

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 602 of 2019

Vikas Kumar Bajoria & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Pawan Kr. Gupta,
Mr. S.N. Upadhyay,
Ms. Sofia Nesar,
Mr. Santanu Sett.

For the Opposite party no. 2 : Mr. Rajsekhar Basu.

For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Saryati Datta.

Heard on : 15.06.2023

Judgment on : 05.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings pending in connection with New Town Police Station Case No. 376 of 2016 dated 15.07.2016 under Sections 323/427/354/509/379/120B of Indian Penal Code and Section 3(1)(iii)/3(x)/3(xi)/3(xv) of Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989, being G.R. No. 3084 of 2016 renumbered as Special Case No. 9 of 2016 pending at 1st Additional District and Session Judge at Barasat.
2. The petitioner's case is that a complaint was filed by opposite party No. 2 before the Learned Chief Judicial Magistrate at Barasat being C. Case No. 0002109 of 2015 under Section 156(3) Code of Criminal Procedure, 1973. The allegation as leveled in the said complaint are inter alia to the effect that :-
 - a) That there is a long standing dispute between the parties and several Civil Suit are pending being T.S. No. 26 of 2009, T.S. No. 86 of 2009, T.S. No. 666 of 2012, T.S. No. 667 of 2012, T.S. No. 668 of 2012, T.S. No. 676 of 2012. All the Civil Suits are pending before the Learned Civil Judge, Sr. Division, 1st Court, Barasat and there are also several criminal cases pending between the parties.

- b) That the accused persons with some malafide intention and by way of practicing fraud, transferred the landed property of Ganesh Mondal and others in their names and in the name of a Company being controlled by the accused persons and out of the said disputes several suits and cases have been filed and all are pending before the competent Courts.
- c) On the date of occurrence, all the accused persons after making criminal conspiracy, came to the house of the complainant and started using filthy languages towards the complainant and other family members and also started showing gesture and posture to insult the modesty of a woman. The complainant protested and on protest, the accused no. 3 pushed her in the Court yard and accused no. 4 kicked her on her back. Taking such advantage, the accused persons with common intention and in criminal conspiracy and by applying criminal force, outraged the modesty of the complainant as they pulled the saree of the complainant and also tore her blouse, which tantamounts to outrage of female modesty. The accused persons have also damaged the household articles of the complainant and also committed theft by taking away Rs. 5,800/- from the complainant's house, which she kept for her household expense.
- d) **The complainant belongs to the Scheduled Caste** and on the date of occurrence, the accused persons forcibly removed the

wearing apparel of the complainant from her person and also insulted the complainant and his family by using abusing language. The accused persons have also told people, that the complainant being a scheduled caste was sub-standard and they will evict the complainant from the land forcibly and these words was uttered by the accused persons in a public place and the accuseds are now creating pressure in various form upon the complainant and her family members and other co-sharer to leave the premises where they are residing at present and also trying to evict them forcibly from their other properties. On the very date of occurrence, the accused persons also brought one bulldozer in order to demolish the house of the complainant and the house of the other co-sharers but the neighboring people appeared at the spot and prevented the accused persons from demolishing the house. The accused persons went away by threatening the complainant and her other co-sharers that they will again return and will demolish the dwelling house and they will also evict them from the Scheduled land.

3. The Petitioners submit that they are innocent and are in no way connected with any offence, far less offences alleged herein.
4. The Petitioners further submit that the Petitioners have no pre incidents and have no record of past conviction.

