

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 96 of 2021

**Sri Toka Boy
Vs.
The State of West Bengal & Anr.**

For the Petitioner	: Mr. Narendranath Das Mr. Pragyadip Roy Basunia Mr. Pratyush Adhikary Mr. Binapati Singha
For the State	: Mr. Aditi Shankar Chakraborty Mr. Arun Sarkar
Heard on	: 03.05.2023, 08.05.2023
Judgment on	: 12.05.2023.

Ananya Bandyopadhyay, J.:-

1. An application under Section 482 of the Code of Criminal Procedure, 1973 has been filed for quashing G.R. Case No. 3197 of 2018 under Sections 188/ 447/ 427/ 506/ 34 of the Indian Penal Code, arising out of Bhaktinagar P.S. Case No. 600 of 2018 dated 07.08.2018 pending before the Learned J.M. (1st Court) at Jalpaiguri.
2. A complaint was filed on 17.8.2018 by the de-facto complainant at Bhaktinagar P.S. which inter alia stated her grandfather to be the recorded owner of a land measuring 6.29 Acre, depicted in R.S. Khatian No. 681/5,

R.S. Plot No. 28 and other sheet no. 9, Mouza-Dabgram, P.S.-Bhaktinagar, District-Jalpaiguri. On the death of her grandfather, fifty per cent of the aforesaid property devolved upon the father of the de-facto complainant, who eventually became the absolute owner of the land measuring 26.5 decimal in respect of Plot No. 22 wherefrom he sold 15.5 decimal of land in respect of Plot No. 28 and possessed the residual 11 decimal of land. The de-facto complainant along with her mother, one sister and four brothers succeeded as joint owners of the aforesaid 11 decimal land on the death of her father.

3. It was further contended that the petitioner, Toka Roy was trying to illegally acquire the aforesaid land as a consequence of which a Title Suit being No. 126 of 2013 was filed on 10.09.2013 along with an application for an order of injunction before the Learned Single Judge (Senior Division) at Jalpaiguri.
4. The petitioner accompanied with labourers entered the aforesaid land and demolishing the boundary wall initiated an actionable construction of another boundary wall disregarding the pending decision of the aforesaid civil suit. On request to discontinue such construction by the de-facto complainant and her brother, the petitioner unrelentingly threatened them of dire consequences compelling the de-facto complainant to file the complaint.
5. Based on such complaint as aforesaid, vide G.D. No. 926 dated 17.08.2018, Bhaktinagar P.S. Case No. 600 of 2018 dated 17.08.2018 under Sections 188/ 447/ 427/506/34 of the Indian Penal Code was initiated. On completion of investigation, charge-sheet was filed on 28.10.2018, under Sections 188/ 447/506 of the Indian Penal Code.

6. The Learned Advocate for the petitioner submitted, the private complainant despite service of notice did not appear to contest the case. He further submitted that in view of Section 195 of the Code of Criminal Procedure, no Court shall take cognizance of an offence under Section 188 of the Indian Penal Code except on the complaint in writing to that Court or by such officer of the Court as the Court may authorize in writing in this behalf of some other Court to which that Court is sub-ordinate.
7. It was further contended that a suit for declaration, recovery of khas possession, injunction and other consequential reliefs against the petitioner being Title Suit No. 126 of the 2013 concerning both the parties had been pending for disposal which conspicuously established the petitioner to be in possession of the property in question negating the fabricated version of the de-facto complainant of disembarking the boundary wall and substituting it with another construction wall describing aggravated incidents of threat.
8. The dispute between the parties had been civil in nature, devoid of any element of criminality and prayed for quashing of the aforesaid G.R. Case.
9. The Learned Advocate for the petitioner relied upon a decision cited in **“Common Cause” A Registered Society Through Its Director Vs. Union of India & Ors.**¹ emphasizing paragraph 2(f) wherein it has been mentioned as follows:

“2(f) Where the cases pending in criminal courts under I.P.C. or any other law for the time being in force are punishable with imprisonment upto three years, with or without fine, and if such

¹ 1996 AIR 1619: 1996 SCC (4) 33

pendency is for more than two years and if in such cases trial have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.”

