

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2365 of 2022

With

CRAN 3 of 2023

Dr. Sujoy Biswas

Vs.

State of West Bengal & Anr.

For the Petitioner : Mr. Sourav Chatterjee,
Ms. Snigdha Ghosh,
Mr. Shivam Saha.

For the State : Mr. Madhusudan Sur, Id. APP,
Mr. Dipankar Paramanick.

For the Opposite Party : None.
No. 2

Heard on : 20.07.2023

Judgment on : 16.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the criminal proceeding being Manicktala Police Station Case No. 259 of 2019 dated August 10, 2019 under Sections 341/323/506 of the Indian Penal

Code, 1860 corresponding to G.R. Case No. 2074 of 2019 pending before the Court of the Learned Additional Chief Judicial Magistrate, Sealdah.

2. The petitioner's case is that the petitioner is a Doctor by profession. Being a righteous and vigilant member and resident of the Society 'Vivekananda Samabaya Abashan Samity Ltd.', 202 and 203 Manicktala Main Road, Kolkata-700 054, the petitioner like his father had all along protested against all illegal activities including misappropriation and embezzlement of funds of the Society and corrupt practices adopted by opposite party no. 2 and his coterie since 2012. Since then he became a target for bodily harm, threats, abuses and false criminal cases by the opposite party no. 2 and the coterie in order to perpetrate their illegal activities.
3. The father of the petitioner Baidyanath Biswas since deceased on 2020 was a member of 'Vivekananda Samabaya Abasan Samity Limited' (hereinafter referred to as the said Society) at 202, Manicktala Main Road, Flat-14, Police Station-Manicktala, Kolkata-700 054 and former Secretary of the said Society.
4. The opposite party no. 2 has been residing in the said Society and being an aged person and an advocate has always maintained influence over other members of the Society and thus continued to remain Secretary of the Society for a prolonged period contrary to law and as such had to resign/was expelled from the post of Secretary of the Society in 2012 due to complaint from the end of the petitioner as he had been running an illegal board and committing irregular and unlawful acts by mis-representing, mis-leading and alluring other innocent members of the

Society. As such the opposite party no. 2 in collusion with other members of the Society harassed the petitioner time and again as he had protested against any kind of mal practice/corruption in the administration of the said Society. As such, the petitioner has to face many serious consequences due to personal vendetta against the petitioner at the instance of the opposite party no. 2 and/or his deputed other members in the said Society. Till now the opposite party no. 2 being a lawyer by profession is exerting influence to regulate the business and affairs of the said Society in unlawful manner.

5. The Board of the said Society had been dissolved by State Government due to defalcation of fund with appointment of administrator on 19.06.2018 and the tenure of administrator has been extended every six months till date to look after the affairs of the Society in accordance with law. Since the introduction of Administrator by State Government on 19.06.2018, the opposite party no. 2 is guilty of non-payment of maintenance charges of the Society willfully in order to obstruct the functioning of administrators and interested to take control of the Society in unlawful manner by collecting service charges from the residents without any authority of law behind the back of administrators to look after the affairs of the Society illegally. As such the said opposite party no. 2 had hatched up conspiracy, with the members of the said Society including senior members who have vested interest, against the petitioner who raised voice against any such wrong doings by them. Out of such personal vendetta, the petitioner was falsely implicated in the manufacturing of false criminal case by the opposite party no. 2. The

complaint in G.R. Case No. 856 of 2013 under Section 509 of the IPC, 1860, was made out and corrected by opposite party no. 2 in his own hand in the name of Malabika Ghosh, the complainant in the said case. The case ultimately culminated in the acquittal of the petitioner by judgment dated 16.11.2021 passed by the learned Chief Judicial Magistrate, 2nd Court, Sealdah.

