

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 228 of 2019

Tapan Kumar Mukherjee

Vs

The State of West Bengal & Anr.

For the Petitioner

: Mr. A. Bhattacharya,
Mr. A.R. Tiwari,
Mr. H. Hait.

For the State

: Mr. Saryati Datta.

Heard on : 23.02.2023

Judgment on : 23.03.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding of G.R.(S) Case No. 1207 of 2018 arising out of Hare Street Police Station Case No. 238 dated August 30, 2018 under Section 338 of the Indian Penal Code, 1860 pending before the Court of the Learned Chief Metropolitan Magistrate at Calcutta.
2. The petitioner's case is that the instant proceeding was instituted on the basis of a First Information Report lodged by the opposite party no. 2 herein with the Officer-in-Charge of Hare Street Police Station therein alleging that "Owners/Promoters/Managers and others of Mercantile Building situated at 9/12, Lalbazar Street, Kolkata – 700 001 did not take proper care of maintenance of the building and neglected the repairing work of the said building as a result of which a chunk of concrete fell upon the opposite party no. 2 and he sustained grievous injury on his person.
3. Accordingly the instant proceeding being Hare Street Police Station Case No. 238 dated August 30, 2018 was registered for investigation under Section 338 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').
4. That though the offence under Section 338 of the IPC is punishable with imprisonment of two years, yet no notice under Section 41A of the Code of Criminal Procedure, 1973 (hereinafter

referred to as 'Cr.P.C.') has been issued by the investigating agency. The investigating agency has only called the petitioner over phone and sought for information from him. The petitioner, being a law abiding citizen has been cooperating with the process of investigation.

5. The petitioner states that he is innocent and in no way connected with any offence far less the offences alleged herein. The petitioner has clean antecedents having no record of past conviction. It is further stated that premises No. 9/12 Lal Bazar Street, P.S. Hare Street, Kolkata – 700 001 is a very old building about 100 years old and the same is being occupied by more than 500 tenants, and most of the tenants are illegally occupying the said premises as a result thereto numbers of proceedings are pending before the City Civil Court at Calcutta as well as Small Causes Court at Calcutta. Moreover none of the tenants are paying their respective monthly rent to the landlord as a result it is impossible on the part of the owner of the said premises to commence repairing work of the said old and dilapidated building as the tenants are also not leaving the premises.
6. It is submitted that the petitioner herein has been impleaded by virtue of his portfolio as a 'Manager'. There is no presumption under Indian Penal Code that a Manager is responsible for repairing work of a dilapidated building. Therefore, the petitioner cannot be held responsible in the instant case. That the allegations made in the First Information Report are so absurd and inherently improbable that on

the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the present petitioner.

7. The petitioner submits that the instant proceeding as initiated against the present petitioner is absolutely baseless, frivolous and displays a clear misuse of the provisions of criminal law and fails to disclose any commission of offence by the petitioner.
8. **Mr. Ayan Bhattacharya, learned counsel for the petitioner** has submitted that the allegations leveled in the impugned First Information Report do not make out an offence under Section 338 of the Indian Penal Code, 1860 qua the petitioner herein.
9. From a bare perusal of the impugned First Information Report, it is evident that no offence can be said to have been committed by the petitioner herein and therefore, the continuation of the impugned proceeding any further will be a clear abuse of the process of court.
10. In spite of due service there is no representation on behalf of the Opposite Party no. 2.
11. **Mr. Saryati Datta, learned counsel for the State** has placed the case diary from which the following facts are before this court:-
 - (i) The petitioner is the Manager of Nawn Estate Pvt. Ltd.
 - (ii) The case has been registered against the Owners/Promoters/Managers and others of the Mercantile Building at 9/12, Lalbazar Street, Kolkata.

- (iii) **Charge Sheet has been submitted against the petitioner alone** showing him as the Owner/promoter/caretaker/manager of the building.
- (iv) Copy of the notice under Section 41(A) Cr.P.C. was served upon the petitioner as Manager and Gopal Sanei, Lata Sanei and Sugata Basu Roy Chowdhuri, all of Nawn Estate Pvt. Ltd. and also Owners of Mercantile Building.
- (v) The petitioner is the manager of the company Nawn Estate Pvt. Ltd. and not the owner of the company nor the Mercantile Building.
- (vi) Without assigning any reasons, the investigating officer did not file Charge Sheet against the owners/promoters/caretakers.
- (vii) The petitioner is the manager of the company "Nawn Estate Pvt. Ltd." and not the Owner of the Mercantile building.

12. **Section 338 of the Indian Penal Code, lays down:-**

"338. Causing grievous hurt by act endangering life or personal safety of others.—Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Ingredients of offence.- The essential ingredients of the offence under Section 338 are as follows:-

- (1) *Accused did some act.*
- (2) *He did it rashly or negligently.*
- (3) *The act was such as to endanger human life or personal safety of others.*
- (4) *Grievous hurt was caused in consequence of such act."*

To constitute an offence under this Section. The accused has to do some act. There is no such materials on record.

13. **Under Section 401A of the Kolkata Municipal Corporation**

Act:-

***"Explanation.—**"person" responsible for a building includes "Person" shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier, or a servant or agent of an owner, occupier, lessee, mortgagee, consultant, promoter or financier, who supervises or causes the construction of any new building or additional floor or floors of any building as aforesaid building."*

14. In the present case there is no materials on record to prima facie show that the petitioner was responsible for the building. It is clear that he is the manager of the company. None of the owners, occupiers, caretakers have been charge sheeted in this case. Only the petitioner has been charge sheeted.

15. From the materials on record it is seen that none of the ingredients required to constitute the offence alleged is present against the petitioner. No Prima facie case is made out against the

petitioner and in the interest of justice the proceedings should be quashed.

16. **CRR 228 of 2019 is allowed.**
17. The proceeding in G.R.(S) Case No. 1207 of 2018 arising out of Hare Street Police Station Case No. 238 dated August 30, 2018 under Section 338 of the Indian Penal Code, 1860 pending before the learned Chief Metropolitan Magistrate, Calcutta, is hereby quashed.
18. There will be no order as to costs.
19. All connected Application stand disposed of.
20. Interim order if any stands vacated.
21. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
22. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)