

CRR 3024 of 2012
CRAN 1 of 2012
CRAN 2 of 2013

In the matter of : Gautam Roy @ Goutam Roy & Anr.

Mr. Saibal Mondal ... for the petitioners

Mr. Kallol Mondal
Mr. Krishan Roy
Mr. Santanu Chatterjee
Mr. Shouvik Das
Mr. Anamitra Banerjee ... for the O.P. No. 2

Mr. Binay Kr. Panda
Ms. Puspita Saha ... for the State

1. This is an application under Section 482 of the Code of Criminal Procedure filed by the petitioner seeking order of quashment of the proceeding in B.G.R. Case No. 1364 of 2008 pending before the learned Chief judicial Magistrate, South 24 Parganas corresponding to Behala Police Station case no. 123 dated 18.4.2008.
2. Briefly stated, on 18.4.2008 Officer-in-Charge, Behala Police Station received an information in writing from Lalit Kr. Modi, constituted attorney of Sri Um Sankar Modi stating *inter alia* that Sailendra Nath Roy being the shebait of Sri Sri Durgarani Mata Thakurani leased out a plot of land in favour of 21 Century Properties Pvt. Ltd. duly represented by its managing Director Gautam Roy for a period of 999 years. The said 21 Century Properties Pvt. Ltd. assigned plot in favour of

Uma Sankar Modi for the period of 999 years by executing a deed which was duly registered and thus Uma Sankar Modi was given possession in respect of the property comprised within plot R.S. Dag Nos. 10172, 10174, R.S. Khatian No. 207. On 18.4.2008 Gautam Roy and Subir Roy trespass into the aforesaid plot of land blocked the egress and ingress of the property by erecting brick wall. The matter was informed to the police by the Director of Godson Pvt. Ltd. After informing the police Lalit Kr. Modi rushed to the said spot at 2 P.M. and found the place was thronged by muscle men engaged by Gautam and Subir Roy who restrained the informant from entering into the said plot of land and even tried to assault the informant physically. The informant claimed to have taken video photographs and still photographs of the site.

3. As the information disclosed offence cognizable in nature, Behala P.S. Case No. 123 dated 18.4.2008 was registered under Sections 448/341/ 506/283 and 34 of the Indian Penal Code and took up investigation which culminated to charge sheet no. 24 dated 25.8.2011.
4. The accused persons surrendered to the jurisdiction of the learned Magistrate after cognizance was taken by the learned Jurisdictional Magistrate..
5. Mr. Saibal Mondal, learned counsel representing the petitioners submits that civil litigations are pending between the parties. This property is the debottar property and the accused persons are still in possession. The de facto complainant made several unsuccessful attempts to take possession of the suit

property on the strength of colourable transactions. This petition of complaint is a manifestation of such an attempt to take possession of the property by illegal means.

6. My attention is drawn to the copy of the plaint of T.S. 176 of 2011 as well as T.S. 1412 of 2008 filed against the accused persons. It is submitted that the suit has already been dismissed.
7. Mr. Mondal, further draws my attention to the revenue record of right. The documents indicate that *prima facie* possession is with the accused persons.
8. Mr. Kallol Mondal, learned counsel appearing on behalf of the de facto complainant / opposite parties submits that the accused persons by executing different deeds on 02.11.1986, 09.11.1987 and 17.11.1987 sold and transferred the properties and delivered possession thereof in favour of the purchasers.
9. It is further submitted that after delivery of the possession of the suit property in the year 2008 the accused persons committed criminal trespass and filed a suit before the Civil Court having jurisdiction seeking declaration that the transactions are colourable, illegal and wrongful.
10. According to Mr. Mondal, there is every reason to presume that when the accused persons executed the deed in favour of the vendees they have delivered peaceful possession of the same.
11. Attempts were made by the de facto complainant / opposite parties and other purchasers to get their names mutated but the competent authority did not adhere to the prayer of the

purchasers and it has been brought to the notice of learned Additional District Magistrate and District Land and Land Reform Officer, South 24 Parganas by writing a letter dated 14.2.2022.

12. From the F.I.R. it appears the de facto complainant claimed to have taken video photographs and still photographs of the alleged incident of criminal trespass. The investigating officer did not collect any such evidence in course of investigation. Charge sheet does not have any reflection of such document.
13. On the contrary the revenue record of rights admittedly are still in the name of accused persons which gives birth to the presumption of possession of the property still with the accused persons.
14. Admittedly, several civil litigations are pending between the parties including a suit filed by the so called purchasers for recovery of possession as well.
15. Mr. Kallol Mondal, submits that the said suit was filed immediately after the alleged incident with a prayer for declaration of title and decree for recovery of Khas possession registered as T.S. 1412 of 2008. But as a matter of fact, Mr. Mondal submits that the suit was dismissed for default and the petition is pending for restoration of the suit.
16. From the attending facts of the case it is palpably clear that the civil dispute over the title and possession of the property is going on between the parties. When prima facie there is nothing to indicate that the possession is with the de facto complainant rather the record of rights indicates otherwise to

and demonstrate that the accused persons are still maintaining possession and on the date of incident the possession was with the accused persons, I feel no hesitation to hold that a civil dispute has been imbued with colour of criminality and if the criminal proceeding is allowed remain in force, it would amount an abuse of process of law.

17. In this regard, I rely upon the decision of the Hon'ble Supreme Court in the Case of ***Mohammad Wajid and another vs. State of U.P. and others reported in AIR 2023 SCC 3784*** wherein it is held;

“30. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the 17 necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of

wreaking vengeance out of private or personal grudge as alleged.”

18. However, it is made clear that this finding as to possession is tentative and for the purpose of this criminal proceeding. It shall not have any relevance in deciding the civil suit between the parties.
19. This revisional application, is, thus, allowed and the proceeding being BGR case no. 1364 of 2008 pending before the learned Chief judicial Magistrate, South 24 Parganas corresponding to Behala Police Station case no. 123 dated 18.4.2008 stands quashed.
20. The accused persons are discharged from bail bonds.
21. The criminal revision, is thus, disposed of along with all connected application.
22. Let a copy of the order along with lower court record be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)