

IN THE HIGH COURT AT CALCUTTA

Circuit Bench at Jalpaiguri

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 230 of 2022

With

CRAN 1 of 2023

Sri Saiyam Goyal & Ors.

Vs.

State of West Bengal & Anr.

For the Petitioners

: Mr. Sandip Mandal,
Mr. Abhilash Mittal.

For the State

: Mr. Aditi Shankar Chakraborty,
: Mr. Nilay Chakraborty.

Hearing concluded on

: 10.10.2023

Judgment on

: 12.10.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceeding being G.R. Case No. 2290 of 2022 corresponding to New Jalpaiguri Police Station Case No. 377/2022 dated 24.04.2022 under Sections 188/447/506/120B of the Indian Penal Code, 1860 pending before the learned Chief Judicial Magistrate, Jalpaiguri.
2. By the impugned order dated 19.05.2022, the learned Chief Judicial Magistrate, Jalpaiguri was pleased to allow the prayer of the investigating officer A.S.I. Uday Shankar Bhattacharjee of Ambari Out-Post under N.J.P. Police Station, directing the B.L. & L.R.O. to make necessary arrangement for spot verification and demarcation of the land having R.S. Plot No. 441 & 442 corresponding to the L.R. Plot no. 608 & 609 recorded in R.S. Khatian No. 2881 & 2882 corresponding to L.R. Khatian No. 4053, R.S. Sheet No. 10, Mouza Binnaguri, J.L. No. 3, Pargana Baikunthapur, P.S. N.J.P., Dist. Jalpaiguri during course of investigation.
3. The petitioners case is that the petitioner no. 1 is a registered owner of a piece of land measuring about 33 decimals by virtue of a registered deed of sale being instrument no. 7132 for the year of 2013 and same was registered on 05.08.2013 before A.D.S.R. Rajganj, Jalpaiguri recorded in Book No. I, Volume No. 22, pages 2661 to 2670.

4. The petitioner no. 2 is a registered owner of a piece of land measuring about 25 decimals by virtue of a registered deed of sale being instrument no. 7134 for the year of 2013 and same was registered on 05.08.2013 before A.D.S.R. Rajganj, Jalpaiguri.
5. The petitioner no. 8 is a registered owner of a piece of land measuring about 33 decimals to the plaintiff no. 2 by virtue of a registered deed of sale being instrument no. 6310 for the year of 2013 and same was registered on 28.06.2013 before A.D.S.R. Rajganj Jalpaiguri recorded in Book No. I, volume No. 20, pages 1788 to 1798.
6. The petitioner no. 8 is also a registered owner of a piece of land measuring 37.75 decimals by virtue of a registered deed of sale being instrument no. 6312 for the year of 2013 and same was registered on 28.06.2013 before A.D.S.R. Rajganj Jalpaiguri recorded in Book No. I, Volume No. 20, Pages 1810 to 1822.
7. That being the registered owners in respect of the above mentioned land as acquired by the petitioner no. 1, 2 & 8 their name have been recorded in the Record of Right and their names have been entered into the L.R. Khatian being Khatian nos. 1022, 971, 972 respectively in respect of the their respective landed properties.
8. The O.P. No. 8 has filed an application before the S.D.L. & L.R.O. for conversion of her land and said prayer was allowed by the S.D.L. & L.R.O., Sadar, Jalpaiguri and the O.P. no. 8 obtained the conversion certificate in respect of her said land on 20.04.2022.

- 9.** It is stated that one Sri Kamal Debnath sold a piece of land measuring about 39 kathas out of the R.S. Plot No. 441 & 442 introducing himself as the owner to the principle of the opposite parties no. 2 namely Pioneer Sales Service & Spares Pvt. Ltd., a Private Limited Company incorporated under Companies Act, 1956 herein after referred as 'said company' by virtue of a sale deed being instrument no. 675 of 2022.
- 10.** The petitioner no. 1 found that the said Kamal Debnath with the help of his associates acted fraudulently and for that the petitioner no. 1 lodged a written complaint with the Officer-in-charge Ambari Out Post under New Jalpaiguri Police Station, Dist. Jalpaiguri on 06.03.2022 and stated about all the illegal activities of said Kamal Debnath and his associates including the directors of the said company and on the basis of the said complaint N.J.P. Police Station Case No. 218/2022 under Sections 447/406/420/468/471 and 120B of IPC was started.
- 11.** Thereafter, the petitioner no. 1 , 2 and 8 filed a suit for declaration, injunction and consequential reliefs along with an application under order XXXIX Rule 1 & 2 of C.P.C. against the said company and others before the Ld. Civil Judge, Junior Division at Jalpaiguri being T.S. No. 246/2022 in respect of the their respective landed properties.
- 12.** On 30.05.2022 Ld. Civil Judge, Junior Division, Jalpaiguri was pleased to pass an ex-parte interim injunction directing the petitioner no. 1, 2, 8 and said Kamal Debnath (defendant no. 2 in the said suit) to maintain status quo over the suit property in respect of the nature, character and

possession of the same as on day till 30.06.2022 and said interim order dated 30.05.2022 was extended time to time on the prayer of the petitioner no. 1, 2 and 8.