6. Even with regard to day to day affairs of the said Society, the opposite party no. 2 had played a pivotal role in collusion with other members of the Society as a result of which the petitioner had to raise his voice on behalf of his aged ailing father at his instance. In fact, opposite party no. 2 was pursuing a personal vendetta in a preplanned manner along with other residents using especially female members of the residents, seeking vengeance for the loss of the post of Secretary and also the dissolution of the Board of the Society for defalcation of fund and appointment of administrator.
7. As an outcome of continuing ill relation with the opposite party no. 2, out of his personal vendetta against the petitioner, the opposite party no. 2 lodged a complaint with Manicktala P.S. on August 10, 2019 on the basis of fabricated incident regarding grass cutting, inciting a provocative action consisting of breach of peace as he had no right to do so, as there was an administrator to look after the affairs of the Society, the basis of which a Criminal Case was registered against the petitioner being Manicktala P.S. Case No. 259 of 2019 under Sections 341/323/506 of the Indian Penal Code being G.R. Case No. 2074 of 2019 and in the said case the

Investigating Officer without conducting proper investigation submitted charge sheet against the petitioner.

8. The petitioner had also lodged a complaint against the opposite party no. 2 and his associates with the Deputy Commissioner of Police (ESD) Kolkata-700 010 on 13th August, 2019, the delay being due to his ailing aged father of 85 years of age at that time, and he was the only one to look after him. On the basis of the said complaint, a case was registered against the opposite party no. 2 and other members on 19th August, 2019, when he again complained to Manicktala Police Station on 18.08.2019.
9. A case was registered against the opposite party no. 2 and other associates being Manicktala P.S. Case No. 269 dated August 19, 2018 under Sections 341/323/506/114 of the Indian Penal Code being G.R. Case No. 2167 of 2019 before the Learned Chief Judicial Magistrate, Sealdah. After investigation in the case, the Investigating Officer filed a charge sheet.
10. **Mr. Sourav Chatterjee, learned counsel for the petitioner** has submitted that the purported complaint on the basis of which the present criminal case being Manicktala Police Station Case No. 259 of 2019 dated August 10, 2019 under Sections 341/323/506 of the Indian Penal Code, 1860 has been registered and is pending in the Court of the Learned Additional Chief Judicial Magistrate, Sealdah being G.R. Case No. 2074 of 2019 and later filing of the charge sheet by the Investigating Officer was an outcome of personal vendetta of opposite party no. 2 seeking vengeance for loss of Secretaryship and later dissolution of the Board of the Society by State Government and appointment of Administrator. As such, impugned

criminal proceeding which had been initiated and culminated in the charge sheet cannot continue any further which will be nothing but an abuse of process of law and as such, the purported criminal proceeding being G.R. Case No. 2074 of 2019 is liable to be quashed.

- 11.** It is submitted that there is a counter case and a revisional application being No. CRR 3464 of 2019. The revisional application has been dismissed for default for non appearance of the opposite party herein. The petitioner in the present revision is the opposite party in revision CRR 3464 of 2019. Both the revisions had been referred for mediation. The report dated 23.06.2023 of the learned Mediator is as follows:-

“Today date fix for mediation. In spite of service, opposite parties in CRR 3464 of 2019 are not present. No accommodation is prayed for. This is the second occasion when the O.Ps in CRR 3464/2019 are not appeared. Let the matter referred back to the referral Court.”

- 12. Mr. Madhusudan Sur, learned counsel for the State** has placed the case diary.

- 13. From the materials on record including the case dairy it appears that:-**

- i) The complainant is **a 85 years old** resident of the same co-operative society.
- ii) The medical papers in respect of the opposite party/complainant in the case diary include **an injury report dated 10.08.2019, which shows that on examination, the doctor found pain and swelling over the left cheekbone.**

iii) It has been noted by the learned Mediator that the opposite party in CRR 3464 of 2019 (the petitioner in this revision) has failed to appear for mediation on two occasions, in spite of being duly served.

14. The offences alleged are all compoundable. The mediation could not be taken up because of the absence of the petitioner in this case on two dates.
15. The medical papers in this case diary and other materials show that there is prima facie materials in the present case against the petitioner to proceed towards trial.
16. **The revisional application being CRR 2365 of 2022 is accordingly dismissed.**
17. All connected applications, if any, stands disposed of.
18. Interim order, if any, stands vacated.
19. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
20. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)