10. It was further submitted, in the instant case the charge-sheet was filed at a belated period beyond sixty days therefore the instant criminal revisional application shall be allowed and the G.R. Case No. 3197 of 2018 shall be quashed.
11. The Learned Advocate for the State submitted that the dispute between the parties to be civil in nature and left it to the discretion of the Court.
12. The perusal of the case diary as submitted by the Learned Advocate for the State, unequivocally reveals the existence of a civil dispute between the parties.
13. The petitioner claims to have purchased the property in question through a valid registered sale deed and the opposite parties have filed a suit for declaration, recovery of khas possession, injunction and other consequential relief vide Title Suit No. 126 of 2013. The opposite parties as plaintiffs in paragraph 9,10 and 11 of the aforesaid Title Suit stated as follows:

“9. That the plaintiffs are innocent in nature and they remain busy in their daily works and the suit property is also far away from their house and taking that advantage the defendant no. 1 encroached the suit property on 14.05.2013 and made a tin shed pucca room in and over the suit property and getting the information of said encroachment when plaintiffs reached at the suit property and requested the defendant no. 1 to vacate the suit property but the defendant no. 1 refused to vacate the suit land instead he threatened the plaintiffs with dire consequences claiming himself the owner of the suit land and thereafter the plaintiffs went to the local police

station to lodge a complaint against the defendant no. 1 but police officer refused to accept the said complaint and advised the plaintiff to go to the court and thereafter on 23.05.2013 the plaintiffs no. 7 filed an application U/S – 144 of Cr.P.C. against the defendant no. 1 before the court of Ld. S.D.E.M. Jalpaiguri and said application has been registered as petition case no. 410/2013 and same is pending for disposal.

10. That very recently on 28.08.2013 the defendant no.1 again started further construction in and over the suit property and he has been running a shop in and over the suit property with the help of defendant no.2 and the plaintiffs also come to know that the defendant no.1 is trying to sell the suit property.

11. That the plaintiff no.5 again on 30.08.2013 went to the suit property and requested the defendant no. 1 and 2 to vacate the suit land but they refused to do so and at time the defendant no. 1 showed a copy of sale deed being no. 1077 for the year of 2013 and same was registered before the A.D.S.R. Rajganj on 05.02.2013 and said sale deed had been executed by the defendant no. 3 who is one amongst the four legal heirs of the above mentioned deceased Kahuchiswari Roy and by virtue of said sale deed the defendant no.1 claimed himself to be the owner of the suit property

It is pertinent to mentioned here that as it is stated in the para no. 5 that Kahuchiswari Roy became the absolute owner of a piece of land measuring about $26.5+6.5=33$ Decimal in respect of Plot No. 28 of 'A' schedule land and after becoming the owner of said land she already transferred her said entire land measuring about 33 Decimal or 20 Kathas in favour of one Jonakishwari Roy by virtue of a registered deed of sale being no. 2983 for the year of 1969 and same was registered before the district registrar Jalpaiguri on 23.04.1969

And thereafter said Jonakishwari Roy transferred her entire 20 Kathas land to one Swarna Roy by virtue of two registered deed

of sale being no. 6348 dated 06.10.1990 and 2274 dated 03.07.1995 and both the sale deed was registered before the district registrar Jalpaiguri.

And thereafter the defendant no. 1 purchased a piece of land measuring about 7 Kathas in respect of plot no. 28 of 'A' schedule land from Swarna Roy by virtue of sale deed being no. 2446 for the year of 1995 and same was registered before the Sadar Joint Sub Registrar, Jalpaiguri on 02.06.1995.

And thereafter the defendant no. 1 transferred a piece of land measuring about 4 katha out of his above mentioned 7 kathas to one Gobinda Dutta and another person by virtue of a registered a deed of sale being no.1293 for the year of 1998 and same was registered before the Sub Registrar, Rajganj, Jalpaiguri on 28.04.1998 and he also sold out the remaining 3 Katha land to another person.

Therefore it is crystal clear that prior to the execution and registration of said sale deed being no. 1077/2013, Kahuchiswari Roy already on 23.04.1969 transferred her entire land measuring about 33 decimal in respect of Plot No. 28 of Schedule 'A' land in favour of one Jonakiswari Roy by virtue of a registered deed of sale being no. 2983 dated 23.04.1969 hence the sale deed being no. 1077/2013 executed by Prabalal Roy i.e. defendant no.3 as her legal heir is illegal and has no value in the eye of law and by virtue of said deed the defendant no. 1 has acquired no right, title interest in and over the suit property and he has illegally encroached the suit property."

