

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
(Criminal Revisional Jurisdiction)**

APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**CRR 180 of 2021
With
CRAN 1 of 2021**

**Rajiv Jain.
Vs.
State of West Bengal & Anr.**

For the petitioner	:	Mr. Suresh Kr. Mitruka Mr. Aayush Mitruka Mr. Mantosh Bhowmick
For the State	:	Mr. Aditi Shankar Chakraborty, Ld. APP Mr. Sourav Ganguly
Heard on	:	08.05.2023
Judgment on	:	14.06.2023

Ajoy Kumar Mukherjee, J.

1. Quashing of proceeding being NJP Police Station Case no. 1216 of 2021 dated 13.11.2011, presently pending before the court of learned Chief Judicial Magistrate Jalpaiguri, has been sought for by filing present application under section 482 of the Code of Criminal Procedure. Petitioner contended that the defacto complainant/opposite party no.2 lodged a complaint under section

156(3) of the Code of Criminal Procedure (Cr.P.C.) against the present petitioner and 5 others and learned Magistrate was pleased to direct NJP police station to conduct investigation treating the petition of complain as FIR. Accordingly police started aforesaid criminal proceeding against the petitioner and other accused persons under sections 188 /447/ 323/ 325/ 354/ 307/ 466/ 467/468/479/471/120B of the Indian Penal code, 1860 (IPC).

2. The allegations levelled in the said FIR against the present petitioner and other accused persons *interalia* to the effect that husband of defacto complainant was owner of one plot of land by the side of National Highway and she is one of the co-sharer of said land and one partition suit in connection with the said land is pending in the Jalpaiguri court, being partition suit No. 123/2021 where she obtained an order of injunction. Accused persons are aware of the said suit, but on 29.10.2021 at about 10.30.a.m., all the accused persons without intimating complainant and her family members illegally and forcefully entered into the suit land violating the order of injunction and attempted to construct tin shedded room over the land. Getting such information defacto complainant obstructed the accused persons and then the accused persons abused her with filthy languages and assaulted her with bamboo lathi and with fist and blows and attempted to kill her by strangulation and outraged her modesty and also threatened her with dire consequences but she somehow managed to flee away from the spot and could save her life. Plaintiff further alleged that the land encroachers (jamidassura) have made conspiracy and in order to grab her land, the accused persons including the present petitioner, manufactured false deed being no. 258/84

dated 16.01.1984. It is further alleged that husband of the defacto complainant previously initiated another criminal proceeding being GR Case No. 1174 of 2012 dated 12.03.2012, alleging that the land brokers have cheated him and created false deed in connection with the said property. However investigation of said case yielded no result and police submitted final report contending that during investigation no case has been made out against the accused persons.

3. Opposite party herein lodged a complain in respect of said occurrence which allegedly took place on 29.10.2021 but police did not take any action inspite of her written complaint at the NJP outpost dated 02.11.2021. Thereafter defacto complainant also sent copy of complain to Siliguri Police Commissionerate on 07.11.2021 but as police was reluctant to start investigation, she was compelled to knock the door of learned Magistrate to lodge aforesaid application under section 156(3) Cr.P.C., whereby court below directed the police authority to start investigation.

4. Mr. Mitruka, learned counsel appearing on behalf of the petitioner submits that the petitioner is a cancer patient and was bed-ridden and was admitted in Tata Medical Centre Mumbai, on an from 24th October 2021 to 30th October 2021 and on 25th October 2021 he was also operated by the doctors of said Tata Medical Centre and subsequently he was discharged on 30th October, 2021. However he stayed at Mumbai till 17th November, 2021, due to various medical tests. In this context he further submits that complaint lodged by the complainant against petitioner is false and concocted and no such incident occurred on the alleged date, in view of fact that in the FIR it has been alleged

that the incident occurred on 29.10.2021, but the petitioner was in Mumbai for treatment from 24th October, 2021 to 17th November, 2021. He further submits that initially one injunction order was passed against the petitioner accused persons in the aforesaid partition suit but subsequently said injunction order was vacated in Misc. Appeal case no. 44 of 2021.

