

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 245 of 2023
(Assigned)**

**Anand Krishna Agarwal & Ors.
-Vs-
The State of West Bengal & Anr.**

For the Petitioners : Mr. Satadru Lahiri
Mr. Safdar Azam

For the Opposite Party No.2 : Mr. Anirban Dutta
Mr. Aditya Roy

For the State : Mr. Avishek Sinha

Heard on : 25.09.2023, 07.03.2024, 14.03.2024,
20.06.2024

Judgment on : 20.09.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioners for quashing of proceeding being C.G.R. Case No.1821/22, arising out of Gariahat Police Station Case No.112 dated 24.06.2022 as well as the charge-sheet being Charge-sheet No.104/2022 dated 06.08.2022, filed under Sections 341/323/504/506/114 of the Indian Penal Code, 1860 and all orders passed in connection with the said proceeding presently pending before the Learned Chief Judicial Magistrate, Alipore, South 24-Parganas.

2. The genesis of the impugned criminal proceeding evolved on an alleged dispute pertaining to possession of respective parties over one shop room situated at the premises being 26/3B, Hindusthan Park, Kolkata-700029, which had been the subject matter of several proceedings/cases instituted and pending between the parties.
3. The opposite party No. 1 was the prosecutor herein and the opposite party No. 2 was the person who set the criminal law into motion against the petitioners.
4. The petitioner No. 1 and 3 are the cousins and petitioner No. 2 is the uncle of the opposite party No. 2.
5. A complaint lodged by the opposite party No. 2 at the Officer-in-Charge, Gariahat Police Station initiated the instant registered case being Gariahat Police Station Case No.112 dated 24.06.2022 under Sections 341/324/504/506/114 of the Indian Penal Code, 1860.
6. The manifold incidents leading to the manifestation of the disputes are cited as follows:-
 - a) The petitioner No. 2 along with his brothers namely Arun Agarwal (since deceased) and Pradeep Agarwal i.e. father of the opposite party No. 2 were joint owners in respect of a shop room located on the ground floor at premises no. 26/3B, Hindusthan Park, Kolkata-700029.
 - b) Initially, one Raj Rani Dhawan was inducted as a tenant in respect of said shop room. Subsequently, after his demise, one Ashok Dhawan and others, being sons of said Raj Rani Dhawan occupied

the said shop room without the consent of the petitioner No. 2 and other landlords and continued his business therefrom.

- c) While in possession of the said shop room they tried to transfer the said shop room to different promoters of the surrounding area, without the consent of the landlords. Being aware of such endeavours, petitioner No. 2 contacted said Ashok Dhawan to explain his lack of authority to transfer the said shop room to any third party without the consent of the landlords. As Ashok Dhawan and others were obdurate and reluctant, the petitioner No. 2 filed applications under Section 144(2) of the Code of Criminal Procedure, 1973 and Section 107 of the Code of Criminal Procedure, 1973, being MP Case No.3658/2017 and MP Case No.3593/2017 respectively before the Learned Executive Magistrate, 1st Court, Alipore, which were subsequently discontinued.
- d) Subsequently, said Ashok Dhawan and others surrendered the possession of the said shop room in favour of the petitioner No. 2 and his younger brother, Arun Agarwal (since deceased) i.e. father of the petitioner No. 3 through execution of necessary documents.
- e) Thereafter, father of the opposite party No. 2 namely, Pradeep Agarwal preferred a Title Suit being Title Suit No.729 of 2018 in respect of the said shop room, against said Ashok Dhawan as well as the petitioner No. 2, which still pending for adjudication before the Learned 3rd Additional Civil Judge (Junior Division), Alipore, South 24-Parganas.

