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C.R.R 2173 of 2021

In Re: An application under Section 482 read with Section 401 of the
Code of Criminal Procedure, 1973;

Sudipta Rakshit and another
Versus
The State of West Bengal and another

Mr. Pradyat Saha,,
Ms. Sudeshna Biswas.
...for the petitioners.

Mr. Madhusudan Sur,
Mr. Dipankar Paramanick,
Ms. Sreyashee Biswas.
...for the State.

Mr. Amitabha Ghosh.
...for the opposite party no.2.

The present revisional application has been preferred by the petitioners challenging the continuance of Lake Police Station Case No.57 of 2021 dated 04.03.2021 under Sections 341/323/506/114 of the Indian Penal Code. The police authorities on conclusion of investigation submitted charge-sheet under Sections 341/323/506/114 of the Indian Penal Code.

The Investigating Agency on conclusion of investigation submitted charge-sheet relying upon four witnesses namely, Jagadish Basak, Partha Saha, Debasis Sinha and the Investigating Officer of the case.

In the letter of complaint addressed to Officer-in-Charge, Lake Police Station dated 17.02.2021, the complainant/opposite party no.2 alleged that the present petitioners tried to grab his property and on several occasions the petitioner no.1 attempted to forge the documents relating to the property and, as such, tortured him both physically and mentally.

It has also been alleged by the complainant that the present petitioners often hurled abusing languages and their activities, as instill fear within him, for the protection of his life and property. The incident which has been complained of is on 30.01.2021 when at about 8.00 a.m. it is alleged that the petitioner no.1 along with his mother knocked his door and threatened him not to go to roof otherwise they would kill him and when such conduct of the petitioners were opposed by the complainant, they assaulted him with fist and blows and tried to kill by strangulate him. The accused persons also abused him in derogatory languages and threatened him of dire consequences. The complainant states that he is an aged person who is unable to tolerate such physical and mental torture which is inflicted by the petitioners.

Learned advocate appearing for the petitioners submits that the complainant has falsely implicated them in connection with the instant case and if the charge-sheet and its accompaniments are taken as a whole, the same fails to make out a case so far as the petitioners are concerned.

Mr. Sur, learned advocate appearing for the State produces the case diary. Attention of the Court was drawn to the

witnesses who were relied upon in the charge-sheet namely, Debasis Sinha and Partha Saha.

The contents of the statement recorded under Section 161 of the Code of Criminal Procedure so far as Debasis Sinha is concerned, there is allegation of both the parties scuffling with each other. While in the statement of Partha Saha, it is seen that the complainant was abusing the present accused/petitioners and as a result the scuffling took place. Prima facie, the factual allegations made by the complainant before the police station do not have its support from the statement of Debasis Sinha and Partha Saha. In fact, if a scuffling has taken place, the police authorities were supposed to involve the petitioners and the complainant. I am unable to accept the opinion of the police authorities in the case where scuffling has taken place between both parties, how one becomes accused and the other becomes complainant in the case.

Mr. Ghosh, learned advocate appearing for the private opposite party no.2/complainant vehemently opposes the contentions advanced on behalf of the petitioners and submits that because of act of the police authorities, the complainant cannot suffer. According to the learned advocate, the complainant is an aged person and has been suffering on his own property and took the assistance of the police authorities because of the brutal act of the present petitioners who had physically and mentally tortured him.

I have assessed the materials available in the case diary which is the foundation of the charge-sheet submitted in connection

with the instant case. I am unable to resist myself to express why the police authorities in this case has taken a partition approach. The continuance of the proceedings on the basis of the materials collected by the police authorities itself would be an abuse of the process of the court. Accordingly, further continuance of Lake Police Station Case No.57 of 2021 dated 04.03.2021 under Sections 341/323/506/114 of the Indian Penal Code and the charge-sheet submitted therein under Sections 341/323/506/114 of the Indian Penal Code is *per se* bad in law and, as such, is quashed.

Accordingly, CRR 2173 of 2021 is allowed.

Pending application, if any, is consequently disposed of.

The complainant, however, in this case has narrated a different set of stories than the witnesses who deposed in support of the prosecution case.

Having regard to the nature of the offence complained of, I grant liberty to the complainant to file an application under Section 200 of the Code of Criminal Procedure, the learned Magistrate would after examining the complainant and the witnesses decide his further course of action under Section 203 or Section 204 of the Code of Criminal Procedure. Such decision would be taken by the learned Magistrate independently and the learned Magistrate should not be influenced by any observations made by this Court which is restricted to the outcome of Lake Police Station Case No. 57 of 2021 dated 04.03.2021.

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.)