

29.03.2023

Court No.35
Item No. 8

D.Hira

CRR 491 of 2016

**Atul Kumar Jhawar
Vs.
The State of West Bengal & Anr.**

Mr. Joyjit Chowdhury,
Mr. Aditya Mondal.

... for the petitioner

Ms. Sreeparna Das.

... for the State

The petitioner has challenged the criminal proceedings against him pursuant to Bhaktinagar Police Station case no. 1424 of 2012 dated 18.10.2012 corresponding to G.R. case no. 5191 of 2012 under Sections 283/341 of the Indian Penal Code, pending in the Court of Judicial Magistrate, 3rd Court, Jalpaiguri.

The genesis of the case as above is an FIR filed by the S.I. Sri Thirtha Sarathi Nath, Officer-in-Charge of Bhaktinagar Police Station, Siliguri Police Commissionerate on 18.10.2012.

The allegations, inter alia, made therein would be that the petitioner having encroached the thoroughfare and erecting bamboo structure thereon on the concerned property, have restrained the police personnel who went to the said place of occurrence for removing the barriers and making the thoroughfare accessible and free for the users. Thus, the case was lodged against the present petitioner under Sections 283/341 of the Indian Penal Code.

Mr. Chowdhury, learned Advocate appearing for the petitioner in this case, has taken this Court through the various documents to show that there is dispute as regards the ownership of the concerned property since long. His client has forcefully and illegally been tried to be ousted from the said property. As it was protested by his client, he

was thrashed with the criminal proceeding, which according to Mr. Chowdhury is malicious and for the purpose of only wrecking vengeance against his client, whereas the FIR would not actually disclose any prima facie material against the petitioner, so far as the alleged offences are concerned.

The allegations levelled against the petitioner is under Sections 341 and 283 of the Indian Penal Code. Ingredients of those may be summarized as hereinbelow:-

Section 341 IPC is the punitive provision for the offence of wrongful restraint and what would have been an offence of wrongful restraint is laid down in Section 339 IPC, which is as follows :

“Wrongful restraint.

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section”.

Section 283 IPC has enumerated as follows :

“Danger or obstruction in public way or line of navigation.

Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished, with fine which may extend to two hundred rupees”.

It is found that in this case police has already completed investigation and filed charge-sheet. However, after perusing documents produced in Court in connection with this case, it clearly transpires that the dispute relating to the concerned property is civil in nature, for which there would have been no cogent reason for the criminal Court to exercise jurisdiction over there. So far as the offence as alleged against the petitioner is concerned and the ingredients thereof as discussed above, neither of those are projected from the version of the FIR or any other material available in this case.

Thus, following the well-settled principles of law that when the FIR is not disclosing any cognizable offence or prosecutable case against

the accused person, the entire proceeding may be quashed in exercise of Court's power under Section 482 of the Code of Criminal Procedure – such power is found legible to be exercised in this case also. Secondly, it is pertinent to mention that the police officer/defacto complainant not being connected with the concerned property in any way has practically no locus standi to move the criminal justice system against the petitioner by lodging FIR, in so far as a person having a right over the property, would only be eligible to proceed against the petitioner, if restrained by him, for an offence under section 341 IPC.

Ms. Das, learned Advocate for the State, though raised objections to the petitioner's contentions and prayer, has however, clarified that the dispute relating to the concerned stretch of property can only be resolved through a civil Court and no reason may arise for the criminal Court to exercise jurisdiction over there.

On the discussion as above, it is found that proceedings if continued any further against the petitioner in this case would amount to abuse of the process of Court, which is, however, to be prevented by exercise of this Court's power under Section 482 of the Code of Criminal Procedure.

Accordingly, the revision succeeds. CRR 491 of 2016 is allowed.

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

Interim order, if any, stands vacated.

Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

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CHATTOPADHYAY

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(Rai Chattopadhyay, J.)

