

04.03.2021
Ct. No. 35
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C.R.R. No. 2429 of 2016
with
CRAN 4 of 2018 (Old No. CRAN 642 of 2018)
with
CRAN 5 of 2021
(via video conference)

In the matter of : Sk. Saukat & Anr.

..petitioners

Mr. Kunal Ganguly

..... for the petitioners

Mr. Dev Kumar Shrma

..... for the opposite party no. 2

Mr. Arijit Ganguly

Mr. Sanjib Kumar Dan

..... for the State

In the present application under Section 482 of the Code of Criminal Procedure read with Sections 397/401 of the Code of Criminal Procedure, the petitioners have prayed for quashing of charge-sheet being no. 233 of 2011 dated 11.09.2011 under Sections 448/325/326/34 of the Indian Penal Code in connection with G.R. Case No. 457 of 2011 pending before the learned Additional Chief Judicial Magistrate, Chanchal, Malda.

It is submitted by the learned counsel appearing for the petitioners that there was a civil dispute between the parties and the petitioners were constrained to approach this Court by way of a writ petition for assertion of their right in respect of the disputed property. Learned counsel further submits that the petitioners were placed in possession of the disputed property by

the police pursuant to the order of this Court. The petitioners have alleged that following such land dispute between the parties there was an incident of altercation and assault wherein both the parties suffered injuries and case and counter-case are pending in respect of the same incident. The private opposite party no. 2 and others lodged a false, fabricated and baseless complaint against them which was registered as a criminal case and charge-sheet was submitted therein against them under Sections 448/325/326/34 of the Indian Penal Code on 11.09.2011. According to the learned counsel appearing for the petitioners, no case has been made out against the petitioners during investigation and the charge-sheet has been filed mechanically. The case is only a counter-blast of the complaint lodged by the petitioners against the opposite party no. 2. It was the petitioners who were brutally assaulted by the opposite party no. 2 and his associates. The petitioners have prayed for quashing of the proceeding of the case including the charge-sheet.

Learned counsel appearing for opposite party no. 2 has filed affidavit-in-opposition and the injury reports annexed thereto show that some of the associates of opposite party no. 2 sustained injuries in the alleged incident. Learned counsel submits that there are several factual aspects of the case which require consideration and quashing the proceeding at this stage shall amount to pre-judging the case, more so, as prima facie case has been made out against the petitioners.

Learned counsel appearing for the State concedes to the submission made on behalf of opposite party no. 2 and refers to the documents placed on record.

Admittedly case and counter case are pending by and between the parties with regard to the selfsame incident which occurred on 16.02.2011. The injury reports prima facie suggest injuries sustained by associates of opposite party no. 2 in the incident. It appears from the charge-sheet that the offending weapon was seized by the investigating officer.

Law enjoins that jurisdiction under Section 482 of the Code of Criminal Procedure should be exercised with care, caution and circumspection and should not be used to stifle a legitimate investigation. The test is whether the uncontroverted version of the F.I.R. makes out a prima facie case against the accused and also whether continuation of the proceeding shall amount to abuse of the process of the Court.

In the present case, investigation of the case has culminated in submission of charge-sheet and the case is awaiting trial. There is sufficient prima facie material in the charge-sheet which shall require determination by the learned Trial Court. Pendency of a counter case cannot be a ground to quash proceedings of the present case. The petitioners may earn their acquittal in the event charges against them are not proved. In the premise, I do not find any ground for quashing the proceeding or the charge-sheet as a whole as the disputed questions of fact involved herein can be determined only in course of trial. The present application is devoid of any merit and is liable to be dismissed.

It is made clear that I have not gone into the merits of the case and the parties shall be at liberty to place their respective cases before the learned Trial Court during trial.

Accordingly, the revisional application being CRR 2429 of 2016 is dismissed.

The connected applications being CRAN 4 of 2018 (Old No. CRAN 642 of 2018) and CRAN 5 of 2021 are accordingly disposed of.

There will be no order as to costs.

Copy of this order be sent down to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Suvra Ghosh, J.)