

OD – 11

WPO/1601/2023

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

PAPIYA ROY

-Versus-

THE STATE OF WEST BENGAL AND
ORS.

BEFORE :

THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA

Date : 26th September, 2023

Appearance:

Mr. Debanik Banerjee, Adv.

Mr. Rohan Ojha, Adv.

*Mr. Steven S. Biswas, Adv.
for the petitioner.*

Mr. Anand Farmania, Adv.

*Mr. Manoj Kumar Mondal, Adv.
...for the State/respondent.*

The Court : The report filed by the State is taken on record.

The petitioner seeks quashing of a proceeding under Section 107 of the Code of Criminal Procedure initiated against the petitioner.

Learned counsel for the petitioner contends that the petitioner is a legal practitioner. As such, considering the vocation of the petitioner it is all the more absurd that she

would threaten the complainant/private respondent, in the manner as alleged in the complaint.

It is further pointed out that the enquiry report allegedly filed by the police authorities is a replica of the complaint and, as such, cannot be relied upon.

Learned counsel next argues that one of the co-complainants, who is the uncle of the private respondent/complainant, filed an application and withdrew his complaint. In the said application, the said co-complainant categorically stated that he had not witnessed nor participated in the incident and as such cannot have personal knowledge either in testimony or about the incident and prayed that the case be dropped.

It is argued that the backdrop of the complaint is a pending civil suit between the petitioner and the complainant, which prompted the complainant to seek to malign the petitioner and to use the criminal complaint as a tool in the civil suit.

Learned counsel appearing for the State contends that State is doing the needful in terms of the provisions of law.

Despite service, none appears for the private respondent. An affidavit of service to that effect be kept on record.

It transpires from a perusal of Section 107 of the Code of Criminal Procedure that the said provision is attracted when

there is an allegation of commission of a breach of the peace or disturbing the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity.

As such, there has to be a 'public' ingredient in the entire allegation made against the accused person.

In the present case, a perusal of the complaint indicates that the dispute alleged is entirely between the petitioner and the complainant emanating from a pending civil suit, which has been admitted in the complaint itself. The complainant states that there has been a long standing dispute regarding marriage hall operation. It has also been alleged that the pending civil suit is related to appointment of trustee regarding such property. In such backdrop, it has been alleged that the present petitioner did the mischievous act as alleged in the complaint.

However, a perusal of the entire complaint and the enquiry report does not, anywhere, reveal that there has been any breach of peace or disturbance to public tranquillity or any wrongful act that may occasion a breach of peace of the public in any manner whatsoever.

As such, even without going into the question as to whether the petitioner and the complainant are locked in a civil dispute before a competent civil Court, it is evident

that the present complaint was a fall-out of the said civil dispute.

Moreover, the petitioner has a point in submitting that being a legal practitioner, it is absurd that the petitioner would use such language and openly threaten the complainant, even before the police authorities, knowing full well the legal implication thereof. Viewed in such context, I am of the opinion that no prima face case has even been made out at all to indict the petitioner of the offence as alleged against the petitioner.

Hence, on the grounds as indicated above, WPO/1601/2023 is allowed, thereby quashing the pending proceeding against the petitioner arising out of the complaint of the private respondent under Section 107 of the Code of Criminal Procedure.

There will be no order as to costs.

(SABYASACHI BHATTACHARYYA, J.)

sm.