- 13.** The said company has filed a suit for declaration, injunction and consequential reliefs along with an application under order XXXIX Rule 1 & 2 of C.P.C. against the petitioners herein before the Ld. Civil Judge, Junior Division, Jalpaiguri being T.S. No. 178/2022 in respect of a vacant piece of land measuring about 39 kathas.
- 14.** On 20.04.2022 Ld. Civil Judge, Junior Division, Jalpaiguri was pleased to grant an ex-parte ad-interim injunction in favour of the said company that the petitioners were hereby restrained from causing interference in the peaceful acts of possession of the said company and forbidding the petitioners from encroaching any portion of the suit property forcibly till 20.05.2022.
- 15.** That during pendency of the above noted suit, the opposite party no. 2 being the constituted attorney of the said company has lodged a complaint on 23.04.2022 with the Officer-in-charge, Ambari Out Post under New Jalpaiguri Police Station, District Jalpaiguri and on the basis of the said complaint, New Jalpaiguri Police Station Case No. 377 of 2022 dated 24.04.2022 corresponding to G.R. Case No. 2290 of 2022 under Sections 188, 447, 506, 120B of IPC was started.
- 16.** The office of the B.L. & L.R.O. served a notice dated 06.06.2022 under Section 57 of West Bengal Land Reforms Act, 1955 to the petitioners and

found therein that the petitioners filed an application under Section 144 of Cr.P.C. against the said company being Petition Case No. 377 of 2022 before the Ld. Executive Magistrate at Jalpaiguri and the revenue inspector informed in the said notice dated 06.06.2022 that he was going to make the physical verification of the said land as per the order of Executive Magistrate at Jalpaiguri.

17. **Mr. Sandip Mandal, learned counsel for the petitioners** has submitted that the petitioners had/have never filed any such application before the Executive Magistrate, Jalpaiguri against the said company and same was informed by the petitioners to the District Magistrate, Jalpaiguri and others by serving a lawyer's notice dated 11.06.2022 and requested them not to enter into the private properties of the petitioners.
18. The petitioner no. 1, 2, 7, 8 have filed a writ petition being WPA No. 2078 of 2022 before Hon'ble High Court, Calcutta, Circuit Bench at Jalpaiguri and during the hearing of the said writ application, the B.L. & L.R.O. informed and submitted a report on 14.08.2022 that the opposite party no. 2 lodged the complaint with the New Jalpaiguri Police Station and on the basis of the said complaint, New Jalpaiguri Police Station Case No. 377/2022 was started.
19. On 19.05.2022 the investigating officer A.S.I. Uday Shankar Bhattacharjee of Ambari Out-Post under N.J.P. Police Station in connection with the said P.S. Case No. 377/2022 has made a prayer for taking the assistance of B.L. & L.R.O. Rajganj for physical verification of

the said land in question and the learned Chief Judicial Magistrate, Jalpaiguri was pleased to allow the prayer for passing an order for directing to B.L. & L.R.O. for necessary arrangement for spot verification and demarcation of the land having R.S. Plot No. 441 & 442 corresponding to the L.R. Plot No. 608 & 609 recorded in R.S. Khatian No. 2881 & 2882 corresponding to L.R. Khatian No. 4053, R.S. Sheet No. 10, Mouza Binnaguri, J.L. no. 3, Pargana Baikunthapur, P.S.- N.J.P., Dist. Jalpaiguri for the sake of investigation.

- 20.** After perusing the said report dated 14.08.2022 as submitted before the Hon'ble Court in connection with the WPA No. 2078/2022, the petitioners came to know regarding lodging of the F.I.R. dated 24.04.2022 against the petitioners and the subsequent order dated 19.05.2022 passed by the Ld. Chief Judicial Magistrate, Jalpaiguri in connection N.J.P. P.S. Case No. 377/2022.
- 21.** The petitioners have appeared before the Ld. Civil Judge, Junior Division, Jalpaiguri in connection with T.S. No. 178/2022 as filed by the said company and took appearance through their conducting lawyer and filed written objection and written statement in support of their case.
- 22.** The injunction application filed by the said company in connection with T.S. No. 178/2022 was taken up for hearing on 24.08.2022 and upon hearing Ld. Civil Judge, Junior Division, Jalpaiguri was pleased to pass the order directing that the parties to the suit shall remain status quo

with regard to the nature, character, possession of the suit property as on this day of order till the disposal of the suit.

