

30.6.2022
S.D.
14.

C.R.R. 3083 of 2014

Sri Nirmal Saha & Ors.
Vs.
State of West Bengal & Anr.

Mr. Amlan Jyoti Sengupta

...For the petitioners.

Mr. Bidyut Kumar Roy
Ms. Sima Biswas

...For the State.

Party/parties is/are represented in the order of their name/names as
appearing in the Cause Title.

Opposite party no. 2 has not been represented.

The revisional application is listed today for hearing.

Heard learned advocate for the petitioners.

It is submitted that initially, this revisioinal application was filed by
three petitioners, but during pendency of this matter, petitioner no. 1,
Nirmal Saha died on 15.5.2021 and copy of death certificate has been
filed.

Learned advocate submits that the petitioners and opposite party
no. 2 are related. Petitioner no. 1 was the brother of opposite party no. 2
and petitioner nos. 2 and 3 are the sister-in-law and nephew of the
defacto complainant respectively. On the basis of complaint lodged by
opposite party no. 2, Baguihati Police Station Case No. 158 of 2014 was
started under Section 277/506 of the IPC. The petitioners filed this

application under Section 482 of the Cr.P.C. praying for quashing of the proceeding in the criminal case. According to learned advocate for the petitioner, the allegations made in the FIR are false and with an object to harass the petitioners who have other cases with opposite party no.2 pending over property dispute. It is further submitted that continuation of this criminal case would be an abuse of the process of Court, as such invoking the inherent jurisdiction, the entire proceeding should be quashed.

Learned advocate for the State produced the Case Diary and submitted that in this case, police have completed investigation and submitted charge sheet against the accused petitioners under Section 277 and 506 of the IPC. Learned Chief Judicial Magistrate after taking cognizance of the offence has framed charge against the accused persons and the next date of the case is fixed on 16.8.2023.

Learned advocate for the State took me through the contents of the Case Diary and submitted that in course of investigation, only two witnesses, namely Prabir Mitra and Samir Mondal who are neighbours of the petitioner have been examined under section 161 of Cr. P.C. and they have stated the prosecution story that on the evening of 17.3.2014, there was a quarrel between Nirmal and his wife with Sunil and Krishna. Later in the evening when Sunil went to use the water of their reservoir, he found some poisonous substance had been added to the water for contaminating the same.

I have considered the FIR as well as the materials in the Case Diary. No separate statement of the defacto complainant has been recorded under Section 161 of the Cr.P.C. So far as the statement under Section 161 of the Cr.P.C. of Prabir Mitra and Samir Mondal is concerned, it appears that they are both hearsay witnesses and do not have any direct information about the occurrence. It also appears from their statements that the allegations of adding poisonous substances to the water in the reservoir of opposite party no. 2 are based upon suspicion and there is no material statement to connect the petitioners with the alleged act. I also find that the Investigating Officer did not have the occasion of collecting any sample from the water of the reservoir, which was allegedly contaminated at the instance of the accused petitioners. The FIR in this case was lodged on 24.3.2014 in relation to an occurrence which took place on 27.3.2014. The delay in lodging the FIR by seven days has not been explained and this is fatal to the prosecution case.

The allegation that Nirmal and his wife abused Sunil and Krishna on the evening of 13.3.2014, does not attract offence under Section 506 of the IPC. The invectives used have not been mentioned in the C.D.

In view of my discussions above and the facts and circumstances which emerged from the Case Diary, I am of the view that there is no material to go for a trial. Therefore continuation of this criminal proceeding against petitioner nos. 2 and 3 would amount to an abuse of the process of Court. Under such circumstances, the criminal proceeding in connection with Baguihati Police Station Case No. 158 of 2014 under

Section 277/506 of the IPC giving rise to G.R. Case No. 1135 of 2014 is quashed.

Thus, the revisional application is allowed.

Interim order, if any, stands vacated.

Let the copy of Case Diary be returned to learned advocates for the State.

Let a copy of this order be communicated to learned Chief Judicial Magistrate, Barasat for information.

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

(Ananda Kumar Mukherjee, J.)