- f) On 12th June, 2022 the petitioners were astounded to find padlock on the door of the aforesaid shop room. Petitioner No. 2 learnt that opposite party No. 2 had applied the padlock and asked him to remove the same. The opposite party No. 2 and his associate miscreants abused the petitioners offensively. Opposite party No. 2 desperately restrained the petitioners to open the said shop room for cleaning himself and his father also to be the joint owners, therefore the petitioners were debarred to touch the said shop room without their permission.
- g) Petitioner No. 2 tried to explain the erstwhile occupiers of the said shop room had already surrendered the same to the petitioner No. 2 in 2018. The infuriated opposite party No. 2 refused to accept such surrender and with the help of local miscreants, threatened the petitioners with dire consequences.
- h) Consequently on 15th June, 2022, the petitioner No. 2 lodged a written complaint at the Officer-in-Charge, Gariahat Police Station against the said incident.
- i) As a counterblast on 24th June, 2022, the opposite party No. 2 lodged a complaint without explaining the cause of delay.
- j) On 26th June, 2022, the opposite party No. 2 and his father assaulted the petitioner No. 1 mercilessly. The petitioner No. 2 preferred an application under Section 144(2) of the Code of Criminal Procedure, 1973, being MP Case No.1962 of 2022 as well as application under Section 107 of the Code of Criminal Procedure,

1973, being MP Case No.1960 of 2022, before the Learned Executive Magistrate, 1st Court, Alipore.

- k) On 2nd July, 2022, the petitioner No. 1 lodged a specific complaint at the Officer-in-Charge, Gariahat Police Station against opposite party No. 2 and another. Pursuant to such complaint on 10th July, 2022, Gariahat Police Station Case No.133 dated 10.07.2022 under Sections 341/323/504/506/34 of the Indian Penal Code, 1860 was registered.
- l) As a counterblast to the said proceedings, father of the opposite party No. 2 also preferred an application under Section 144(2), being MP Case No.2009 of 2022 against the petitioners.
- m) On 22nd July, 2022 the opposite party No. 2 lodged another complaint against the petitioner No. 1 and 3 for alleged commission of offences punishable under Sections 341/504/506/114 of the Indian Penal Code, 1860.
- n) The opposite party No. 2 and his father on 27th July, 2022 wrongfully restrained the petitioner No. 2 and his family and threatened them with dire consequences. The petitioner No. 2 again lodged a complaint at the Police Station as well as before the Court of the Learned Chief Judicial Magistrate, Alipore, under Section 156(3) of the Code of Criminal Procedure, 1973. Subsequently, the said application was converted into a complaint case under Section 200 of the Code of Criminal Procedure, 1973, being Complaint Case

No.2296 of 2022 pending before the Learned Judicial Magistrate, 7th Court, Alipore, for adjudication.

o) Besides the aforementioned proceedings pending between the parties, there were several proceedings pending between the parties relating to different properties viz. Title Suit No. 248 of 2015, Title Suit No. 236 of 2016, Title Suit No. 208 of 2016, Misc. Case No. 45 of 2017, Title Suit No. 1002 of 2017, Title Suit No. 960 of 2022.

7. Upon registration of the instant criminal proceedings, the petitioners were served with a notice under Section 41A of the Code of Criminal Procedure, 1973. The petitioners had complied with the same.
8. The investigating agency submitted charge-sheet vide Charge-sheet No.104/2022 dated 06.08.2022 against the petitioners for commission of the alleged offences punishable under Sections 341/323/504/506/114 of the Indian Penal Code, 1860 before the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas.
9. The Learned Magistrate took cognizance of the alleged offences.
10. Learned Advocate for the petitioners submitted a comprehensive list of events viz.:-

The petitioner No. 2, father of the complainant/opposite party and father of the petitioner No. 3 were joint owners of the shop room at premises no. 26/3B, Hindusthan Park, Kolkata-700029.

One Raj Rani Dhawan was tenant of said shop room. After his demise, Ashok Dhawan and others, forcefully occupied the shop room and continued the business therefrom.

2017:- While in possession of the said shop room tenants tried to transfer the said shop room to third party. Petitioner No. 2 preferred proceedings before the Learned Executive Magistrate, 1st Court, Alipore, which was subsequently dropped.

2018:- Subsequently, tenants surrendered their possession owing to dispute said shop room is under lock and key. Father of the complainant/opposite party assailing the surrender of tenancy preferred a Title Suit being T.S. No. 729 of 2018 against the tenants with specific relief for restraining them from subletting.

16.05.2018:- Civil Judge (Jr. Division), 3rd Court, Alipore passed an order restraining the tenants, i.e., the defendants from subletting the shops.

12.06.2022:- The petitioners attempted to open the shop room for cleaning complainant/opposite party and his associates abused the petitioners in filthy languages. The complainant/opposite party in a desperate manner restrained the Petitioners. There had been hot altercation.

