

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

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

C.R.R. No. - 2773 of 2018

With

IA No. CRAN 6 of 2021 (not found)

IN THE MATTER OF

Nirmal Kanti Deb.

Vs.

Lakshi Debnath nee Laxmi Debnath.

**For the petitioner : Mr. Subrata Goswami, Adv.,
Mr. Sumanta Ganguly, Adv.**

Judgment on : 24.03.2023

The instant criminal revision has been preferred for quashing a criminal proceeding being CR Case No. 43 of 2018 u/s 506/120B of the IPC now pending before the Learned Judicial Magistrate at Nabadwip Nadia.

The brief fact of the petition of complaint filed by the present opposite party before the Learned Magistrate can be described as follows–

After demise of the father of the opposite party she inherited a premises being holding no. 109/2 situated at Ward no. 50 under Nabadwip Municipality along with her two brothers and three sisters. It is further

contended that the opposite party got separated from her husband and she is now residing at her father's house as mentioned above. Dispute between the brothers cropped up in respect of the shares of the residential house and civil case is pending before the court of Civil Judge Krishnanagar. It is the further case of the O.P. that quite often she was assaulted and tortured by her brothers. It is the case of the opposite party that the present petitioner is an influential person in Nabadwip who threatened the opposite party to leave the house otherwise she would be killed by her brothers. On the basis of such threatening the instant complaint case was lodged.

After filing of that complaint case the opposite party and her daughter was examined on S/A by the Magistrate and after recording of the S/A Learned Magistrate issued the process against the present petitioner u/s 506/120B IPC.

Learned Advocate for the petitioner submits that impugned order of issuance of process passed by the Learned Magistrate is illegal and improper in the eye of law.

The process issued u/s 120B IPC reveals the non-application of judicial mind by the Learned Magistrate. He also contended that the present petitioner is no-way involved in the alleged commission of offence. He never threatened the opposite party in any way. He is a councillor of Nabadwip Municipality for which, he has been falsely implicated in this case.

It is the further case of the Learned Advocate for the petitioner that ingredients of offence u/s 506 and 120B of IPC is missing in this case. So he prayed for quashing.

Heard the Learned Advocate, perused the petition of complaint. It is alleged in the petition of complaint that the present petitioner is the influential person and on the day of incident he stated to the opposite party to leave the house otherwise her brother may kill her. This appears to the O.P to be an indirect threatening, thus she lodged the complaint.

I have perused the examination of the O.P and his daughter recorded u/s 200 Cr.P.C. on S/A.

In the impugned order, after recording the S/A Learned Magistrate was satisfied that there are sufficient ground for proceeding u/s 506(1)/120B of IPC. Admittedly section 120B of IPC deals with the punishment of offence of criminal conspiracy.

Definition of Criminal conspiracy is laid down u/s 120 A of the IPC. It enumerated as “Section- 120A when two or more persons agreed to do, or caused to be done -.....”

Thus to constitute an offence of criminal conspiracy there must be two or more person. In this case only the present petitioner was arrayed as an accused; it was not averted in the petition of complaint that the present petitioner ever conspired with any person to commit such an offence. Thus in my view the satisfaction of Learned Magistrate for proceeding against the present petitioner u/s 120B IPC is baseless.

Section 506 IPC deals with punishment for offence of criminal intimidation. The criminal intimidation was defined u/s 503 of IPC. To constitute every offence mens rea is the essential ingredients. In this particular case, the petition of complaint does not disclose about the mens rea of the petitioner. It further appears that the complaint stated about the alleged criminal intimidation against the present petitioner which is actually his apprehension that the opposite party may be assaulted in future. The act of an alleged criminal intimidation was not also witnessed by independent witness except daughter of the OP (may be termed as interested witness). If the entire fact of the petition of complaint along with the statement of the sole witness is taken to be true then also it is highly improbable for the Magistrate to prove the offence against the present petitioner beyond reasonable doubt. No independent was cited as a witness in this case; place of occurrence was not mentioned i.e. where she received such alleged threatening from the present petitioner.

Considering the ratio of judgment of Hon'ble Apex Court in State of **Hariyana Vs. Bhajanlal (AIR 1992 Supreme Court 604)**; if the allegations made in the complaint are taken at their face value, accepted in their entirety; do not prima facie constitute an offence to make a case against the accused.

Considering the facts and circumstances of this case and considering the materials on record I find merits to entertain the instant revisional application.

CRR is allowed.

The order of issuance of process passed by the Learned Magistrate against the petitioner appear to be illegal and improper. Accordingly the entire criminal proceeding against the present petitioner is hereby quashed.

CRR 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.)