

02.08. 2022
item No.61
n.b.
ct. no. 34

CRR 3334 of 2007

**Hari Shankar Jayaswal & Ors.
Vs.
State of West Bengal & Anr.**

Mr. Kaushik Chatterjee,
Mr. Tirthankar Dey,
Ms. Mouli Sarker
.....for the Petitioners

Mr. Arijit Ganguly,
Mr. Sandip Chakraborty,
.....for the State

Mr. Kaushik Chatterjee, learned advocate appearing for the petitioners submits that the present case has been initiated with a *mala fide* purpose as a counter-blast to the complaint case, which was filed by the petitioner no.1.

According to Mr. Chatterjee, the complainant and his associates are illegal trespassers who without any licence are carrying out their business at the premises owned by the present petitioners in order to illegally grab the area. The complainant and his associates are initiating criminal cases on the basis of allegations which have no foundation in the eye of law.

Learned advocate draws the attention of this court to the applicability of the relevant provisions of the Indian Penal Code under which the charge sheet has been submitted and also submitted that the investigation of the case was carried on the basis of the application under Section 156(3) of the Code of

Criminal Procedure which has not complied with the requirements specified by the Hon'ble Supreme Court in the case of ***Priyanka Srivastava & Anr. Vs. State of Uttar Pradesh & Ors.*** reported in ***(2015) 4 SCC(Cri) 153.***

Mr. Chattejee emphasizes that the General Diary entry which was the foundation of application under Section 156(3) of the Code of Criminal Procedure did not spell out any offence and on the basis of certain narratives attracting cognizable offences, a direction was obtained from the Learned Chief Judicial Magistrate, Howrah for registration of the FIR. It has also pointed out by the Learned Counsel that there is nothing on records to show that on failure of the Officer-in-Charge of the concerned police station to take steps, intimation was at least sent to the Superintendent of Police concerned.

Learned advocate lastly submits that the continuance of proceedings are abuse of the process of law and the same if allowed to continue, is bound to cause miscarriage of justice.

On the other hand, Mr. Sandip Chakraborty, learned advocate appearing for the State produces the Case Diary and draws the attention of the Court to the statement of the witnesses substantiating the stand of the State so far as the applicability of the sections are concerned in the report under Section 173 of the Code of Criminal Procedure.

I have perused the materials appearing in the Case Diary particularly, the allegation made therein. On a perusal of the same, I am of the opinion that some of the sections so mentioned in the charge sheet may not apply but at this stage

what this court is required to do is to find out whether offence has been made out or not. The applicability of the Sections in respect of alleged offence and materials collected by the Investigating officer would be a subject matter of consideration at the stage of framing of the charges.

Having regard to the same, I am of the opinion that no interference is called for at this stage by this Court. The learned Trial Court would consider the charges and allow the petitioners to place the relevant materials and thereafter decide whether a case has been made out or not, for proceeding to the trial.

The petitioner is granted liberty to raise all the points canvassed in the revisional application at the stage of consideration of charges.

Accordingly, CRR 3334 of 2007 is disposed of.

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

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)