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C.R.R.1056 of 2021

In Re: A petition under Section 482 of the Code of Criminal Procedure,
1973;

(Dr.) Barsan Chatterjee
Versus
Bandana Chatterjee and others

Mr. Ayan Bhattacharjee,
Mr. Kunal Ganguly,
Mr. Tirupati Mukherjee,
Mr. Debarka Guha.
...for the petitioner.

Mr. Bibaswan Bhattacharya.
...for the opposite party nos.1 and 2.

Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.
...for the opposite party nos.3 and 4.

The present application under Section 482 of the Code of Criminal Procedure is against the judgment and order dated January 28, 2020 passed by the learned Additional District and Sessions Judge, First Track, Second Court, Asansol in Criminal Revision No.2 of 2019. In the said revisional application, the order dated September 7, 2018 passed by the learned Judicial Magistrate, 3rd Court, Asansol, Paschim Bardhaman in C/90546 of 2018 was challenged.

Mr. Ayan Bhattacharjee, learned advocate appearing for the petitioner draws the attention of this Court to the order dated 07.09.2018 wherein the learned Magistrate was pleased to dismiss the complaint under Section 203 of the Code of Criminal Procedure.

The main grievance of the petitioner before this Court is

that when the court took cognizance of the offence, the court thought that sanction was not necessary for prosecuting the public servants, but after examination under Section 200 of the Code of Criminal Procedure at the stage of issuance of process, learned Magistrate based the foundation of this case on the issue relating to Section 197 of the Code of Criminal Procedure for prosecuting the public servants.

Learned advocate for the petitioner has also taken this Court to the allegations relating to the complicity of all the accused persons made in the petition of complaint. Further grievance of the petitioner is that the learned sessions court while exercising its revisional jurisdiction did not apply its mind judicially and erroneously endorsed the order passed by the learned Magistrate.

Mr. Bhattacharya, learned advocate appearing for the opposite party nos.1 and 2 submits that the present case is a circumstance created for exerting pressure and even if the allegations are taken as a whole, a civil dispute has been given a cloak of a criminal proceeding.

Mr. Sur, learned advocate appearing on behalf of the opposite party nos.3 and 4, on the other hand, supported the orders passed by the learned Magistrate as well as the learned Sessions Judge while exercising its revisional jurisdiction that the opposite party nos.3 and 4 being police officers have been roped in for the purpose of creating pressure tactics for private and personal interest of the petitioner who with an oblique motive initiated the instant complaint case.

I have assessed the orders passed by the learned Magistrate as well as the learned sessions court. I have also considered the submissions advanced by the learned advocate appearing for the petitioner and at the first blush the said submissions seem to be attractive but it is also settled proposition of law that a court of law at an appropriate stage can on a fact require sanction for further proceedings against public servants who have been implicated in the case.

Be that as it may, liberty has been prayed for filing a complaint with the documents which are already in possession of the present petitioner who is the complainant and which could not be placed at the relevant time before the learned Judicial Magistrate who refused to issue process by his order dated 07.09. 2018.

Having considered the submissions of the petitioner/complainant and as the settled proposition of law is that if for want of any materials the first complaint could not succeed, the second complaint on the selfsame facts but on materials which were available are entitled to be entertained by a court of law, I grant liberty to the petitioner/complainant to file a fresh complaint before the learned jurisdictional court. For the time being, no interference is made in respect of the order passed by the learned Additional District and Sessions Judge, First Track, Second Court, Asansol in Criminal Revision No.2 of 2019.

With the aforesaid observations, CRR 1056 of 2021 is disposed of.

Pending application, if any, is consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)