

CRR 1218 of 2019

In the matter of: Piyali Das & Anr.

....Petitioners.

Mr. Raghunath Adhikary
Ms. Tanaya Banerjee

... for the Petitioners.

Mr. Saryati Datta

... for the State.

Mr. Ankit Agarwala
Mrs. Alotriya Mukherjee
Mr. Robin Basu

... for the Opposite Party No.2.

The present revisional application has been directed to quash the impugned proceeding being Polba Police Station Case No.127 of 2018 dated 04.12.2018 under Sections 341/325/506/34 of the Indian Penal Code, lodged by opposite party no. 2, Manik Das.

On December 4, 2015 the opposite party no.2 filed a written complaint to the effect that he runs two factories adjacent to his house after taking due permission from the Government of West Bengal. One neighbouring woman threw piece of brick towards his factories and threatened his workers with a view to close these two factories. On December 1, 2018 in the afternoon at 4:30 p.m., in a planned way F.I.R. named seven accused persons including the petitioners with the help of sharp cutting weapons attacked complainant's / opposite party No. 2's daughter and wife with a view to kill them and for which they sustained bleeding injury. Neighbours admitted his daughter in hospital and subsequently the aforesaid proceeding started on the basis of said incident.

Mr. Adhikary, learned lawyer for the petitioners contended that prior to aforesaid F.I.R., on December 2, 2018 one Sumitra Das filed a written complaint that on December 1, 2018 at 5 hours opposite party no. 2 Manik Das and others forcibly entered into the house of said

Sumitra Das and assaulted complainant/Sumitra Das and her daughter by piece of brick, rod and also tried to outrage their modesty and had also broken window glasses, outlet pipe, resulting which the said complainant Sumitra Das and her daughter received grievous injury and was treated at Chandannagar Hospital and over the said incident said Sumitra Das first lodged F.I.R. being Polba P.S. Case No. 126/18 dated 02.12.2018 against opposite party no.2 herein and five others under section 341/325/354B/427/34 IPC.

It is further contended that the petitioner no.1 is a higher secondary school teacher and the petitioner no.2 is the husband of the petitioner no.1 who is a central government employee and they had ancestral property in the same locality and petitioners frequently go there to look after their property from their residence at Nabagram, Konnagar, and on the alleged date of occurrence, they had acted as good samaritan.

Mr. Raghunath Adhikary, learned counsel appearing on behalf of the petitioners, further submits that the petitioners went their ancestral house and they heard groaning with cry from a house and immediately they went there and rescued two women whom they know very well and as such shifted them to the Polba Police Station and one of the wounded lady Sumitra Das filed FIR against the opposite party no.2, that is, Manik Das as mentioned above.

After hearing the news of lodging FIR by the said Sumitra Das, opposite party no.2 herein i.e. Manik Das on December 4, 2018 lodged FIR vide FIR No.127 of 2018 against Sumitra Das and six others including the present petitioners though there is no involvement of the petitioners in connection with the aforesaid subsequent counter case. Petitioners only acted as good Samaritan by bringing the injured to police station. Investigating agency did not bother to mention that over

the selfsame incident another FIR was lodged against the defacto complainant/ opposite party no.2 prior to lodging FIR by the opposite party no.2. From the said fact, it is palpably clear that the investigating agency did not conduct investigation properly.

Mr. Adhikary further submits that in the judgment passed by Apex Court in Writ Petition (C) No.235 of 2012 **Savelife Foundation and another vs. Union of India & another**, their Lordships in order to protect good samaritan was pleased to observed as follows:-

“20. We also direct that the court should not normally insist on appearance of Good Samaritans as that causes delay, expenses and inconvenience. The concerned court should exercise the power to appoint the Commission for examination of Good Samaritans in accordance with the provisions contained in section 284 of the Code of Criminal Procedure, 1973 suo motu or on an application moved for that purpose, unless for the reasons to be recorded personal presence of good Samaritan in court is considered necessary.”

Accordingly, it is submitted on behalf of the petitioners that no prima facie case has been made out against the present petitioners as would be evident from their complaint itself and other materials on record. No specific overt act has been attributed against the petitioners. Therefore, the petitioners submit that F.I.R. as well as charge-sheet is liable to be quashed on the ground of suppression of material fact and also on the ground of fabrication of material facts. As such, further continuation of the impugned proceeding will be complete abuse of process of Court.

Mr. Saryati Datta, learned counsel appearing on behalf of the State, submits that investigation has already been ended in charge-sheet and prima facie case has been established against the present petitioners. Whether the petitioners will be able to prove guilt of the offender or not will be adjudicated during trial but at this stage the proceeding cannot be quashed at its threshold invoking power under Section 482 of the Code of Criminal Procedure, when sufficient

incriminating materials have been collected by the investigating agency against the petitioners during investigation.

I have gone through the materials in the case diary and perused the petition of complaint.

The petitioners are FIR named and specific allegation has been levelled against the petitioners in the complaint which discloses prima facie non-cognizable offence against petitioners along with others to the extent that they have allegedly assaulted victims who sustained bleeding and other injuries. It further appears that during investigation police had recorded statement of the available witnesses under Section 161 of the Code of Criminal Procedure which also discloses that the present petitioners along with others assaulted the victim with different weapons. Police during investigation has also seized certain broken particles and Police has also collected injury report of victim.

It is well settled that at the stage when the High Court considers a petition for quashing criminal proceeding under section 482 of the Cr.P.C., the allegations in the F.I.R. must be read as they stand and it is only if on the face of the allegations that no offence as alleged, has been made out, that the court may be justified in exercising its jurisdiction to quash. The parameters of the jurisdiction under section 482 have been reiterated in a consistent line of judicial precedents.

In a recent judgment in ***Rajeev Kourav Vs. Baisahab and others*** reported in **(2020) 3 SCC 317** Apex Court observed as follows:-

“8.It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while

considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding”.

In the present case from a reading of the complaint, it cannot be held that even if the allegations are taken as proved, no case is made out. There are allegations in the F.I.R. and the statements recorded under section 161 Cr.P.C. against the present petitioners that the petitioners along with other accused persons assaulted wife and daughter of defacto complainant with sharp cutting weapons and that victims sustained injury and were treated in hospital. The question that whether victims were in fact assaulted by the petitioners herein, is a matter of trial but at this stage, it cannot be said that no case is made out. Thus quashing of impugned proceeding before the trial is not permissible.

Accordingly, CRR 1218 of 2019 is dismissed.

However, the learned trial court is directed to expedite the trial of the proceeding and dispose of the case as early as possible preferably within a period of one year from the date of communication of this order.

However, there shall 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.)