

08-02-2022
Subha
Item-10
Ct -.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

(Via video-conference)

C.R.R 1830 of 2020
with
CRAN 1 of 2021

In Re: An application under Sections 482 read with Section 397/401 of the Code of Criminal Procedure.

In the matter of : Sudipta Nath ...Petitioner.

Mr. Usof Ali Dewan
Mr. Asif Dewan

....for the petitioner.

Mr. Sudip Ghosh
Mr. Bitasok Banerjee
Mr. Apurba Kumar Datta

.....for the State.

The present revisional application was preferred challenging the proceedings arising out of Raghunathganj P. S. Case No. 441 of 2020 dated 16.09.2020 under Sections 447/379/427/34 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad.

The Investigating Agency, on completion of investigation in connection with the said FIR, has already submitted chargesheet relying upon eight(8) witnesses namely, Raju Dutta, Madhumita

Dutta, Subir Dutta, Sanjay Barik, Madhab Halder, Aziz Seikh and two police officers associated with the investigation.

Mr. Usof Ali Dewan, learned advocate appearing on behalf of the petitioner challenges the initiation of the proceedings and submits that there was a dispute regarding the subject-matter of land, but no incident, as such, has happened and the present petitioner has been falsely implicated in the instant case after a long lapse of time and in fact the FIR itself would reflect that after one year eight months, the present FIR was registered by the police authorities.

The learned advocate for the petitioner further submits that the materials which have been collected by the Investigating Agency to arrive at its own conclusion under Section 173 of the Code of Criminal Procedure are not tenable in law and erroneously the police authorities have submitted chargesheet under Sections 447/379/427 of the Indian Penal Code.

Mr. Ghosh, learned advocate appearing on behalf of the State disputes the submissions advanced by the learned advocate appearing on behalf of the petitioner and submits that the delay *ipso facto* cannot be a ground for quashing of the proceedings.

According to the learned advocate of for State, the materials which have been collected in course of the investigation, particularly the oral assertion made by the witnesses support the prosecution case and the certificate issued by the authorities reflect that the property belonged to the de facto complainant which has

been illegally withheld by the present petitioner after dispossessing the de facto complainant.

Learned advocate has also relied upon a decision of the Supreme Court, *Shantaben Bhurabhai Bhuriya Vs. Anand Athabhai Chaudhari & Ors.* reported in (2021) AIR (SC) 5268 and refuted the reliefs prayed for by the petitioner. The First Information Report which was by way of a letter of complaint alleged that the de facto complainant was the owner relating to District-Murshidabad under P. S. Raghunathganj under Jangipur Municipality under Mouza – Basudevpur R. S Khatian No. 6, L. R. Khatian No. 7, Dag No. Khatian No. 3250 which is measuring about 2522 sq. ft or 3.50 cottah. The said property was purchased by the de facto complainant from one Partha Sarathi Nath. The said property was covered by a boundary wall and there was an iron gate in front of the property with pillars surrounding the demarcation. On 27.01.2019 at about 11.30-12 'O' Clock at night, the accused Sudipta Nath and his associates forcefully entered into the property after breaking open the gate and committed theft. Thereafter, they created their own boundary wall in a manner wherefrom the demarcation of the plot was removed. The said accused persons also dismantled the pillars and the trees which were planted within the area.

The police authorities treated the aforesaid complaint as FIR and proceeded to investigate Raghunathganj P. S. Case No. 441 of 2020 dated 16.09.2020.

On completion of investigating, chargesheet no. 489 of 2020 was submitted before the jurisdictional court under Sections 447 and 379 of the Indian Penal Code.

Delay ordinarily is not a consideration, until and unless an exceptional case is made out for interference by the high court. In this case, the basic charges which have been incorporated in the chargesheet are under Sections 447/379/427 of the Indian Penal Code. The witnesses so relied upon have narrated the same facts in the FIR.

In this case, particularly the delay has assumed some importance because of the fact that no documents have been relied upon by the police authorities to show that during this period of one year eight months, the complainant has pursued his remedies. The other fact, which assumes importance, is that in this case, there has been no recovery in relation to the materials which should have been recovered as primary evidence for substantiating the charges under Section 379 of the Indian Penal Code.

What has been substantiated by the prosecution is that a certificate issued by the BL & LRO regarding the ownership of the plot/property. But there are no materials to show that the present petitioner has dispossessed and is presently illegally in possession of the property thereby making out a preliminary case for trespass. Except the oral evidence of the five witnesses, who are closely related, even the original owner of the property was not cited as a witness. As earlier stated, in such circumstances, delay assumes

importance.

Mr. Ghosh, learned advocate appearing for the State relied upon the decision of *Shantaben Bhurabhai Bhuriya Vs. Anand Athabhai Chaudhari & Ors.(Supra)* and by referring to a portion of paragraph of the said judgement which is as follows:

“Even otherwise, on the ground of delay in lodging FIR/complaint, the criminal proceedings cannot be quashed in exercise of powers under Section 482 of the Code of Criminal Procedure. The aspect of delay is required to be considered during the trial and during the trial when the complainant is examined on oath and a question is put to him/her on delay and he/she can very well explain the delay in his/her cross examination. But on the aforesaid ground, entire criminal Proceeding cannot be quashed in exercise of powers under Section 482 of the Code of Criminal Procedure”.

He also emphasized that the case should go for trial.

I have given my anxious consideration regarding the materials collected by the Investigating Agency and the formal chargesheet which incorporates the sections as also the cognizance taken by the learned Magistrate on such chargesheet.

Taking an overall view of the delay in one year eight months, no explanation being provided in course of examination of the witnesses or any document or information being communicated to any government authority, and on appreciation of the crux of the statement of the witnesses, I am of the opinion that the materials so collected falls short for framing of charges in the instant case for continuance of the trial.

The allegations have overtones of civil proceedings and the delayed factual manipulation have been done for invoking the jurisdiction of the criminal court. The continuance of the proceedings, as such, is bound to cause miscarriage of justice.

Accordingly, all further proceedings arising out of Raghunathganj P. S. Case No. 441 of 2020 dated 16.09.2020 as also the chargesheet filed therein presently pending before the learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad is hereby quashed.

With the aforesaid observations, the revisional application being CRR 1830 of 2020 is allowed.

Let the report submitted by the Inspector-in-Charge, Raghunathganj P.S, Jangipur P.D through the learned advocate for the State be kept with the record.

Interim order, passed herein, is made absolute.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

All concerned parties are to act in terms of a website copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]