5. Mr Mitruka strenuously argued that the matter in dispute as raised by the complaint is purely civil in nature and has been filed against the petitioner and his other relatives maliciously with an ulterior motive for wreaking vengeance to the petitioner and with a view to spite him due to personal grudges with the help of land mafias. He further submits that in the FIR, it is alleged that accused persons have forged deed no. 258 of 1984 but said deed has been executed by husband of the complainant favouring his own sister Smt. Mina Dutta but no complain has been made against her in the instant case. The complainant has suppressed that said husband of complainant Shanti Ranjan had executed a deed of declaration confirming that he sold part of subject land to Mina Dutta Paul by virtue of aforesaid deed no. 258 of 1984. The complaint also not disclosed that her husband filed Title suit 147 of 2014 which got dismissed in 2020. Since the earlier title suit dismissed, defacto complaint filed partition suit 123 of 2021, admitting petitioner and other's title in the property in question.

6. He further submits that under the law second complain on the self same cause of action after a period of more than nine years is not permissible. In this context he relied upon the case of ***Arnab Rajan Goswami Vs. Union of India & others, (2020) 14 SCC 12.*** He further submits that husband of

complainant also instituted aforesaid suit during his life time, being title suit no. 147 of 2014 for declaration and injunction and also for consequential reliefs, but the court refused to grant any *ad interim* injunction and said suit was ultimately dismissed for default on 20.02.2020. In fact petitioner and his other relatives are *bonafide* purchaser of land which was purchased in the year of 2007 for valuable consideration from the lawful owners and Record of Rights has also been published in their names. They have also lawfully converted the character of land. A portion of land has already been acquired by the Government and for which they had received compensation from the National Highway Authorities. Accordingly Mr. Mitruka submits that the learned Magistrate ought to have satisfied *prima facie* about the commission of cognizable offence by the accused persons before making any direction upon the police authority to start investigation. He further submits that the allegations in the FIR are so absurd and inherently improbable against the present petitioner and his other relatives and friends, that no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused. Accordingly he has prayed for quashing the said criminal proceeding.

7. Opposite party no. 2/defacto complaint is not represented. Mr. Chakraborty learned counsel appearing on behalf of the state/opposite party no. 1, submits that in connection with the earlier case, which was initiated in 2012, a protest petition is pending against final report submitted by police. He further submits that police closed investigation in the said case because deeds in question could not be recovered in the earlier case nor it's genuineness

could be examined and for which accused persons were not charge sheeted. However in the present case, the impugned deeds and documents have been filed and such documents need verification during investigation but due to stay order passed in this application, police could not verify those documents and he further submits, if after verification it is found that the deeds in question are genuine then police will submit final report to that extent but as contents of the FIR makes out prima facie cognizable offence, so it would not be proper to quash the said proceeding as sought for by the petitioner. Mr. Chakraborty, learned APP further contended, even if the alibi of the petitioner is accepted for argument's sake, it can only save the petitioner from offence affecting human body but the rest offences alleged against him including criminal conspiracy does not require his physical presence.

8. I have considered submissions made by both the parties and also perused the materials on records as well as materials in the case diary, so far collected, during investigation. Law laid down pertaining to quashing of criminal proceedings initiated against the accused under section 482 of the Cr.P.C. has been dealt with elaborately by the Apex Court in various cases. In ***Rajib Thapar and others Vs. Madan Lal Kapoor*** reported in **(2013) 3 SCC 330** the court *interalia* held as under:-

29. *The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its*

inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

“30. *Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:”*

“30.1. *Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?”*

“30.2. *Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?”*

“30.3. *Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?*

“30.4. *Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?”*

“30.5. *If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”*

9. Accordingly in order to judge the veracity of the aforesaid prayer made by the petitioner for quashing, let me first examine whether first two steps as

pointed out in the said judgment could be satisfied in the present context or not.