13.06.2022:- Father of the complainant/opposite party lodged complaint with Officer-in-Charge, Gariahat Police Station which did not disclose any offence.

15.06.2022:- The petitioner No. 2 lodged complaint with the Officer-in-Charge, Gariahat Police Station.

24.06.2022:- Complainant/Opposite Party lodged an improved version of 13th June, 2022 with Officer-in-Charge, Gariahat Police Station, based on which impugned case had been registered.

26.06.2022:- Complainant/Opposite Party and his father assaulted the petitioner No. 1 and caused severe injury. Petitioner No. 2 preferred an application under Section 144(2) as well as under Section 107 of Code of Criminal Procedure, 1973, which was pending before the Learned Executive Magistrate, 1st Court, Alipore

02.07.2022:- Petitioner No. 1 lodged a complaint based on which a specific case being Gariahat Police Station Case No.133 dated 10.07.2022 had been registered against the complainant/opposite party and another under Section 341/323/504/ 506/34 of the Indian Penal Code, 1860.

July, 2022:- In counterblast to the said proceedings, father of the complainant/opposite party preferred MP Case No. 2009 of 2022 under Section 144(2), which was pending.

25.07.2022:- Police report submitted in MP 190/2022 representing incident of 12.06.2022 as civil dispute.

27.07.2022:- Complainant/Opposite Party and his father wrongfully restrained the petitioner No. 2 and his family and threatened them with dire consequences. Over the incident the petitioner No. 2 preferred an application under Section 156(3) of the Code of Criminal Procedure, 1973, which was subsequently converted into complaint under Section 200 of the Code of Criminal Procedure,

1973, being Complaint Case No. 2296 of 2022 pending before the Learned Judicial Magistrate, 7th Court, Alipore.

28.07.2022:- Police report filed in MP Case No. 2009 of 2022 representing the tenor of the case as civil dispute and observation regarding alleged tension was contrary to earlier report submitted on 25.07.2022.

06.08.2022:- Charge-sheet was submitted.

25.09.2022:- During enquiry under Section 145 Code of Criminal Procedure, 1973, specific observation by Officer-in-Charge, Gariahat Police Station that enquiry revealed civil dispute regarding the disputed shop room amongst.....”

27.06.2023:- Supplementary Charge-sheet was submitted.

11. It was further submitted that:-

- i. The parties were co-owners of the property which was ancestral one.
- ii. There had been long pending civil disputes and parties were envious to each other.
- iii. Relief prayed in Civil Suit pertained to possession over shop-room and issues originated therefrom.
- iv. The complainant/opposite party suppressed following facts while lodging complaint:
- v. Earlier on 13th June, 2022 complaint had been lodged over self-same incident which remained restricted to abuse and no case had been registered based on such complaint.

- vi. Civil Courts order in Title Suit injuncted the erstwhile tenants from subletting the shop and has no manner of application against the petitioners.
- vii. The allegation of assaulting with 'thick chain' had been subsequently introduced just to change the color of representation and to mislead the administration for registering a case for investigation.
- viii. Respective police reports submitted in connection with numerous proceedings pending inter-se parties unequivocally indicated the origin of the disputes were civil in nature, related to possession of ancestral property for which civil suit was pending and unnecessarily criminal law of the land invoked.
- ix. During investigation, Investigating Agency could not place on record any contemporaneous material e.g. medical document(s), seizure of chain or any offending weapon or means which diluted the improvement, suppression and/or misrepresentation made while lodging First Information Report. It took away the scope of registering any case for investigation based on the improved representation and negated possibility of proceeding with investigation.
- x. Once during investigation, improvement, suppression, misrepresentation and extreme malice of the complainant/opposite party was exposed, the Investigating Agency had no scope to prima-facie held the petitioners liable for the alleged offence accepting the

tainted/false version of the complainant/opposite party and his associates as sacrosanct.

