

CRR 754 of 2019 is, accordingly, disposed of.

There shall be no order as to costs.

Copy of the order be sent to the learned trial court for information and necessary action.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon usual undertaking.

(Suvra Ghosh, J.)