

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

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

C.R.R. No. - 3360 of 2018

IN THE MATTER OF :

Debojyoti Goswami

Vs.

State of West Bengal & Anr.

**For the petitioner : Mr. Moyukh Mukherjee, Adv.,
Mr. Sarthak Mondal, Adv.,**

For the State : Mr. Pravas Bhattacharya, Adv.,

Judgment on : 15 .05.2023

Subhendu Samanta, J.

The instant criminal revisional application has been preferred for quashing of a criminal proceeding being Complaint Case No. 2079/2016 under Section 323/504 of IPC pending before the learned Judicial Magistrate, 7th Court, 24-Parganas (Sough) at Alipore. It is alleged in the complaint that the present petitioner on 06.05.2016 at about 10.30 PM rebuked the opposite party No. 2 with filthy language and assaulted him by which the complainant suffered injury in his person and he was treated at SSKM, Hospital. It is further allegation of the complainant that the incident happened over the Rai Bahadur

Road on the ground that the complaint was falsely roped in a criminal case and wherein he was obtained a bail by which the present petitioner became furious and assaulted him.

After filing of the said complaint case, the complainant was examined on SA under Section 200 Cr.P.C. and process was issued upon the present petitioner under Sections 323/504 of the India Penal Code, 1860. On several occasions the complainant did not appear and the complainant was show caused by the Magistrate. Thereafter on 13.08.2018, the complaint was dismissed for non prosecution and the petitioner/accused was discharged from the case. Again on the same day the complainant appeared before the learned Magistrate and prayed for restoration of the case. The learned Magistrate directed to issue notice upon the petitioner/accused for hearing of the petition of restoration.

Hence this revision.

Learned advocate for the petitioner submits that the criminal proceeding initiated by the complainant/opposite party No. 2 is a false case, no such incident happened in the alleged date of incident. One specific criminal case was initiated against the opposite party No. 2 and the present petitioner being the police personnel was entrusted to conduct investigation of that case. The instant criminal proceeding was initiated only to harass the present petitioner.

It is further case of the petitioner that the order for taking cognizance by the learned Magistrate is a typed order and learned Magistrate has not applied his judicial mind in passing the impugned order. Rule 138 of High Court Rule has been violated in the order for taking cognizance by the Magistrate. It is further contention of the petitioner that the petition of complaint does not indicate the name of any witness though the alleged offence occurred over the crowded road at Kolkata.

Learned advocate for the petitioner submitted that the proceeding of the entire criminal case would show that the present opposite party No. 2 has filed the criminal case only to harass the present petitioner. On several dates, he has not taken any step before the learned Magistrate. Considering the conduct, learned Magistrate has dismissed the criminal case and discharged from the present petitioner under Section 256(1) CrPC.

He has further pointed out that on the same day the complainant again filed one petition for restoration of the order dated 13.08.2018. Learned Magistrate wrongfully entertained the complainant and for the purpose of hearing of the said restoration application, again, another notice was issued upon the present petitioner.

Learned advocate for the petitioner further submits that according to the provision of Section 362 of CrPC order and judgement

of court cannot be altered, thus the issuance of further notice upon the present petitioner on the basis of a false case is palpably illegal.

Learned advocate for the State submits that the instant criminal case actually disposed of by discharging the petitioner, thus it is not necessary to pass any appropriate order for quashing the proceeding.

Heard the learned advocates. Perused the petition of complaint and the certified copy of the orders passed by the learned Magistrate in connection with complaint Case No. C. 2079/2016.

None appears on behalf of private opposite party no. 2 instead of service upon him through registered post.

The petition of complaint was filed on 07.05.2016 alleging the occurrence of an offence on 06.05.2016 at about 10.30 pm at Rai Bahadur Road. No person was named as a witness in the petition of complaint. It further appears that the alleged occurrence was not diarised to the local Police Station or to the Deputy Commissioner of Police by the petitioner. It has been alleged in the petition of complaint that the complainant was treated as SSKM, Hospital but no such document was annexed with the petition of complaint.

The order No. 1 dated 07.05.2016 was placed before this court. It appears that this is a typed order only some "fill in the blanks" has been done over a pre-typed order. Undoubtedly, the order No. 1 dated 07.05.2016 signed by the Chief Judicial Magistrate, 24-Pargans

(South) at Alipore is violative to the Rule 183 of Calcutta High Court, Criminal (Subordinate Court). Rule 183 is read as follows:-

R.183. Orders requiring the exercise of judicial discretion and the final order shall be recorded by the Magistrate in his own hand or typed by him, others may be recorded under his direction by the Bench Clerk.

On plain reading of the Rule it appears that the learned Chief Judicial Magistrate has not applied his judicial mind in taking cognizance of the offence against the present petitioner thus the impugned order dated 07.05.2016 is liable to be set aside.

Furthermore, the order dated 13.08.2018 passed by the learned Judicial Magistrate, 7th Court, 24-Parganas (South) at Alipore in discharging the present petitioner is a reasoned order. By virtue of the order dated 13.08.2018 the present petitioner was discharged under Section 256 (1) CrPC. Thus the Magistrate has got no power to again issue fresh notice upon the present petitioner for answering him on a petition of re-calling.

The instant criminal revision is pending since 2018, the opposite party No. 2 complainant opted not to appear instead of service of notice upon him thus the statement of the petition of the instant revisional application appears to be uncontroverted by the opposite party No. 2.

Considering the entire circumstances, it appears to me that the criminal proceeding pending before the learned Judicial Magistrate was filed in ulterior motive, if the same proceeding is allowed to be continued that would tantamount to be an abuse of process of court.

Considering the same, I think there is merit to entertain this criminal revisional application.

In result thereof, the instant criminal revisional application being CRR No. 3360 of 2018 is allowed.

The criminal proceedings being Complaint Case No. 2079/2016 under Section 323/504 of IPC pending before the learned Judicial Magistrate, 7th Court, 24-Parganas (Sough) at Alipore against the petitioner is hereby quashed.

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.)