

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay.

CRR 2097 of 2013

**Saranjit Singh
Vs.
The State of West Bengal & Anr.**

For the Petitioner : Mr. Debabrata Acharyya
Mr. Sital Samanta

For the State : Mr. Narayan Prasad Agarwala
Mr. Pratick Bose

Heard On :24.01.2023

Judgment On :18.04.2023

ANANYA BANDYOPADHYAY, J.:

1. The instant criminal revisional application is filed to quash a proceeding being ACGR Case No. 10498 of 2012 arising out of Pragati Maidan Police Station Case No. 231 dated 03.09.2012 pending before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas.
2. The Learned Court of ACJM Alipur, South 24 Parganas vide order dated 15.05.2013 took cognizance relating to ACGR Case No. 10498 of 2012 arising out of Pragati Maidan Police Station Case No.231

dated 03.09.2012 and issued summons against the accused no. 1 i.e. the petitioner herein.

3. A charge sheet no. 73/13 dated 14.05.2013 was filed in connection with the aforesaid P.S case under Sections 147/149/447/427/511/506 of The Indian Penal Code against the present petitioner was charge sheeted after the completion of the investigation, based on a complaint lodged by the de facto complainant i.e opposite party no. 2 herein alleging on 09.08.2012 at about 4 hrs. the petitioner herein accompanied by 5/6 people entered the premises of the de facto complainant at 8 Pagladanga Road, Kolkata 105 in order to acquire possession over the said plot illegally and being armed with Lathi, iron rod, etc committed rioting and attempted to demolish the wall of the factory and tin barricade which was installed as boundary wall within the said plot. Security Guards of the complainant present at the spot were overpowered by the accused persons on protest and sustained minor injuries. The accused persons also threatened the complainant with dire consequences.
4. The Learned Advocate for the Petitioner submitted the institution of a Title suit no. 321 of 2012 on 16.07.2012 before the 1st Court of Civil Judge (Junior Division), Alipur, South 24 Parganas for recovery of possession, cancellation of Lease Deed and for permanent injunction by the petitioner wherein the opposite party is a defendant. On the

said date an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for temporary injunction and also an interim injunction was filed. The Learned Trial Court was pleased to pass an order of ad interim injunction in the form of status quo till 16.08.2012. The Learned Advocate for the Petitioner submits in order to wreck vengeance against the petitioner the de facto complainant has filed the complaint with ulterior motive, maliciously to falsely implicate the petitioner. The offences charged against the petitioner are unfounded and the Learned Trial Court committed an error in taking cognizance of the case.

5. Learned Advocate for the State submitted sufficient materials to be present on record in the case diary to establish the wrongful act committed by the petitioner. At the initial stage without conducting the trial the petitioner cannot be absolved of committing the offences charged against him. Accordingly the instant criminal revisional application shall be dismissed.

6. Section 148 of The Indian Penal Code state as follows :

“Rioting, armed with deadly weapon.—Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

7. Section 149 of The Indian Penal Code state as follows :

“Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

8. Section 448 of The Indian Penal Code state as follows :

“Punishment for house-trespass—Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

9. Section 441 of The Indian Penal Code state as follows :

“Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit criminal trespass.”

10. The perusal of the case diary on record revealed that the petitioner was armed with deadly weapons like Lathi, Iron rod etc. forming an unlawful assembly comprising of 5/6 unknown persons to destruct

the boundary wall of a Gunny Bag manufacturing factory. On being resisted the petitioner left the spot threatening to kill the de facto complainant. The statement of the witnesses recorded under section 161 of the Code of Criminal Procedure unequivocally mentioned of a civil dispute between the parties and echoed the contention of the de facto complainant as stated in the complaint. Such statements are based on hearsay. The physical assault caused by the petitioner could not be established by the Security Guards alleged to have been suffered minor injuries. The 5/6 associates of the petitioner who accompanied him to form an unlawful assembly to commit the offence of criminal trespass could not be identified and charges could not be framed against them to indict. No deadly weapon was recovered. There is no material on record to establish demolition of the boundary wall or forceful ingress causing damage to the property.

11. Under such circumstances as stated above to allow to continue with the trial of the case will result in abuse of process of law and cause harassment and predicament of the petitioner.
12. Accordingly, the criminal revisional application being CRR 2097 of 2013 is allowed.
13. The proceeding being ACGR Case No. 10498 of 2012 arising out of Pragati Maidan Police Station Case No. 231 dated 03.09.2012

pending before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas is accordingly quashed.

14. Connected application if any is also disposed of accordingly.
15. Case diary be returned to the Learned Advocate for the State.
16. There is no order as to cost.
17. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
18. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(ANANYA BANDYOPADHYAY, J.)