10. 30.1.Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2.Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

11. Petitioner claimed that they have jointly purchased suit land in valuable consideration via registered sale deed dated 05.09.2007. Defacto complainant's husband previously filed Criminal complain contending that the impugned deed is a forged deed. However said criminal proceedings being BhaktiNagar P.S. case No. 1174 of 2012 dated 12.03.2012 under section 420/468/471/472 of I.P.C ended in final report where the I.O. reported that allegations against the accused persons could not be substantiated due to non availability of sufficient evidences and/or original copy land deed no. 258 of 1984 and on the other hand, complainant himself had admitted/ or confirmed that land deed being no. 258 of 1984 in respect of 87 decimal of land sold to Mina Dutta daughter of Krishna Chandra dutta on 01.10.2012.

12. Petitioners' further case is said land has been duly mutated in their favour and they have also got the land duly reclassified on 26.11.2012. It is

their further case that they have also received compensation in connection with the said land on 18.11.2014 from the land acquisition department. Furthermore partition suit in connection with the property in question being P.S. 123 of 2021 has been filed where initially injunction order was passed ex-parte but subsequently it was vacated on 30.03.2022.

13. In the above backdrop if the contents of the FIR analysed it appears that it divides into two parts. First part relates to an incident which allegedly occurred on 29.10.2021 at 10.30 a.m. and in the second part the allegation is land encroachers forged cheated and used forged deed as genuine in connection with the disputed property. In connection with the incident which allegedly took place on 29.10.2021 that the petitioner and other accused persons forcefully entered the suit land and man handled the complainant violating the order of status-quo and threatened her and also tried to kill her by strangulation, it appears that petitioner by filing cogent documents has substantiated his claim that he is a cancer patient and was undergoing treatment on that particular date in a Mumbai hospital. The petitioner had underwent surgery at the Tata medical Hospital Mumbai at the relevant point of time and as such contended, it is absurd and absolutely improbable that he could have perpetrated in the alleged crime or even he was in a position to make any conspiracy for the alleged occurrence. Petitioner in support of the same has placed impeccable documents to establish his plea of alibi which includes his treatments sheets and that he was undergoing treatment since May, 24 and that he boarded from Bagdogra via Indigo Flight 6E 6175 on 18.10.2021. Medical report dated 19.10.2021, 23.10.2021 and 25.10.2021,

issued by Tata Medical Hospital Mumbai shows that the petitioner underwent various diagnosis and examinations before scheduled surgery. Admission slip, tests reports and surgical check list are also filed, which was issued by the Hospital of Mumbai and most importantly discharge summary issued by the Tata Hospital shows that the petitioner was admitted to the said Hospital on 24.10.2021 and underwent surgery on 25.10.2021 and discharged from hospital on 30.10.2021. Certificate further shows that till 16.11.2021 petitioner was clinically examined by the said Hospital and thereafter he was declared to be fit for travel. In support of his return from Mumbai to Bagdogra via Spice jet Flight SG-163 petitioner also filed copy of boarding pass which shows that the petitioner returned to Siliguri on 17.11.2021. The aforesaid documents filed, by the petitioner prima facie establish, in the absence of contrary document or evidence that:-

- (i) Petitioner boarded from Bagdogra to Mumbai on 24.10.2021 and underwent surgery on 25.10.2021 in Tata Hospital at Mumbai.
- (ii) Petitioner was discharged from said hospital on 30.10.2021 and underwent follow up tests and thereafter received a certificate of fit to travel on 16.11.2021 and returned from Mumbai on 17.11.2021.

