

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. -1380 of 2017

IN THE MATTER OF

Malina Dey & Ors.

Vs.

The State of West Bengal & Ors.

**For the Petitioner : Mr. Moyukh Mukherjee, Adv.,
Mr. Abhijit Singh, Adv.,
Mr. Sarthak Mondal Adv.**

**For the State : Mr. Saswatagopal Mukherjee, Ld. P.P.
Mr. Sarwati Dutta Adv.**

For the opposite party : Mr. Arindam Jana Adv.

Judgment on : 18.04.2023

Subhendu Samanta, J.

This is an application u/s 482 of the Criminal Procedure Code for quashing of a proceeding in connection with GR Case no. 6600 of 2014 arising out of Khardah Police Station Case no. 1110 of 2014 dated 1st December 2014 under sections

323/373/420/406/448/427/506/120B and 34 of IPC pending before the Learned Court of 1st Judicial Magistrate at Barrackpore.

The brief fact of the case is that the present petitioners are the owners in respect of land and opposite party no. 2 is the developer. One development agreement was executed and signed between the parties for the purpose of construction of multi-storied-building over the portion of land. It is the allegation of the petitioner that the present opposite party no. 2 has flouted the terms of the agreement and as he was directed by the present petitioners for the performance of the development agreements. The instant false criminal proceeding was filed.

Learned Advocate for the petitioners submitted that the contents of the application u/s 156(3) of Cr.P.C. does not disclose the ingredients of the offence as complaint. He further pointed out that the police has conducted the investigation of this case in a perfunctory manner and submitted a charge sheet without basis of any documents and ingredients which can substantiate commission of alleged offence. He again pointed out that the dispute between the parties are civil in nature. The petitioners got a favourable order of bail from the

competent court wherein it was observed that the matter of dispute between the parties is civil in nature.

He further pointed out that in compliance of the terms of the development agreement the petitioners had deposited a huge sum of money with the private opposite party but he did not hand over the possession of the owner's portion of the flat. The dispute between the parties is now pending before the Learned Consumer Court.

He further submitted that the statement of available witnesses recorded by the I.O. are of mala fide, of the witnesses are interested witnesses who were working under the control of the present opposite party no. 2. The statement of no independent witness was recorded by the I.O., the investigation of the police was concluded in a perfunctory manner. He again pointed out that there are no ingredients for the commission of offence u/s 420 or 406 of IPC. There are no evidence of criminal trespassed. In the course of investigation police could not recovered any article which was alleged to be stolen by the present petitioner. Thus offence punishable u/s 379 IPC is not substantiated. He prayed for quashing.

Learned Advocate appearing on behalf of the private opposite party no. 2 submitted that the petitioners along with

some anti social elements entered into the business premises of the OP no 2. He had been assaulted mercilessly. The petitioner also stole some articles and money destroyed several documents relating to the business. On the basis of the complaint police investigated the case and after satisfying about the prima facie commission of the offence has made out, submitted charge sheet against all the petitioners. He further argued that the opposite party no. 2 was treated at the hospital for such assault. The injury report is not the sine qua non for the commission of the offence u/s 323 IPC. He further pointed out the order of the Learned Consumer Forum would reflect that the present petitioners had forcefully obtained the possession. Thus there are ingredients of offence punishable u/s 420 IPC. He further argued that the instant case is pending before the Learned Magistrate which is at the stage of evidence. Thus the instant case cannot be quashed.

In support of his contention he cited a decision reported in **(2019) 6 SCC 107** and argued that the Hon'ble Apex Court in the above cited judgment has held that appreciation of evidence at the stage of Section 482 Cr.P.C. is impermissible. Para 14 of the above citation is set out as follows:

14. In our view, the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code of Criminal Procedure, 1973

(for short "CrPC") because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case.

He also cited another decision reported in **(2021) 9 SCC 191** and argued that non production of injury report held not fatal when offence u/s 323 IPC proved otherwise based on evidence on record. The last part of the Para 11 of the above citation be set out as follows:

However, production of an injury report for the offence under Section 323 IPC is not a sine qua non for establishing the case for the offence under Section 323 IPC. Section 323 IPC is a punishable section for voluntarily causing hurt. "Hurt" is defined under Section 319 IPC. As per Section 319 IPC, whoever causes bodily pain, disease or infirmity to any person is said to cause "hurt". Therefore, even causing bodily pain can be said to be causing "hurt". Therefore, in the facts and circumstances of the case, no error has been committed by the courts below for convicting the accused under Section 323 IPC.

Learned Advocate for the OP 2 further submits that this court while exercising its power u/s 482 Cr.P.C is not permitted to go into the merits of the evidence collected by the police during the investigation of this case. The investigation of the police is ended in charge sheet, during the course of investigation police has collected several materials regarding the involvement of the present petitioner in the alleged offence.

The status of the case at present is in the stage of evidences. Thus, the instant criminal revision cannot be allowed.

Heard the Learned Advocate perused the materials on record and also perused the CD. It appears that initially the parties are entered into an agreement for construction of multi-storied-building over a piece of land owned by the present petitioners. The present OP 2/ complainant lodged the petition of complaint with the CJM Barrackpore who directed the police to conduct the investigation treating the petition of complaint to be FIR. On the direction of the Magistrate, police conducted investigation.

During the course of investigation the statement of available witnesses were recorded. On perusing 161 statements it appears that the witnesses supported the prosecution case.

I have also perused the documents annexed with the objections it appears that there were development agreements signed between the parties and the copy of agreement of sales is also annexed. Some disputes were admittedly cropped up regarding the proper completion of development work on the portion of the owner's share. Some GD entry was also appended regarding the complaint of the OP no. 2 and his partners; the letters exchanged between the parties regarding the disputes were also annexed.

There may have some civil disputes for breach of terms of agreement between the parties; but at the same time the dispute between the parties can very well be culminated to an alleged criminal action. The allegation of the present OP 2 is prima facie made out by collection of evidence by the police during investigation. Simply, pendency of a civil proceeding between the parties shall not debarr a criminal court to proceed to enquire about a criminal action allegedly done by the accused persons. It is true that offence punishable u/s 323 cannot be substantially proved only by an injury report.

I have further perused the FIR and connected documents it appears from the CD that the materials therein are sufficient to prove the commission of prima facie offence by the present petitioner. At this juncture this court in exercising its inherent power u/s 482 Cr.P.C. cannot go to enquired into the truthfulness of the evidences collected by the IO during the course of the investigation. The matter is purely subjected to be inquired during the stage of trial.

Thus, I find no merit to entertain the instant criminal revision.

In result thereof the CRR is dismissed and disposed of.

Any order of stay passed by this court during the continuation of the instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)