- 23.** That after the said order dated 24.08.2022 as passed by this Ld. Court, the men and persons of the said company including the opposite party no.2 who is the constituted attorney of the said company have started to accelerate the construction work of permanent nature in and over the suit property by violating the injunction order dated 24.08.2022.
- 24.** On 27.08.2022, the petitioner no.1 tried to lodge a written complaint with the O.C., N.J.P. Police Station but same was refused and the petitioner no. 1 was compelled to lodge a complaint with the Commissioner of Police, Siliguri Police Commissionerate.
- 25.** Having no other alternative, the petitioners have filed an application under Section 151 of C.P.C. seeking police help on 31.08.2022 before the learned Civil Judge, Junior Division, Jalpaiguri in connection with T.S. No. 178/2022 and stated therein that the said company and its associates have been deliberately and intentionally violating the order of the learned Civil Judge, Junior Division, Jalpaiguri as passed on 24.08.2022
- 26.** The learned Civil Judge, Junior Division, Jalpaiguri was then pleased to direct the Officer-in-Charge, New Jalpaiguri Police Station to comply with the order and further directed them to look into the matter, so that the Court's order would not be violated in any manner causing any serious breach of peace.

- 27.** The petitioner no. 1 has obtained the certified copy of the said order and communicated the same to the Officer-in-Charge, New Jalpaiguri Police Station through his lawyer on 05.09.2022.
- 28.** On 06.09.2022 that one employee of the petitioner no. 1 found that the men and agents of the said company including the opposite party no. 2 engaged a huge number of labourers for carrying/continuing the said construction under their supervision by violating the order dated 24.08.2022 passed by the learned Civil Judge, Junior Division at Jalpaiguri in connection with T.S. No. 178/2022 and they all had assaulted and misbehaved with the said staff and for that the petitioner no. 1 lodged a complaint with the Siliguri Police Commissionerate on 08.09.2022.
- 29.** It is thus submitted that the opposite party no. 2 did not come to the Court of law with clean hands and he along with others on behalf of the said company have implicated the petitioners in numerous false litigations before the various forum including the FIR being New Jalpaiguri Police Station Case No. 377/2022 under Sections 188/447/506/120B of I.P.C. against the petitioners.
- 30. The allegations in the First Information Report were inter alia as follows:-**

“that the opposite party no.2 being the constituted attorney holder of the said company stated in the said complaint dated 23.04.2022 that the said company Pioneer Sales Service & Spares Pvt. Ltd. owning all that piece and parcels of land measuring about 39 kathas in R.S. Plot No. 441 and 442 corresponding to L.R. Plot No. 608 and 609, recorded in R.S

Khatian No. 2881 and 2882 corresponding to L.R. Khatian No. 4053 in R.S. Sheet No. 10, Mouza Binnaiguri, J.L. No. 3, Pargana Baikunthapur, it is further stated therein the petitioners are claiming to be the owners of the said land or part thereof and creating disputes and disturbance in respect of peaceful possession and enjoyment of the said land and the petitioner had on number of occasions tried to encroach upon and take forcible possession of the said land and having no other alternative, the said company filed a suit being no. 178 of 2022 pending in the Court of learned Civil Judge, Junior Division, Jalpaiguri and vide order dated 20.04.2022, the learned Court was pleased to pass an order of injunction in the said case against the petitioners restraining them from interfering with the peaceful act of the said company. The copy of the said order was enclosed in the said complaint dated 23.04.2022. It is further alleged that again on 23.04.2022 the petitioners came to the said land and tried to encroach upon and disturbed the peaceful possession and enjoyment of the said company. There was hot altercation over the said dispute and the petitioners thereafter left the spot and while leaving the spot the petitioners threatened the opposite party no. 2 with dire consequences and used abusive languages. The petitioners trying to disturb the peaceful possession of the property and take forcible possession of the said land or part thereof in violation of the order of the learned Court, the act and activities and such threat and abuse by the petitioners have caused severe mental agony and pain to the opposite party no. 2 was in state of panic and also apprehensive of forceful dispossession from his property or part thereof. And in view of the above noted activities of the petitioners, the opposite party no.2 lodged the said complaint on 23.04.2022 and the New Jalpaiguri Police Station Case No. 377/2022 dated 24.04.2022.”