14. Aforesaid documents remains unchallenged and court exercising its inherent jurisdiction under section 482 of Cr.P.C. can very well rely upon the materials submitted by the petitioner which is based on sound, reasonable and indubitable facts. Aforesaid materials are also sterling and of impeccable quality and is sufficient enough to reject and overrule the factual assertion contained in the complain, that the petitioner had assaulted the defacto

complainant /opposite party no. 2 physically or tried to strangle her or was in a position to made any conspiracy for causing the alleged occurrence. I have also perused the case diary wherefrom I find that the available witnesses have also not made any allegation of assault against the present petitioner during examination under section 161 of Cr.P.C. Even the medical report collected by I.O. during investigation, where history of victim's physical assault has been noted on 29.10.2021, such injury report does not disclose the name of perpetrators. Accordingly petitioner has successfully raised defence of alibi based on unquestionable and unimpeachable documents. Supreme Court in ***Suryalaxmi Cotton Mills limited Vs. Rajbeer Industries Limited and others*** reported in **(2008) 13 SCC 678** held in paragraph 22 as follows:-

“22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.” (emphasis added)

15. So far as the contents of second part of the FIR regarding allegation of forgery or user of forged documents as genuine as levelled against the present petitioner under section 466/467/468/471/120B, is concerned it appears that in the FIR it has not been alleged that the present petitioner has forged any

deed or document. What has been stated in the FIR is that the land encroaches (Jamidassu) in connivance with each other and with the help of fraudulent deed trying to evict her from the suit property. In the FIR it has been stated that all the accused persons have procured fraudulent deed being No. 258 of 84 dated 16.01.84 in respect of which her husband initiated above mentioned GR case No. 1174 of 2012 dated 12.03.2012, but nowhere in the petition of complaint any specific overt act has been alleged against the petitioner, which can attract any cognizable offence under the aforesaid penal sections against the present petitioner. Moreover on perusal of the statements recorded under section 161 of the Cr.P.C., it also appears that the witnesses have not alleged that the present petitioner have manufactured any forged deed or had made any conspiracy for procuring any such deed.

16. Learned counsel for the State submits that they have received copy of the deed and they want to verify it. In this context, though no allegation has been levelled against the present petitioner anywhere in connection with the said allegation of forgery but still it is not in dispute that civil suit claiming right title interest in the said property are pending before appropriate forum and the civil court is supposed to decide such issue on the basis of such deed or deeds in order to grant reliefs. In fact dispute to above context is purely civil in nature between the parties in connection with right title interest and possession in respect of the property and materials are sufficient to reject and overrule the factual assertion contained in the complain that the present petitioner has forged any deed or document or has cheated anyone or has used any forged document as genuine. In fact the allegation of forgery against

present petitioner is wild in nature. No Specific allegation as to how the deed was forged by the petitioner, when it was forged or how alleged forged deed was used by the petitioner. No explanation was also given as to why complain was lodged in 2021 when offence allegedly committed, many years back.

17. 30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

18. In view of documents as referred above and in the absence of any allegation of forgery, the inevitable conclusion is that the materials relied by accused has not been refuted by the prosecution or defacto complainant and materials is such that it cannot be justifiably refuted by the prosecution agency or the defacto complainant and as such sections 466/467, 468/479/471/120B cannot have any application against petitioner herein in the present context. Similarly in view of above referred unchallenged documents, which prima facie establish that petitioner was not and could have been present and/or instigate at the time of commission of alleged crime under section 188 or 447 or 323 or 325 or 354 or 307/120B of I.P.C on 29.10.2021, I find continuance of present proceeding against the present petitioner would be an abuse of process of court and would not serve the ends of justice since there is hardly any chance of conviction of present petitioner at the end of trial.

19. In view of aforesaid discussion I am of clear view that the criminal case has been filed against the petitioner only for achieving the ultimate goal to criminalise a civil dispute and court should not encourage such practice.

20. In view of above CRR 180 of 2021 is allowed. The criminal proceedings being N.J.P Police Section Case No 1216 of 2021 dated 13.11.2021, being G.R. Case No. 6189 of 2021, pending before learned Chief Judicial Magistrate, Jalpaiguri is hereby quashed in respect of the present petitioner only. I made it clear, since other accused persons in the said proceeding are not the petitioners herein, I have not gone into the merits of allegations levelled against other accused persons in the said proceeding. Connected application is also disposed of accordingly.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJAY KUMAR MUKHERJEE, J.)