

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 436 of 2019

Sahadeb Ghosh

Vs

The State of West Bengal & Anr.

For the Petitioner : Ms. Sohini Bhattacharya.

For the State : Ms. Rita Dutta.

For the Opposite Party no. 2 : None.

Heard on : 23.02.2023

Judgment on : 24.03.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against quashing of FIR being Taratala Police Station Case No. 67 of 2018 dated 13.04.2018 under Sections 341/323/114/379 of the Indian Penal Code, which is pending before the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas.
2. The petitioner's case is that the opposite party No. 2 filed a complaint before the Officer-in-Charge Taratala Police Station. The case as made out in the complaint is that the opposite party no. 2 went to deposit electricity bill in the CESC Ltd. Office at Taratala on 11.04.2018 at about 2.30 p.m. When he entered into the compound of CESC Power Branch Office at Taratala with his motor bike bearing registration No. WB01-AA 4882 the watchman cum security personnel directed him to park the said motorcycle outside the office complex by abusing him in filthy languages and subsequently the said security personal with some other persons jumped over him and assaulted him with fists, blows and kicks and someone snatched his gold chain from his neck. He also sustained scratch injury on his neck and the miscreants took away his remote car key from his pocket. Thereafter one senior person rescued him and allowed him to deposit the CESC bills.

3. The petitioner states that petitioner was present in the CESC Power Branch Office at Taratala on 11.04.2018 at about 2.30 P.M. due to his personal work and when the security personnel repeatedly instructed the opposite party No. 2 to park the vehicle outside the CESC Office premises the Opposite Party No. 2 forcefully tried to park the said vehicle inside the area. After some time the petitioner saw that the opposite party no. 2, the security personnel and two/three other persons were fighting with each other. The petitioner requested them not to create such kind of nuisance inside the CESC Office premises and within five minutes on the request of the petitioner and other officers everything was normal and the Opposite Party no. 2 went inside the premises for depositing his electric bills.
4. The Opposite Party no. 2 then lodged a complaint with the officer-in-charge Taratala Police Station and the said complaint was duly received by the police authority and in pursuant to such complaint Taratala Police Station case No. 67 dated 13.04.2018 under Sections 341/323/114/379 of the Indian Penal Code, 1860 was registered for investigation. The petitioner has not been named in the FIR.
5. Upon completion of investigation, the investigating agency submitted charge sheet against the petitioner (being charge sheet no. 165 of 2018 dated 28.08.2018) arising out of Taratala Police Station Case No. 67 dated 13.04.2018 under Sections 341/323/114/379 of IPC.

6. The petitioner states that the allegation as leveled against the petitioner is wholly frivolous and ill conceived in as much as the petitioner is a reputed person. He does various official work in the CESC Taratala Office for last 5 years but he is not a paid staff of CESC. But every day for doing various official work the petitioner visits the CESC Taratala Office.
7. The petitioner submits that the CCTV footage on the basis of which the instant F.I.R. has been lodged clearly indicates that the Opposite Party no. 2 started assaulting the security personnel while illegally parking his vehicle and it is the opposite party no. 2 who started the entire nuisance inside the premises of CESC Taratala Office.
8. **Ms. Sohini Bhattacharya, learned counsel for the petitioner** has submitted that in order to attract the ingredients of Sections 341/328/114/379 of the Indian Penal Code it is imperative on the part of the prosecution to prima-facie establish that there was intention on the part of the petitioner to cause physical assault as well as snatching from the time of inception. In the instant case there is not even a whisper which could indicate the commission of physical torture and theft as claimed by the Opposite Party no. 2. In fact it is clear from the actions of the Opposite Party no. 2 as well as the petitioner, that the petitioner made attempts for settlement till the last moment and there is no question of snatching and theft by the petitioner. In absence of

these elements continuation of the present proceeding is bad and baseless and is liable to be set-aside.

9. The petitioner states that the allegations as leveled in the charge sheet after a careful scrutiny do not disclose anything to prima-facie indicate that there had been any nuisance, theft, physical assault on the part of the petitioner upon the Opposite Party no. 2. The mala fide intention of Opposite Party no. 2 has resulted in wrongful loss for the petitioner with regard to his image and reputation in the society as well as in the professional arena. As such the continuation of the proceedings against the petitioner is wholly without jurisdiction and is liable to be set-aside.

10. It is further submitted that taking of cognizance and subsequent continuation of the proceedings are judicial acts whereby a Learned Court is required to apply its mind to the materials as placed before it and thereafter being satisfied with regard to the complicity of the person so sought to be arraigned as accused, take cognizance of the offences as alleged and subsequently decide to proceed with the case. A mechanical approach in taking cognizance does not satisfy the judicial need and mere signature on the dotted lines indicating that cognizance has been taken is a travesty of justice. In the instant case, the Learned Magistrate without applying his mind to the fact situation of the case in the most erroneous manner has taken cognizance of the offences as

alleged so far as the present petitioner is concerned and has decided to proceed with the case without applying his judicial mind.

11. As such, the continuation of the instant proceeding will be a gross abuse of the process of court inasmuch as from the facts narrated hereinabove it is crystal clear that the present petitioner is a reputed person. The allegations when taken in their entirety do not disclose the commission of any offence by the petitioner at all.

12. **Ms. Rita Dutta, learned counsel for the State** has placed the case diary from which it is evident:-

- i) That the dispute in this case is in respect of parking.
- ii) The complainant is a consumer and had come to pay the bill.
- iii) The petitioner was present due to his personal work.
- iv) The altercation started when the security personnel (accused Pranab Kumar Ray) asked the complainant to park his bike outside. This was done in course of his (the security's) official duty.
- v) Materials substantiating the statement that the accused tried to murder him is totally absent.
- vi) There is no seizure list thus no recovery of either any chain nor the car keys as alleged.

13. **In spite of due service the opposite party no. 2 has not appeared.**

14. Improper parking causes severe inconvenience and it is the duty of the security to ensure that no inconvenience is caused. The Investigating Officer has only mentioned the role of the accuseds as seen from the CCTV but not the role of the complainant in the altercation as the accuseds have not filed a counter case.
15. From the materials on record, it is seen that the ingredients required to constitute the offence under Sections 379, 341 and 114 IPC is clearly absent. **The only offence to proceed towards trial is under section 323 IPC because of the medical papers. But as to how it happened is subject to trial.** CCTV footage with a certificate under Section 65B of the evidence Act is to be considered by the trial court. The Learned Magistrate will thus proceed accordingly.
16. But considering the nature of dispute between the parties, the Learned Magistrate will first send the case and parties herein for mediation through the respective District legal services authority and make all efforts to settle the matter before proceeding with the case. In case of mediation not succeeding the learned Magistrate will proceeded as per observation above.
17. **CRR 436 of 2019 is allowed in part.**
18. The proceeding in Taratala Police Station Case No. 67 of 2018 dated 13.04.2018, before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, in respect of Sections 341/114/379 of the Indian Penal Code, is quashed.

19. The proceeding in Taratala Police Station Case No. 67 of 2018 dated 13.04.2018, before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, will proceed only in respect of the offence under Section 323 IPC as per observation in this judgment after an attempt at mediation.
20. There will be no order as to costs.
21. All connected Application stand disposed of.
22. Interim order if any stands vacated.
23. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
24. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)