

CRR 980 of 2020

In the matter of: Sukumar Ghosh & Ors.

....Petitioners.

Mr. Prasant Kr. Banerjee

Ms. Indrani Nandi

... for the Petitioners.

Mr. Prasun Kumar Dutta

Md. Kutubuddin

Mr. Santanu Deb Roy

... for the State.

Affidavit of service filed by the petitioners in Court today be kept with the record.

None appears on behalf of the opposite party no.2 in Court today in spite of service.

The present revisional application under Section 482 read with Section 401 and 397 of the Code of Criminal Procedure has been preferred for quashing of the impugned FIR in connection with Jangipara Police Station Case No.93 of 2017 dated 24.4.2017 under Section 188/34 of the Indian Penal Code in G.R. Case No.1015 of 2017.

The petitioners have contended that the opposite party no.2 lodged a false complaint before the Circle Inspector Uttarpara, Hooghly against the petitioners on 07.4.2017. The allegation made by the complainant is that the present petitioners have constructed their house forcibly in spite of injunction order passed by the Hon'ble High Court at Calcutta on 28.3.2017 and his further case is that the petitioners had already constructed first floor and they did not pay any heed to the requests made by the opposite party no.2.

The petitioners have further contended that local police came to the spot and construction work was stopped for the time being but after departure of the police from the spot, petitioners again

started construction violating the order of injunction and also violating the injunction order passed by the learned Trial Court at Serampore.

Mr. Prasanta Kr. Banerjee, learned counsel appearing on behalf of the petitioners, submits that Section 188/34 of the Indian Penal Code does not attract in the present case as the said section relates to disobedience of an order duly promulgated by the public servant.

He further stated that one Samir Kumar Ghosh filed a suit being Title Suit No.68 of 2015 against the petitioners who are the defendants in the said suit for injunction and the said suit ultimately came up before the Hon'ble High Court at Calcutta being C.O. No.2439 of 2016 and the Hon'ble High Court by its order dated 28.3.2017 was pleased to direct the parties to maintain status quo as of the date of the suit in respect of the possession over the plot no.978.

Mr. Banerjee further submits that petitioners have not violated any order of the Hon'ble High Court and the police authority on the basis of false FIR submitted charge-sheet under Section 188/34 of the Indian Penal Code which is illegal, motivated and baseless and the police authority had no right to initiate such proceeding. Accordingly, petitioners have prayed for quashing of the proceeding.

Mr. Prasun Kr. Dutta, learned counsel appearing on behalf of the State, placed the case diary and leaves the matter to the discretion of the Court. He however submits that the petitioners have prayed for quashing of the FIR but they have not prayed for quashing of the entire proceeding, investigation has already been ended in charge sheet.

Considered submissions made by both the parties.

Under the law if there is any violation of the order of injunction before the trial court then the appropriate remedy for the opposite party no.2 is to start proceeding under Order XXXIX Rule 2A of the Code of Civil Procedure. In case of violation of any order passed by this High Court on 28.3.2017, the appropriate remedy lies to the petitioners is to file contempt proceeding before the appropriate Bench.

In ***State of Haryana & others vs. Bhajan Lal & others***, reported in **1992 Supp (1) SCC 335** the illustrative categories have been indicated the scope of exercise of power under section 482 of the code, where High Court may exercise its power to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice. Paragraph 102 runs as follow:-

“102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

In view of above law is well settled that where there is a specific provision in the code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party, High Court should quash the proceeding, invoking power under section 482 of the code. Here in the present case for violation of injunction order (if any) passed by Trial Court or the High Court, the opposite party no.2 has efficacious redress for the grievance lies in the concerned statute and as such the question of invoking inherent power does not arise, as there is specific remedy in the statute.

Moreover, it appears from the case diary that no incriminating material have been collected by the investigating officer during investigation that may disclose any offence against the petitioners. Furthermore, charge-sheet submitted under Section 188/34 of the Indian Penal Code which is completely absurd in terms of allegations leveled in the FIR. The allegation against petitioner as disclosed in the FIR is that petitioner have violated order of injunction and raised construction on the disputed plot. First of all these allegations amounts to contempt and does not disclose cognizable offence. Secondly section 188 applies, where there was promulgation of an order by a public servant and accused having knowledge about such promulgation

has disobeyed it which caused or tendered to cause obstruction, annoyance, injury or risk of the same to a person lawfully employed or caused danger to human life health or safety etc, which is absolutely not the case of FIR maker.

Having considered the aforesaid facts and circumstances of the case, I find that if the present proceeding is allowed to continue further that would be sheer abuse of process of court and this is a fit case where invoking power under Section 482 of the Code of Criminal Procedure, the present proceeding is required to be quashed.

Accordingly, CRR 980 of 2020 is allowed and all the proceeding being Jangipara Police Station Case No.93 of 2017 dated 24.4.2017 under Section 188/34 of the Indian Penal Code in G.R. Case No.1015 of 2017 is hereby quashed.

However, there will be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Ajoy Kumar Mukherjee, J.)