

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.R.R. 830 of 2016

Bonomali Pal and others

Vs.

State of West Bengal & Anr.

For the Petitioners	:Mr. Jayanta Narayan Chatterjee, Adv. Mr. Debashis Banerjee, Adv. Ms. Moumita Pandit, Adv. Ms. Nandini Chatterjee, Adv. Mr. Supreem Naskar, Adv. Ms. Jayashree patra, Adv. Ms. Ritushree Banerjee, Adv.
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For the State	:Mr. Pravas Bhattachrya, Adv. Mr. M.F. A. Begg, Adv.
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For the opposite party No.2	:Mr. Kausik Gupta, Adv.
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Heard on	: June 28, 2023
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Judgment on	: June 25, 2023
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Bibhas Ranjan De, J.

1. As I am dealing with an application under Section 482 of the Code of Criminal Procedure (hereinafter referred to as CrPC) for quashing the charge sheet and proceeding thereon, case diary was called for and photocopies of case diary have been produced.
2. This revision application under Section 482 of the CrPC has been filed challenging the criminal proceeding being no. G.R. No. 2656/2015 arising out of Burdwan Police Station Case no. 718/2015 dated 25.07.2015 under Section 504/506/325 of the Indian Penal Code (hereinafter referred to as IPC) read with Section 3 of the Scheduled Casts and Scheduled Tribes (prevention and Atrocities Act), 1989 (hereinafter referred to as SC & ST Act) out of an application under Section 156(3) filed before the Court of Ld. CJM Burdwan. It was alleged *inter alia* that one Sandip Kahar, *de facto* complainant, cleaned the waste deposited in the house of the petitioners/ accused on being asked on 11.07.2015 and on the next day i.e. on Sunday (12.07.2015) said *de facto* complainant demanded labour charges. Petitioner no. 1, Banamali Paul gave him a sum of Rs. 150/- but said *de*

facto complainant refused to accept the same on demand of more. Thereafter, petitioner no. 1 i.e. Banamali Paul abused him in filthy languages and *de facto* complainant protested. Petitioner No. 1, Banamali Paul pushed him down and petitioner No. 2, Urmi Paul and Petitioner No. 3, Ram Krishna Mohanta, assaulted him with bamboo stick. At that time, one Rabindra Paul rushed to the place and abused him and assaulted by kicks. Then Sandip Kahar, *de facto* complainant, cried out for help and witnesses namely Sanjay Chakraborty, Chandra Mohan Das, Ranajay Mohanta, Chanchal Das and others came to the alleged place of occurrence and saved the *de facto* complainant.

3. Ld. Advocate, Mr. Jayanta Narayan Chatterjee, appearing on behalf of the petitioners, by referring to one application and reminder thereof, submitted that the petitioner no. 1, Banamali Paul sent a letter addressed to Chairman, Burdwan Corporation regarding illegal construction by Ranajay Mohanta, Chanchal Das and Chandra Mohan Das adjacent to the house of said Banamali Paul without leaving any space.

4. Mr. Chatterjee has further contended that on 22.06.2015 Urmi Rupa Paul (petitioner no. 2 of this case) filed one

complaint before Sadar PS, Burdwan against Basir Ahamed (Councilor of Ward no. 27), Sk. Arup, Sanjay Chakraborty, Chandra Mohan Das, Chanchal Kumar Das and Ranajay Mohanta for committing the offence of molestation, assault and threat after entering into the house of the petitioners of this case on 21.06.2015. Accordingly, Burdwan PS case no. 581 dated 22.06.2015 was started under Section 341/323/354/427/379/448/504/506/34 of the IPC. Mr. Chatterjee has, next, submitted that application under Section 156(3) of CrPC was filed by the private opposite parties is nothing but counter blast.

5. Mr. Chatterjee has submitted that the offence alleged in this case presumably attracts the Provision of Section 3 (x) of the SC & ST Act but there was no allegation of intentional insult other than quarrel. Mr. Chatterjee has further submitted the offence alleged in this case under the Act, 1989 did not take place within the public view. It has been further submitted by Mr. Chatterjee that the words alleged to have been uttered did not come within the purview of mischief of the Act, 1989 unless *prima facie* it is seen that petitioners were having personal knowledge of the caste or tribal identity of the victim under Section 8 (c) of the SC & ST Act.