- xi. The allegations levelled in the First Information Report, charge-sheet and materials collected during investigation and permitted scope of appreciation in the 'attending circumstances' did not make out any case for wrongful restraining. No case under Section 341 of Indian Penal Code, 1860 was made out. The allegation of assault by using dangerous weapon and thereby causing hurt had been negated due to non-availability of any contemporaneous material and sheer dichotomous representation in complaint dated 13th June, 2022 and 24th June, 2022. So, charge under Section 324 of Indian Penal Code, 1860 was misplaced. Prosecution failed to bring on record any material that substantiates essential factual trappings of holding that alleged abuse was sufficient to incite the complainant/opposite party to commit an offence or breach the public peace or amounted to intimidating as defined in Section 503 of Indian Penal Code, 1860.

- xii. The complainant/opposite party was in habit of misleading/misrepresenting before administrative authorities and Court of Law. He never approached the Court of law in clean hands.

12. It was concluded that in view of the innate susceptibilities, both legal and factual, as pointed out above, it was needless to mention that no case had been made out against the petitioners, for which they could be asked to face the ordeal of criminal prosecution. In fact, the instant criminal prosecution

was sheer abuse of process of law and as such it was humbly prayed that the entire proceedings being C.G.R. Case No.1821/22, arising out of Gariahat Police Station Case No.112 dated 24.06.2022, under Sections 341/323/504/506/114 of the Indian Penal Code, 1860, presently pending before the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas against the petitioners be quashed.

13. Learned Advocate for the opposite party No.2 too submitted a list of events as follows:-

30.10.2010:- Family settlement was executed between the parties, where the father of the opposite party No.2 became 1/3rd share of the shop premises situated at premises No. 26/3B, Hindustan Park, Ground Floor, Police Station Gariahat, Kolkata-700029.

16.05.2018:- Apprehending the petitioners' illegal acts to take possession of the shop room from the tenant namely Ashoke Kumar Dhawan in a conspired manner, the father of the opposite party No. 2 had preferred a Title Suit being T.S. 729 of 2018 pending before the Learned 3rd Additional Civil Judge (Junior Division) at Alipore. The Learned Judge was also pleased to pass an order directing the tenant Ashoke Kumar Dhawan not to handover the possession to any of the co-owners and further no third party interests were to be created by the tenant. Despite the orders of the Civil Court, the petitioners had conspired with the tenant namely Ashoke Dhawan to take possession of the said shop room whereby the petitioners had paid a sum of Rs.79 Lakhs in cash to the tenant Ashoke Dhawan.

12.06.2022:- Petitioner No. 1, 2 and 3 had tried to break open the said shop room and illegally took possession of the shop room. On protest by the opposite party No. 2, the petitioners had assaulted the opposite party No.2 along with the assistance of local goons and upon local people gathering the petitioners had left the said premises.

13.06.2022:- The opposite party No. 2 had preferred a complaint on the said incidents which occurred on 12.06.2022 before the Gariahat Police Station.

24.06.2022:- Opposite party No. 2 had preferred another complaint based on the same set of allegations as no action was taken by the Gariahat Police Station. The same was registered as Gariahat Police Station Case No. 112/2022.

26.06.2022:- As a protest to the registration of Gariahat Police Station Case No. 112/2022, the petitioners had tried to assault the opposite party No.2 and the father of the opposite party No. 2 at the residency of the opposite party No. 2.

30.06.2022:- Father of the opposite party No. 2 had preferred an application under Section 144(2) of the Code of Criminal Procedure, 1973 before the 1st Executive Magistrate at Alipore against the illegal attempts of the petitioners to take possession of the shop room.

16.07.2022:- The investigating agency had sent a notice under Section 41A of the Code of Criminal Procedure, 1973 to the father of the opposite party No. 2 and the opposite party No. 2, in connection

with Gariahat Police Station Case No.133 of 2022 under Sections 341/323/504/506/34 of the Indian Penal Code, 1860.

19.07.2022:- The father of the opposite party No. 2 and the opposite party No. 2 had appeared before the Learned Magistrate and were granted bail in connection with Gariahat Police Station Case No.133 of 2022.

22.07.2022:- Opposite party No. 2 had preferred a written complaint on the said incident which occurred on 26.06.2022. The said investigating agency was pleased to register the written complaint as Gariahat Police Station Case No.143 of 2022.

06.08.2022:- Charge-sheet No.104/2022 under Sections 341/323/504/506/114 of the Indian Penal Code, 1860 in connection with Gariahat Police Station Case No.112/2022 was filed by the investigating agency.

