

17.01.2023

Court No.35
Item No. 63

D.Hira

CRR 799 of 2016
With
CRAN 2 of 2017 (Old No. CRAN 596 of 2017)
With
CRAN 4 of 2018 (Old No. CRAN 129 of 2018)
With
CRAN 6 of 2022

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

Mr. Angshuman Chakraborty,
Mr. Shashanka Sekhar Saha.

... for the petitioners

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

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 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.

The petitioner has filed this case to challenge the proceedings in Complaint case No. C-448 of 2015 under Sections 341/323 of the Indian Penal Code pending in the Court of Judicial Magistrate, Bidhannagar. It is learnt that the Trial Court has issued 'summons' in the case on 11th August, 2015.

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.

On consideration of the facts and circumstances of this case and the materials available in case diary 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 one (1) year, whereas seven (7) years have already elapsed from the date of initiation of the criminal proceedings. Taking into account the submissions made on behalf of the petitioner, of long standing property related dispute between two relatives here, there remains no scope or any doubt to find grudge and vengeance to be the reason for the complainant to knock the doors of criminal justice system. The same is, however, deprecatory. In a recent judgment of **Deepak Gaba & Ors. vs. State of Uttar Pradesh & Anr.** reported in **2023 SCC Online SC 3**, the findings of Hon'ble Supreme Court may be profitably noted here 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 therein squarely apply in this case. Considering all, I am of the view that the allegations made in the complaint 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 of the extraordinary jurisdiction of this Court, the prayer of the petitioner in this case is allowed.

Proceedings in Complaint case No. C.448 of 2015 under Sections 341/323 of the Indian Penal Code is quashed and set aside.

Accordingly, CRR 799 of 2016 is disposed of.

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.)