6. Ld. Advocate, Mr. Kausik Gupta, appearing on behalf of the private opposite party has contended that there are allegations of other offences of assault and criminal intimidation under Section 325/507 IPC.
7. Ld. Advocate, Mr. Pravas Bhattacharya, appearing on behalf of the State, submitted repeatedly that petitioners/accused was absconding for considerable period.
8. I am sorry to pay any heed to the argument advanced by Mr. Bhattacharya, regarding absconsion of the petitioners/accused as I am not dealing with any bail application of the petitioner/ accused. It appears from the entire records including the cause title of the revision application it is found that Banamali Paul (petitioner no. 1) is the father of Urmi Paul (petitioner no. 2) from the applications addressed to Chairman Burdwan Corporation it is found that Banamali Paul (petitioner No.1) initially lodged complaint on **08.05.2015** against Ranajay Mohanta, Chanchal Das, and Chandra Monhan Das for illegal construction. Thereafter, on **19.05.2015** said Banamali paul sent a reminder addressed to Chairman, Burdwan Corporation. Subsequently, on 22.06.2015 petitioner no. 2, Urmi Paul lodged a complaint before the Burdwan Sadar

Police Station against alleged attack their house by one Basir Ahamed, (Councilor of ward 27), Sk. Arup, Sanjay Chakraborty, Chandra Mohan Das, Chanchal Kumar Das Ranajay Mohanta and others. From the complaint lodged before the police by Urmi Paul (petitioner no. 2) shows that alleged attack was made because of protest against illegal construction by sending letters addressed to the Chairman of Burdwan Municipal Corporation.

9. I am in full agreement with Mr. Chatterjee that the application under Section 156(3) of CrPC was filed before the Court of Ld. Chief Judicial Magistrate, Burdwan directly without even mentioning in the application itself regarding compliance of Section 154(1) & 154(3) of the CrPC, far to speak of filing documents showing compliance of Provision of Section 154 of the CrPC.

10. It appears from the record that before filing of the application under Section 156(3) of CrPC petitioner no. 1 lodged complaint against the person who is the witnesses in the petition under Section 156(3) of the CrPC. Not only that, the witnesses of the application under Section 156(3) of CrPC were also the alleged accused of the case of Burdwan

Sadar PS Case no. 581 dated 22.06.2015 which was put into motion at the instance of Urmi Paul(petitioner 2).

11. After careful scrutiny of the case diary, it has come to the notice that charge sheet was submitted relying on the statement of Sanjay Chakroborty, Chandra Monhan Das, Ranajay Mohanta and Chanchal Das under Section 161 of the CrPC. Incidentally, petitioner no. 1, lodged complaint agisnt those witnesses before the Chairman of Burdwan Corporation for illegal constriction and petitioner no. 2 also lodged complaint before Burdwan Police Station against those witnesses cited in application under Section 156(3) of the CrPC.

12. Regarding offence under Section 3(x) of the SC & ST Act. 1989, it appears from the application under Section 156(3) of CrPC that the alleged incident took place in the house of Banamali Paul, petitioner 1, and after the incident of assault complainant Sandip Kahar cried out for help and then only witnesses came to the house of Banamali Paul (petitioner no.1). Therefore, incident alleged in this case cannot be said to have been taken place within the public view to attract the provision of Section 3(x) of the SC & ST Act, 1989.

- 13.** In the aforesaid view of the matter, allegation of false implication, in my opinion, cannot be ruled out. Thus, I find it justified to quash the proceeding arose out of charge sheet no. 946 / 15 dated 18.11.2015.
- 14.** Accordingly, Criminal Proceeding being no. GR 2656 /15 arising out of Burdwan Police Station Case No. 718/15 dated 25.07.2015 under Section 504/506/325 of the IPC read with Section 3 of the SC & ST Act, 1989, pending before the Ld. Chief Judicial Magistrate, Burdwan, stands quashed.
- 15.** With the above observation, Criminal Revision application being application no. CRR 830 of 2016 stands disposed of.
- 16.** Case diary be returned.
- 17.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]