

D/L33
08.12.2022
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C.R.R.1922 of 2021

In Re: A petition under Section 482 of the Code of Criminal Procedure,
1973;

Partha Nandy
Versus
The State of West Bengal and another

Mr. Dipanjan Dutt,
Mr. Karan Dudhwewala.
...for the petitioner.

Mr. Avishek Sinha.
...for the State.

The present revisional application has been preferred challenging the proceedings relating to Bantra Police Station Case No.187 dated 09.08.2021 under Sections 188/427/506/34 of the Indian Penal Code (G.R. Case No.4199 of 2021) pending before the learned Chief Judicial Magistrate, Howrah.

On conclusion of investigation, charge-sheet was submitted before the jurisdictional court under Sections 188/427/506 of the Indian Penal Code.

I have assessed the report under Section 173 of the Code of Criminal Procedure and I find that serial no.11 in the said formal report of Section 173 of the Code of Criminal Procedure, there are no properties/articles/documents recovered or seized. The case is based solely on the statement under Section 161 of the Code of Criminal Procedure in respect of witnesses namely, Subhro Nandi, Saptashwa Nandy, Saprathi Nandy, Rajdeep Das, Rohan Paul and two Police Officers, namely, Prolay Kr. Saha and Tanu Pakhira.

The factum which has been stated in the complaint was that the complainant on or about the year 2005 filed a suit where an injunction order was passed restraining the accused/petitioner, however, the accused/petitioner by violating such injunction order trespassed by breaking open the gate. The date of incident which has been referred to is 2nd August, 2021 and 4th August, 2021. The charge-sheet has been submitted under Sections 188/427/506 of the Indian Penal Code. So far as Section 188 of the Indian Penal Code is concerned, in view of the bar under Section 195 of the Code of Criminal Procedure, police authorities are not empowered to file charge-sheet under such Section.

So far as the allegations under Sections 427/506 of the Indian Penal Code or for that matter offence is concerned, I have assessed the statement of the five witnesses which have been relied upon by the State. The summary of their allegations relate to violation of the injunction order breaking the padlock of the factory and entering the property. Ordinarily, it should have been better if such factum relating to the conduct of the accused/petitioner had been brought before the same civil court which was in *seisin* of the matter.

However, having regard to the fact that in the present case, the materials which have been collected by the Investigating Agency do not inspire confidence of this Court and is only based on the statement of the witnesses under Section 161 of the Code of Criminal Procedure, I am of the opinion in the background of the facts of the allegations both in the FIR and the charge-sheet the

same cannot be a foundation for proving the charges for mischief and criminal intimidation. There were scope of collection of ample evidence if the statement of the witnesses under Section 161 of the Cr.P.C. that were to be believed. The seizures being nil in this case, I am of the opinion that further continuance of the proceedings would be an abuse of the process of the court and, as such, further proceedings arising out of Bantra Police Station Case No.187 of 2021 dated 09.08.2021, charge-sheet filed therein as also orders passed by the learned CJM, Howrah should be quashed.

Accordingly, CRR 1922 of 2021 is allowed.

Pending application, if any is consequently disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)