

17.01.2023

Court No.35
Item No. 62

D.Hira

CRR 797 of 2016
With
CRAN 5 of 2017 (Old No. CRAN 3863 of 2017)
With
CRAN 6 of 2018 (Old No. CRAN 128 of 2018)
With
CRAN 7 of 2022

Priyanka Ghosh & Ors.
Vs.
The State of West Bengal & Anr.

Mr. Angshuman Chakraborty,
Mr. Shashanka Sekhar Saha.

... for the petitioners

Mr. Sudip Ghosh,
Mr. Bitasok Banerjee.

... for the State

No one is appearing for the opposite party in spite of service.

Affidavit of service filed on behalf of the petitioners be kept with the record.

Mr. Chakraborty, learned Advocate appears on behalf of the petitioners and submits that due to the dispute within the family relating to property matters multifarious cases have been preferred by both the parties against each other. The present one is one of those so far as the allegations against the petitioners in the FIR are concerned. According to Mr. Chakraborty, those will not constitute any cognizable offence against his clients. He has further submitted that the FIR on which phase had not disclosed any offence at all by the present petitioner. On all the grounds as narrated above, he has sought for an appropriate order for the petitioner in this case.

Mr. Banerjee, learned Advocate appears for the State. He has made submissions as regards the facts of the case. He has filed a report today in Court of the Inspector-in-Charge, Bidhannagar North Police Station dated 17th January, 2023, which speaks for the present

status of the case in the Trial Court. According to the said report trial has already commenced and two witnesses have already been examined. Mr. Banerjee, has raised objection on the ground that relevant documents are available in case diary including the statement of witness under Section 161 of the Code of Criminal Procedure suggesting involvement of the petitioners in the alleged crime and being corroborated with the injury report. He has submitted that the concerned Doctor has been cited as a witness in this case by the prosecution. The report submitted today be kept with the record. According to him, there is no merit in petitioner's case.

In this case this Court is invited to exercise power under Section 482 of the Code of Criminal Procedure which empowers a Court with the inherent power to interfere and make such order as may be necessary to secure the ends of justice as well as to prevent abuse of process of any Court.

It is learnt that in this case trial has already commenced. However, on consideration of the facts and circumstances of this case and the materials available in case diary to suggest long standing family dispute between the parties relating to property etc., it is found that furtherance of the trial in this case will amount to be only an abuse of the Court's process and it is necessary for the ends of justice that this Court interferes in the matter.

It is noteworthy that the alleged offence would at best subject the petitioner/accused person to a conviction for a period of three (3) years whereas seven (7) years have already elapsed from the date of initiation of the criminal proceedings. Materials are overwhelmingly evident from even the case diary (more particularly witnesses' statement) that there has been a long-standing family dispute between the parties in connection with the property matters. The criminal cases are filed out of grudge and vengeance, which is deprecatory. In a recent judgment of **Deepak Gaba & Ors. vs. State of Uttar Pradesh & Anr.** reported in **2023 SCC Online SC 3**, the Hon'ble Supreme Court has held that,

“25. We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private or personal grudge. Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in entirety, do not constitute the offence alleged. The inherent powers of the court can and should be exercised in such circumstances. When the allegations in the complaint are so absurd or inherently improbable, on the basis of which no prudent person can ever reach a just conclusion that there is sufficient wrong for proceeding against the accused, summons should not be issued.”

The principles decided in the same squarely applies here too. Considering all, I am of the view that the allegations made in the FIR against the petitioner would not constitute to be a cognizable case against her and proceeding in trial in this case would amount to abuse of the process of the Court.

Accordingly, following the settled principles of law the trial is not to be proceeded and by exercising the extraordinary jurisdiction of this Court, the prayer of the petitioners in this case is allowed.

Accordingly, all the proceedings in connection with G.R. Case No. 150 of 2015 arising out of Bidhannagar North Police Station Case no. 48 of 2015 dated 18th February, 2015 pending in the Court of Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas is quashed and set aside.

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

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Rai Chattopadhyay, J.)