14. The opposite parties claimed the following relief, in the aforesaid civil suit :

- a. "A decree declaring that the plaintiffs are the absolute joint owners of the suit property.

- b. *A decree directing the defendant no. 1 and 2 to vacate the suit land and give possession of the suit property to the plaintiffs.*
- c. *A permanent injunction restraining the defendants and their men and persons from entering the suit property.*
- d. *A permanent injunction restraining the defendants from changing the nature and character of the suit property.*
- e. *A permanent injunction restraining the defendant no. 1 from alienating the suit property to any persons.*
- f. *A permanent injunction restraining the defendants and their men and persons from disturbing the peace full possession of the suit property of the plaintiffs*
- g. *A decree declaring that the defendants have no right, title, interest in an over the suit land*
- h. *A decree directing the defendants to remove the illegal construction, tin shed pucca room made by them from the suit property with their own cost.*
- i. *A decree declaring that the sale deed being no. 1077/2013 dated 05.02.2013 registered before the A.D.S.R. Rajganj, Jalpaiguri is void abinitio and has no value in the eye of law and the defendant no. 3 had no right to execute the same and the A.D.S.R. Rajganj may be given a direction to make an entry in the registrar in this respect.*
- j. *A decree declaring that by virtue of above mentioned sale deed being no. 1077/2013 the defendant no. 1 has acquired no right title, interest in respect of the suit land.”*

15. The plaintiff of the de-facto complainant duly affirmed depicted the petitioner to be in possession of the property, a fact un-impeachable contrary to the statement of the de-facto complainant in her complaint. The statements recorded under Section 161 of Code of Criminal Procedure explicitly and unambiguously referred the dispute between the parties to be manifestly civil in nature. Recourse to criminal proceedings to disguise a civil dispute

should not be encouraged to the detriment of accused persons where their civil rights over properties are under challenge before a civil Court of competent jurisdiction. It gives rise to multiplicity of proceedings, waste of Court hours, unnecessary utilization of manpower, inexplicable harassment to the accused persons. The opposite parties' in incongruence with the actual facts of the case surreptitiously filed the complaint to the predicament of the petitioners. Moreover, the provisions under Section 195 of the Code of Criminal Procedure are mandatory in nature and non-compliance of it would vitiate the prosecution and all other consequential Orders.

16. Section 188 of the Indian Penal Code states as follows:

“188. Disobedience to order duly promulgated by public servant. –

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.”

17. The opposite parties could not produce any Order promulgated by public servant which had been violated by the petitioner nor does the charge-sheet

in paragraph 17 wherein the brief facts of the case are enumerated by the Investigating Officer, mentions any Order of the public servant to have been breached or disobeyed by the petitioner. The plaint of Title Suit No. 126 mentions of an application filed under Section 144 Code of Criminal Procedure on 23.5.2013 registered as Petition Case No. 410 of 2013, which was pending for disposal. Any Order passed in the said petition would have been effectively valid for a period of sixty days. The complaint was filed by the de-facto complainant on 17.8.2018 after nearly five years, transgressing the prescribed period of 60 days.

18. Prima facie, it appears there has been no disobedience of any Order duly promulgated by public servant under Section 188 of the Indian Penal Code and moreover, non-compliance of the provisions stipulated under Section 195 Code of Criminal Procedure with regard to Section 188 of the Indian Penal Code vitiates the entire proceedings.
19. The ingredients to constitute offence under Sections 447/506 of the Indian Penal Code are deceptively concocted and applied in the instant case in order to falsely implicate the petitioner for subserving ulterior motive.
20. Under the facts and circumstances of the case to allow to continue with the proceedings with the Learned Trial Court would result in abuse of process of the law and accordingly the Criminal Revisional Application is allowed.
21. The proceedings being G.R. Case No. 3197 of 2018 arising out of Bhaktinagar P.S. Case No. 600 of 2018 dated 07.08.2018 under Sections 188/ 447/ 427/ 506/ 34 of the Indian Penal Code pending before the Learned J.M. (1st Court) at Jalpaiguri is accordingly quashed.

22. Connected application if any is also disposed of accordingly.
23. Case diary be returned to the Learned Advocate for the State.
24. There is no order as to cost.
25. 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.
26. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)