

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

C.R.R. 3339 of 2012

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CRAN 11 of 2019

Chaitali Das Dutta & Ors.

Vs.

The State of West Bengal

Present:

The Hon'ble Justice Siddhartha Roy Chowdhury

For the Petitioner : Mr. Sourav Chatterjee
 Mr. Soumya Nag
 Mr. Priyom Biswas

For the State : Mr. Binay Panda
 Mr. S. K. Bhakat

Heard On: 28.03.2023 & 29.03.2023

Judgment on : 29.03.2023

The Court:

This application under Section 482 of the Code of Criminal Procedure is the manifestation of displeasure of the petitioners over the proceeding being GR Case No.310 of 2011 (TR No.20 of 2012) pending before the learned Judicial Magistrate, 2nd Court, Katwa, Burdwan arising out of Katwa P.S. Case No.136 of 2011 dated 20th May, 2011 under Sections

147/148/448/332/149 of the IPC including the order dated 9th January, 2012 passed by the learned Trial Court by which the charge sheet was framed and trial commenced.

Briefly stated, one Nrisingha Prosad Das, father of Ramendra Narayan Das bequeathed his property by executing a Will and Satya Gopal Das was the propounder. Probate was granted to the last Will of Nrisingha Prosad Das. The Will was challenged before Hon'ble Apex Court but in vain.

The petitioner Nos.1 and 2 are the daughters of Ramendra Narayan Das, petitioner No.3 is the husband of petitioner No.1 and petitioner No.4 is a family friend of Ramendra Narayan Das.

There was a dispute over the property and there was simmering discontent amongst the co-owners, nephew of Panchubala Dasi, Sri Nanda Kumar Maiti, on 20th May, 2011 set the criminal administration of justice into motion by informing the Officer-in-Charge, Katwa police station stating inter alia that on the said date at about 12.30 hours he was sitting in the drawing room when Kailash Sharma, his son Amit Sharma and Ramendra Narayan Das led some unknown persons who invaded the said room together with his daughter, wife and driver. They were armed with revolver, bomb, iron rod and other weapons tried to lift Nanda Kumar Maiti by force. When Nanda Kr. Maiti made an attempt to flee, the miscreants with an intention to kill him opened fire and assaulted him with iron rod, tried to throttle him and they also snatched a diamond ring, a gold chain weighing

about 80 gms., finger rings and made him suffer bleeding injuries on different parts of his body. Even they did not spare Dolly Das, a relative who came to rescue Nanda Kr. Maiti. With the advent of neighbouring people, the miscreants evacuated the place after charging bombs and opening blank fires. The information since disclosed offences cognizable in nature, police registered Katwa P.S. Case No.136 of 2011 under Sections 147/148/149/448/323/325/506/379/354 of the Indian Penal Code and Sections 25 and 27 of the Arms Act.

After investigation, however, police filed charge sheet against 8 accused persons under Section 147/148/149/448/323 of the Indian Penal Code.

Mr. Chatterjee, learned counsel for the petitioner submits that the de facto complainant is possessing the property in question which is also owned by Ramendra Narayan Das. Therefore, the offence under Section 448 of the IPC cannot be said to have been committed by the co-owners which the learned Trial Court failed to appreciate.

It is further contended that in the written information, Nanda Kr. Maiti narrated the manner that he was allegedly assaulted and made to suffer injury, which is not correct, and the exaggeration of Nanda Kr. Maiti undoubtedly indicates that he had the sole intention to harass the petitioners, who went to the ancestral property.

Refuting such contention, Mr. Panda, learned counsel for the State submits that the miscreants were not the co-owners. Ramendra Narayan

Das was one of the co-owners of the property and as such the others cannot escape the liability of committing the offence under Section 448 IPC.

It is further submitted that soon after the incident, the de facto complainant and her relative attended Katwa Hospital and the medical officer treated both of them who had injury like abrasion on the right forearm, multiple bruises on the left forearm, lacerated injury in the right leg and fresh bleeding on the tip of little finger and on the right index and ring finger etc. This injury report suggests that the de facto complainant and Dolly Das got hurt by the criminal activities of the petitioners.

I have perused the case diary and I find that allegedly Amit Sharma and Kailash Sharma were the principal accused persons who came and applied criminal force upon Nanda Kr. Maiti.

The statement of witnesses examined by the police and recorded under Section 161 of the Code of Criminal Procedure suggest that Ramendra Narayan Das, his two daughters, son-in-law and another person were kept confined inside the room and they were rescued by the police, while Kailash and his son Amit were arrested by police. This statement unveils and indicates the possibility that as co-owners, the petitioners together with Ramendra Narayan Das had been to the ancestral property, over which the predecessor-in-interest of the de facto complainant, Panchu Bala Dasi was given right to occupy till her lifetime. Their presence naturally disturbed apparent placid atmosphere. The exaggeration made by the de facto

complainant in his petition of complaint undoubtedly indicates that the petition of complaint is attended with mala fide. The statement recorded by police under Section 161 CRPC narrates that Ramendra Narayan Das and his daughters, son-in-law as well as their driver were kept confined inside the room and they were rescued by the police.

This rules out the possibility of their involvement in causing hurt to Nanda Kr. Maiti, the de facto complainant. It is the settled principle of law that if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial judge will be empowered to discharge the accused. (see **Sajjan Kumar vs. CBI reported in 2011 AIR SCW 3730**).

Therefore, the learned Trial Court, in my humble opinion, failed to exercise jurisdiction vested upon him by framing charge against the accused persons. As I have already pointed out the criminal proceeding, since inception was attended with mala fide, relying upon the decision of Hon'ble Apex Court in **State of Haryana vs. Bhajanlal**, I am of the view that the criminal proceeding being GR Case No.310 of 2011 should not be allowed to remain in force and should be quashed in order to avert the abuse of the process of law, which I accordingly do.

Consequently, the revisional application is allowed and proceeding being G.R. Case No.310 of 2011 is set aside and stands quashed.

The connected application being CRAN 11 of 2019 is accordingly disposed of.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

Lower court records be sent down to the Trial Court forthwith.

Urgent certified copy of this order be immediately made available to the parties subject to compliance with all requisite formalities.

(Siddhartha Roy Chowdhury, J.)