- 31.** That during pendency of the said Title Suit being No. 178/2022, the opposite party no. 2 lodged the complaint with the Officer-in-Charge, New Jalpaiguri Police Station for taking physical possession of the suit property which is the subject matter of the said Civil Suit.
- 32.** The opposite party no. 2 somehow managed the investigating officer of the said New Jalpaiguri Police Station Case No. 377/2022 and said

investigating officer filed an application for an order to direct the concerned B.L. & L.R.O. to verify and demarcate the said suit property which is the subject matter of the said civil suit.

33. It is stated that the Ld. Chief Judicial Magistrate Jalpaiguri has acted beyond his jurisdiction by passing the order dated 19.05.2022 and on the basis of the said order, the opposite party no. 2 took physical possession of the said suit property which is the subject matter of the said civil suit.
34. It is further submitted that the impugned proceedings qua the petitioners is otherwise bad in law and is liable to be set aside and/or quashed.
35. Affidavit of service is on record.
36. **Mr. Aditi Shankar Chakraborty, learned Additional Public Prosecutor** has placed the case diary.
37. **Section 188 of the Indian Penal Code lays down:-**

“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 person 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 trends 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.

Illustration.— An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

Ingredients of offence. — *The essential ingredients of the offence under Section 188 are as follows:*

- (1) There was promulgation of an order;*
- (2) Such promulgation was made by a public servant;*
- (3) Public Servant was legally empowered to make the promulgation;*
- (4) Promulgation directed not to do certain things or to take certain orders in connection with certain property in his possession or management;*
- (5) Accused knew of the promulgation;*
- (6) Accused disobeyed it;*
- (7) Such disobedience caused or tended to cause obstruction, annoyance, injury, or risk of the same to a person lawfully employed, or caused or tendered to cause danger to human life, health or safety or a riot or affray.”*

- 38.** Thus, it is seen that none of the ingredients required to constitute an offence under Section 188 of the Indian Penal Code are found in the petition of the complaint.
- 39.** Considering the nature of dispute between the parties, relating to landed properties, and the Civil Suits pending before the Civil Courts, the following judgment of the Supreme Court is relied upon:-

(a) In M/s. Indian Oil Corporation vs. M/S Neph India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006, the Court considered the following point among the two points decided.

8. The High Court by common judgment dated 23.3.2001 allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the Respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arise for consideration :

(i) Whether existence or avilment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?

(ii) Whether the allegations in the complaint, if accepted on face value, constitute any offence under sections 378, 403, 405, 415 or 425 IPC ?

Re : Point No. (i) :

9. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC

692], *State of Haryana vs. Bhajanlal* [1992 Supp (1) SCC 335], *Rupan Deol Bajaj vs. Kanwar Pal Singh Gill* [1995 (6) SCC 194], *Central Bureau of Investigation v. Duncans Agro Industries Ltd.*, [1996 (5) SCC 591], *State of Bihar vs. Rajendra Agrawalla* [1996 (8) SCC 164], *Rajesh Bajaj v. State NCT of Delhi*, [1999 (3) SCC 259], *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [2000 (3) SCC 269], *Hridaya Ranjan Prasad Verma v. State of Bihar* [2000 (4) SCC 168], *M. Krishnan vs Vijay Kumar* [2001 (8) SCC 645], and *Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque* [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) *A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.*

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) *A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.*

(iii) *The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.*

(iv) *The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts*

which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the

Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

- 40. From the materials on record** including the case diary it is evident that the dispute between the parties is a civil dispute/property dispute (alleged fraudulent transfer of land). Admittedly, civil suits are pending before the Civil Courts. The ingredients required to constitute offenses under Sections 188/447/506/120B of the Indian Penal Code are prima facie not present against the petitioners.
- 41. The revisional application being CRR 230 of 2022 is thus allowed.**
- 42.** The proceeding being G.R. Case No. 2290 of 2022 corresponding to New Jalpaiguri Police Station Case No. 377/2022 dated 24.04.2022 under Sections 188/447/506/120B of the Indian Penal Code, 1860 pending before the learned Chief Judicial Magistrate, Jalpaiguri, **is hereby quashed** in respect of the petitioners herein.
- 43.** No order as to costs.
- 44.** All connected applications, if any, stand disposed of.

- 45.** Interim order, if any, stands vacated.
- 46.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 47.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)