

13.03.2023
Court No.35
Item no.55
I.T (p.a)

CRR 1066 of 2015

**Dinesh Prasad
Vs.
The State of West Bengal & Anr.**

Md. Bani Israil,
Mrs. Kanchan Gupta

.... For the petitioners

Mr. Uddipan Banerjee,

....For the opposite party no.2

Mr. Pravas Bhattacharya,
Mr. Mirza firoj Ahmed Begg.

....For the State

Petitioner is aggrieved of and has prayed for quashing of the charge sheet dated 30.06.2012 in Golabari Police Station Case No. 296 of 2012, pending in the Court of the Judicial Magistrate, 5th at Howrah. The case was lodged under Section 448/341/323/506/354 IPC against the present petitioner.

Mr. Israil, ld. Advocate appearing for the petitioner has heavily relied on the document annexed with the petition, i.e, the field report of bailiff. By relying on the same it has been submitted that the petitioner is the decree holder with respect to the property in question and has obtained decree from Civil Court for eviction of the alleged illegal occupants in the said plot of land, which he says, includes the present opposite party no.2 also.

By relying on the said document it is submitted that by dint of Court's order, bailiff went to execute the decree, when the bailiff as well as the present petitioner have been vehemently and

violently restrained by the present opposite party no.2. It is admitted that two cases arose concerning the incident as above, which happened on May 18, 2012. Both the parties in the civil suit, i.e, the respective defacto complainant and the accused person/petitioner in the present case lodged their individual criminal cases making allegations against each other.

In this case the opposite party no.2 by lodging an FIR being Golabari Police Station Case no. 296 of 2012 dated 18.05.2012 has alleged against the petitioner, of voluntarily causing hurt and also outraging modesty of a woman, along with other allegations. Ld. Advocate for the petitioner submits that the FIR as above has been based on no cogent and truthful material in order to find that a cognizable offence or even a prosecutable case has at all been made out against his client. It is submitted that firstly by restraining the bailiff and that too by exercise of aggression and violence, the opposite party no.2 perpetrated the offence. Secondly, he has submitted that the investigation was absolutely perfunctory, in so far as, neither the concerned bailiff of the Court nor any woman, whose name has been mentioned in the FIR has been examined of the I.O during investigation or cited as witnesses in the charge sheet. Accordingly petitioners' alleged involvement in this case is only baseless, as much as that the police has voluntarily withdrawn its prayer for reinvestigation, made before the trial Court. He has pointed out to the fact that it is a settled law that in the event a Court, exercising jurisdiction under Section 482 Cr.P.C, 1973, finds no prima facie ingredient of

offence as alleged against the petitioner to be present in the FIR and that the FIR not having disclosed a cognizable case against him – the Court shall proceed to quash the entire criminal proceeding/prosecution against the petitioner. He says that his client is eligible for such a relief under law in view of no cognizable case having been made out against him in the FIR and also the perfunctory nature of investigation which actually reached nowhere, much less than to implicate his client.

Ld. Advocate appearing for the opposite party has however vehemently opposed such contention and prayer by the petitioner on the grounds inter alia that his client has been subjected to undue force and coercion to be dislodged from his residence. It is submitted that the civil Court's decree does not cover his client. He has also indicated the civil matter is still pending before the appropriate Court. It is submitted that since the petitioner has applied force unauthorizedly and unduly, the present police case was lodged for redress of grievance of the opposite party no.2. He further submits that at this stage the Court may not interfere into the prosecution by exercising its extraordinary jurisdiction under Section 482 Cr.P.C, 1973.

Mr. Bhattacharya, appearing for the State has submitted the case diary in Court. It has also been indicated that in this case charges have already been framed and evidence is to commence shortly.

Peruse the record and also heard the submissions on behalf of all the parties.

Law envisages that this Court is empowered by exercising power under Section 482 Cr.P.C, 1973, to make orders to give affect to any order under the CrPC or to prevent abuse of process of any Court or even otherwise to secure the ends of justice.

It has also been time and again spelt out by the constitutional Courts including the Hon'ble Apex Court that while exercising such a wide power, the Court should be very conscious, use the said power very sparingly and with absolutely circumspection. It is also settled now that the proceedings against any person may be quashed when the allegations made in the FIR would not disclose a cognizable offence or any case at all against the accused person or the same, if has been filed maliciously to wreak vengeance against the accused persons.

In this case it appears, that the parties have accepted and not disputed an incident of scuffling to have happened on 18.05.2012. There may be civil case pending between the parties. However the said fact itself would not lead this Court to ignore any ingredient of offence, as alleged against the petitioner, to be present in the FIR. Non-examination of any vital witness, as submitted on behalf of the petitioner, if would have any affect or not, should be a question to be decided at the time of trial. Otherwise in this case, from the FIR it appears that materials as regards offence under the aforestated provisions of law has been duly mentioned therein. The stage of the case in the trial Court is also not to be ignored, i.e, trial has already started with framing of charges.

Under such circumstances this Court is of the opinion that the prosecution against the petitioner should not be quashed at this stage in exercise of the inherent power of this Court. Instead there are sufficient materials found, so that the trial may proceed duly. Accordingly this revision merits no success.

C.R.R 1066 of 2015 is dismissed. Connected application, if any, are also disposed of.

However considering the long pendency of the matter I find it proper to express the desire that this trial should be concluded within a period of six months from the dated of receipt of copy of this order by the trial Court. The trial Court shall make every possible endeavor for the same.

Case diary be returned.

Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)