30.08.2022:- The Learned 1st Executive Magistrate in connection with M.P. Case No.2009 of 2022 preferred by the father of the opposite party No. 2 was pleased to pass an order after perusing the police report dated 30.08.2022 converting the proceedings under Section 144(2) of the Code of Criminal Procedure, 1973 to Section 145 of the Code of Criminal Procedure, 1973 and further directed the parties to maintain a status quo.

22.12.2022:- Copies were supplied under Section 207 of the Code of Criminal Procedure, 1973 to the father of the opposite party No.2 and the opposite party No. 2 in connection with Gariahat Police Station

Case No.133 of 2022 under Sections 341/323/504/506/34 of the Indian Penal Code, 1860.

07.01.2023:- The opposite party No. 2 had preferred an application under Section 173(8) of the Code of Criminal Procedure, 1973 praying for further investigation as the investigating agency had not seized the CCTV footage of the incident occurred on 12.06.2022, before the Learned Chief Judicial Magistrate at Alipore. The Learned Magistrate was pleased to allow the prayer.

20.01.2023:- CRR 245 of 2023 was filed by the petitioners challenging the proceedings in connection with Gariahat Police Station Case No.112 dated 24.06.2022 as well as the charge-sheet being Charge-sheet No.104/2022 dated 06.08.2022, as submitted therein under Sections 341/323/504/506/114 of the Indian Penal Code, 1860.

02.02.2023:- The Learned 1st Executive Magistrate at Alipore was pleased to pass an order making the order passed under Section 145 of the Code of Criminal Procedure, 1973 absolute.

27.06.2023:- The investigating agency had filed a supplementary charge-sheet being no.79/23 under Sections 341/323/504/506/114 of the Indian Penal Code, 1860, the investigating agency had seized the CCTV footage of the incident which occurred on 12.06.2022.

07.10.2024:- In connection with Gariahat Police Station Case No.133 of 2022 under Sections 341/323/504/506/34 of the Indian Penal Code, 1860 in which the father of the opposite party No. 2 and

the opposite party No. 2 was falsely implicated and said proceedings was fixed for framing of charges.

14. The Learned Advocate for the State placed the entire case record before this Court emphasizing the chain of circumstances and a copy of the video-graphed CCTV footage obtained by the police during the course of re-investigation, which necessitated the process of trial to unearth the exactitude.
15. Apparently the petitioners and the opposite party no. 2 being related to each other through family ties have instituted multiple number of cases both civil and criminal against each other over a considerable period of time concerning disputes, differences and rivalry over certain properties including the one situated at a prime location, i.e. Gariahat, Kolkata. The animosity and obstinacy between the warring parties are reflected through the accusations against each other concerning the possession of the disputed property exposing reluctance and unrelenting attitude on the part of the disputants to resolve the family dispute through mediation.
16. Presumably the dispute between the parties is civil in nature which has been disguised with criminal overtures. However since the Investigating Officer in discharging the direction for reinvestigation vide Order dated 24.04.2023 passed by the Learned Magistrate recorded the statement of the independent witnesses and seized the CCTV footage of the incident from the complainant whereby the petitioners assaulted the de facto complainant by a thick iron chain and broke open the padlock of a closed shop at the disputed address.

17. The trial of the instant case is necessary to unravel the truthfulness of the alleged incident.
18. The institution of cases against each other concerning a property which has been a subject matter of a civil dispute and seeking the involvement of the police authorities at every instance causing machinery of police administration to act on each and every complaint over self-same issues and subsequent recourse to Court is not only detrimental to the functioning of the police administration, it is equally burdensome on the Court to deal with such instances.
19. The petitioners are to agitate their grievance before the Trial Court to assist the same to conclusively determine the dispute in question. The Learned Trial Court is to determine the veracity of the complaint as well as the charge-sheet independently irrespective of the views of this Court as opined above. The opposite party no. 2/de facto complainant is to similarly assist the Court without causing any hindrance at the time of trial whatsoever.
20. In view of the above, the instant criminal revisional application being CRR 245 of 2023 is accordingly dismissed.
21. There is no order to costs.
22. Department is directed to return the case diary forthwith.
23. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
24. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)