

01.03. 2022  
item No.16  
n.b.  
ct. no. 34

**(via video conference)**

**CRR 1039 of 2017**

**Abhijit Datta  
Vs.  
Arun Kumar Dey**

Mr. Santanu Kr. Mitra,  
Mr. Sourav Chatterjee,  
Ms. Tapasi Sinha,  
Mr. Amartya Pal  
.. for the petitioner.

Mr. Upendra Roy,  
Md. Mustafa,  
Mr. Faiz Alam Khan,  
Mr. Sunny Nandy,  
Mr. Tamal Singha Roy  
... for the O.P.

Mr. Chatterjee, learned advocate for the petitioner emphasised that the allegations made in the petition of complaint if it is accepted in its entirety, fails to make out any case so far as the present petitioners are concerned. Learned advocate also submits that the allegations made in the petition of complaint have overtone of civil proceedings and unnecessarily the complainant/private opposite party is invoking the jurisdiction of the Criminal Court alleging offences under Section 341/506 of the IPC.

Learned advocate draws the attention of this court to the fact that discrete/cryptic instance, which have been referred to without any substantive materials/evidence cannot be the foundation for invoking provisions of Section 341 of the IPC. It has

also been specified that so far as the allegations under Section 506 of the IPC is concerned, none of the neighbours or witnesses have been examined and the relationship between the complainant and the present petitioner and his wife, who has been implicated in the instant case are that they are occupying the same premises. Learned advocate also submits that wife of the present complainant also filed an application under Section 144 of the Code of Criminal Procedure before the learned Executive Magistrate. However the police report so submitted relating to the disputes opined the same to be civil in nature. The said proceedings were subsequently dropped by the learned Executive Magistrate.

Mr. Roy, learned advocate appearing for the complainant/opposite party submits that the allegations made in the petition of complaint are justified and there are issues regarding access as also cleaning of the water tank, the complainant and his wife has been refused access and that is why the present proceedings with specific dates have been initiated against the present petitioner and his wife, who are responsible for such acts.

I have considered the allegations made in the petition of complaint as also the initial deposition of the complainant and his witnesses. The lower court records were also called for ascertaining the materials which are relied upon by the learned Magistrate prior to issuance of process. On an overall assessment of the nature of the dispute between the present petitioner and the complainant, I am of the opinion that although there are overtones of civil dispute

but at the same time certain minor petty offences cannot be ruled out.

However, the learned Magistrate is directed to ensure that there are both documentary evidence as well as oral evidence in support of the assertions regarding the incidents complained. It is a settled principle of law that issuance of the process in criminal case is a serious matter and the courts are supposed to apply its mind.

Having regard to the materials which surfaced at the stage of Section 200 of the Code of Criminal Procedure I am of the opinion that complete enquiry is to be conducted under Section 202 of the Code of Criminal Procedure by the Learned Magistrate before taking a decision as to whether a case has been made out for issuance of process.

Accordingly, all orders passed on or after January 24, 2017 is hereby set aside.

The learned Magistrate would direct an enquiry to be conducted under Section 202 of the Code of Criminal Procedure, assess the materials so collected, thereafter decide whether the provisions of the Indian Penal Code for which the complaint has prayed for issuance of process are applicable or at all any case has been made out for issuance of process and then pass the order either under Sections 203 or 204 of the Code of Criminal Procedure.

With the aforesaid observation CRR 1039 of 2017 is disposed of.

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

Interim order, if any, is hereby vacated.

The department is directed to send back the lower court records preferably within a week from the date to the jurisdictional Court.

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

**( Tirthankar Ghosh, J.)**