

04.03. 2022
item No.31
n.b.
ct. no. 34

(via video conference)
CRR 724 of 2020
+
CRAN 1 of 2021

Yashwant Kumar Daga & Anr.
Vs.
State of West Bengal & Anr.

Mr. Sabyasachi Banerjee,
Mr. Satadru Lahiri
Mr. Anirban Dutta,
.....for the Petitioners

Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.
.....for the State

Mr. Parthapratim Das
... for Defacto Complainant

The present revisional application has been preferred challenging the proceedings arising out of Gariahat Police Station Case no. 48 of 2018 wherein after completion of investigation the Investigating Authority submitted charge sheet under Sections 430/114 of Indian Penal Code. The present petitioners have approached this court challenging such proceedings initiated at the instance of opposite party no.2.

I have perused the letter of complaint which was treated to be the First Information Report of the instant case, wherein there were allegations of snapping whole of the water supply for which opposite party no.2, being a tenant was unable to have any access for her livelihood and as such case was registered.

Mr. Banerjee, learned advocate appearing for the petitioners submits that the allegations made in the FIR and the subsequent materials collected by the Investigating Agency *prima facie* fails to make out any case of Section 430 of the Indian Penal Code. To that attention of the court was drawn to the statement of the witnesses.

This court, considering the fact that the dispute originated between the landlord and the tenant, directed the special officer to file a report. The report of the special officer has also been submitted before this court.

Mr. Sur, learned advocate appeared for the State and produced the Case Diary for consideration of the materials which were collected in course of investigation.

As none appears on behalf of the private opposite party no.2, Mr. Parthaprati Das, learned advocate appeared on behalf of the opposite party no.2 being engaged by the High Court Legal Aid Services Authority.

Mr. Das, learned advocate argued that materials which have been collected by the Investigating Agency *prima facie* reflects that a case has been made out for progress of the trial. According to the learned advocate, there are stop cock present which may empower the present petitioners to control the supply of water and the same was stopped on February 17, 2016 and continued till the complaint was filed before the jurisdictional Police Station.

I have considered the materials, the act which may constitute an offence within the ambit of Section 430 of the Indian Penal Code which is distinguishable from a civil dispute. The

provisions of Section 430 of the Indian Penal Code are to be read in the background of Section 425 of the Indian Penal Code. Now, the substance of offence which apply to the present case would come within the ambit “Diminution of the supply of water..... for food or drink human beings”.

The allegation is completely different from the factual background where the allegation was that “Cut off my water supply” as alleged in the complaint dated 20.02.2018 addressed to the Officer-in-Charge of the Police Station. In view of the factual position being different and the letter of complaint being embellished with allegations which are unsubstantiated with the situation existing at the ground reality I am of the opinion that the opposite party no.2 has distorted the facts for the purpose of registration of the case.

In view of the decision of this Court in C.R.R.1357 of 2015 Bhagirath Agarwal vs. State of West Bengal, I am of the opinion that the allegations made in the petition of complaint and the charge-sheet do not satisfy the requirements of Section 430 of the I.P.C. in the background of Section 425 of the I.P.C. and the continuance of the same would be an abuse of the process of the Court and is bound to cause miscarriage of justice.

Accordingly, Gariahat P.S. Case No.48 of 2018 and all orders passed therein by the Judicial Magistrate is hereby quashed.

Thus, C.R.R.724 of 2020 is allowed.

All pending connected application, if any, are consequently disposed of.

Interim order, if any, is made absolute.

Mr. Das, learned advocate appearing for the private opposite party no.2 submits the right of a tenant to have continuous water supply cannot be throttled, there is no second view to such proposition. If any application is taken out before the Civil Court in seisin of the matter, the same would not be an impediment because of the findings of the Court, as the jurisdiction of the criminal court and the civil court are different and the rights of a tenant to receive continuous supply of water under no circumstances can be a subject matter of criminal proceedings, the right remains absolutely with the civil court.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)