5. That the impugned proceedings is a product of suppression of material facts and an attempt to harass and blackmail, to squeeze out financial benefits with an unethical malafide intention and for which certain facts have been purportedly suppressed by the opposite party No. 2 herein before the Learned Additional District and Sessions Judge, 1st Court, at Barasat.
6. The Suits which are pending between the opposite party No. 2 and the petitioners are pending since 2009.
7. A settlement agreement between the petitioner and the husband of the opposite party No. 2 has been duly signed on 08.12.2015. The opposite party No. 2's husband has agreed in the said agreement to settle all pending litigation between the parties and for which the petitioners No. 1 herein agreed to pay Rs. 55,00,000/- to Ganesh Mondal i.e. the husband of the opposite party No. 2. Rs. 30,00,000/- only was paid by cheque being No. 196666 dated 08.12.2015 drawn on IDBI Bank Ltd., as advance payment.
8. The petitioner no. 1 representing his business concern has also agreed to construct a 4000 sq.ft. house over the 5 Cottahs on Dag No. 2150 of Mouza-Chakpanchuria , J.L. No. 33 at their own expenses and hand over the possession of same to Ganesh Mondal. It is stated that the said agreement also provides the specification of works for the construction of the said house and the same has been already done

and delivered to the husband of the opposite party No. 2 by the petitioners following the terms and conditions of the agreement.

9. That on receiving such huge amount of Rs. 30,00,000/- from the petitioners and also after signing the agreement, the husband of the opposite party no. 2 agreed to provide the peaceful possession of the land in favour of the petitioners and also to co-operate with the petitioners' employees or agents in the construction of the boundary wall and do all necessary things for the peaceful enjoyment and possession of the said land, which was purchased by the petitioners company and agreed to withdraw and/or non-prosecute all civil and criminal cases pending against either of the parties and shall not also pursue any such proceedings against each other in the future. The husband of the opposite party no. 2 also agreed to submit the compromise petition in the Civil Suits, which were pending between the parties before the Learned 1st Civil Judge, Senior Division at Barasat.
10. Thereafter on 15.07.2016, the opposite party no. 2 after having the knowledge of the said agreement and also enjoying the consideration amount of Rs. 30,00,000/- along with the residential house of 4000 sq.ft. lodged a concocted, frivolous, baseless, harassive complaint with malafide intention to blackmail the petitioners and squeeze out more money than the agreed amount between the parties.

11. That the opposite party no. 2 has also submitted a settlement/compromise petition in the year 2017 before the Civil Court and the same is pending for the final hearing.
12. **Mr. Pawan Kumar Gupta, learned counsel for the petitioners** has submitted that the instant proceeding as initiated against the present Petitioners is absolutely baseless, frivolous and displays a clear misuse of provisions of criminal law and fails to disclose any commission of offence by the Petitioners.
13. The impugned proceeding is otherwise bad in law and in thus liable to be quashed
14. **Mr. Rajsekhar Basu, learned counsel for the opposite party no. 2** has submitted that the petitioners taking advantage of the complainant's status are abusing and harassing her and her family, continuously and the present revision being an abuse of process of law is liable to be dismissed.
15. **Mr. Saswata Gopal Mukherjee, learned public prosecutor** has placed the case diary along with a memo of evidence and submitted that considering the serious nature of offences alleged and the materials on record, the case should be permitted to proceed towards trial.
16. **From the materials on record** it is evident that there are several litigations pending between the parties, which includes civil suits relating to property including the property where the complainant

resides. Documents showing that there have been attempts to amicably settle their disputes are on record.

17. **There are several cases pending against the petitioners.**
18. **The alleged incident in this case took place in the complainant's courtyard within public view and there are witnesses to the incident (Section 3(1) (x) of the SC & ST Act and there is also an allegation of tearing the blouse and pulling the saree of the complainant's wife and other allegations. Admittedly the dispute relates to a land which is occupied by the complainant (Section 3 (1) (iv) of the SC & ST Act).**
19. Thus a prima facie case appears from the materials on record against the petitioners and there being sufficient materials on record, the case should be permitted to proceed towards trial.
20. **CRR 602 of 2019 is dismissed.**
21. **Considering the nature of dispute between the parties, alleged payment by the petitioners along with a house, petition of compromise and the several pending litigations, the trial court shall refer the matter for mediation to the concerned District Legal Services Authority before proceeding in the case.**
22. No order as to costs.
23. All connected applications, if any, stands disposed of.
24. Interim order, if any, stands vacated.

25. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
26. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)