

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

PRESENT:

The Hon'ble **JUSTICE UDAY KUMAR**

C.R.R 310 of 2020

**Sukumar Roy Rana & Ors.
-Vs-
The State of West Bengal & Anr.**

For the Petitioners: Mr. Prabir Kumar Mitra, Adv.,
 Mr. Pinak Kumar Mitra, Adv.,
 Mr. Soumon Nanda, Adv.

For the State/O. P No.1: Mrs. Debjani Sahu, Adv.

Hearing concluded on: 23.02.2024.

Judgment on: 17.05.2024.

UDAY KUMAR, J.: -

1. The instant Criminal Revision is filed under Section 401 read with section 482 of the Code of Criminal Procedure, 1973, (hereinafter referred to as 'Cr.P.C.') for quashing of the charge-sheet being No.349 of 2019 filed on 28.07.2019 under Sections 447/448/323/354/506/ 34 Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'), to the Ld. Chief Judicial Magistrate, Purba Medinipur at Tamluk (hereinafter referred to as 'C.J.M'), in connection with Tamluk Police Case number 224 of 2019 dated 18.04.2019, corresponding to G.R. Case No. 806 of

2019, and quashing of the order of cognizance of the offences taken by Ld. Chief Judicial Magistrate, Purba Medinipur on 26.11.2019, on the ground that they have been falsely implicated in this case out of personal vengeance and the charge-sheet has been filed after perfunctory investigation.

2. Brief facts necessary for deciding this criminal revision are that both parties are neighbours and they were at loggerheads on the issue of title and possession over “Ka/1” scheduled property, which augmented an acrimonious relationship between them. As they were antagonistic to each other, the surroundings became charged.
3. Anticipating serious threat to the peace and tranquility in the locality, the petitioners Sukumar Ray Rana and others filed a petition under Section 144(2) of Cr.P.C to the Court of Ld. Sub-divisional Magistrate 1st Court, Tamluk, praying for an order to prevent Badal Chandra Jana and others from constructing permanent structure over plot number 433, J.L. No. 256 Khatian No. 108, 506, 988, 495 and 1057 of Mouza- Kalikapur under Tamluk police station. M.P. Case No. 108 of 2019 under Section 144(2) of Cr.P.C was started against the other parties Badal Chandra Jana and others, thereupon.
4. In the existing facts and circumstances the Ld. Executive Magistrate, Tamluk observed an apprehension of breach in peace and tranquility prevailing in the locality. He also observed that 0.1 decimal of land under Daag No. 433, Mouza- Kalikapur J.L. No. 256 was under active possession of the petitioners. Therefore, he directed the O.C Tamluk

police station to maintain peace and tranquility in the area and submit report and also directed the B.L & L.R.O. Tamluk to submit a detailed report of the suit land, vide his order dated 01.03.2019.

5. In addition to that, petitioner instituted a Title Suit 71 of 2019 on 25.03.2019, for

- a. declaration of title of petitioners over the scheduled land under Daag No. 433, Mouza- Kalikapur J.L. No. 256, and
- b. the permanent injunction against defendants Badal Chandra Jana, in respect of “Ka/1” scheduled property.

This Suit is pending before the learned Civil Judge (Jr. Div.) 1st Court, Tamluk.

6. The specific case of petitioners was that the scheduled property originally belonged to one Govinda Rana. On his demise the shares in the property equally devolved upon his four sons namely (i) Radhanath, (ii) Ramprasad (iii) Batakrishna and (iv) Krishna Prasad. After demise of Batakrishna, his share was further devolved on his son Bijay Krishna. Accordingly, the names of Radhanath, Ram Prasad, Bijoy Krishna and Krishna Prasad were entered into the LR & ROR.

7. Subsequently, after demise of Radhanath, Ram Prasad and Krishna Prasad, their shares in the land, including the suit lands under A, B, C and C/1 strip, had devolved upon the plaintiffs/ petitioners to the extent of their respective shares, determinable as per the applicable law of inheritance. As such, they acquired right, title and interest on the scheduled property.

8. The said right, title and interest of petitioners on the A, B, C and C/1 strip of lands were clouded by the opposite parties. They claimed that scheduled lands were a part and parcel of their plots being number 430, 429 and 432, while the Petitioners claimed it to be a part and parcel of their plot number 428, 433 and 431.
9. To resolve the dispute, petitioner prayed for declaration of his right, title, interest on the scheduled land, and to restrict the other parties permanently from causing disturbance in their peaceful possession and enjoyment of the suit property, and to restrain the defendant from raising further construction over the 'ka/1' schedule property i.e., suit land, and from changing its nature and character, in the Title Suit 71 of 2019 dated 25.03.2019.
10. Learned Civil Judge (Junior Division), 1st Court, disposed of the said injunction petition on 26th March 2019, by allowing the prayer for ad-interim injunction, whereby both parties were restrained from changing the nature and character of the Ka/1 schedule property till 24.04.2019.
11. Thereafter, O.P. 2 Badal Chandra Jana of Village- Kalikapur Tamluk filed a written complaint under Section 156(3) of Cr.P.C, in the court of Ld. Chief Judicial Magistrate, Purba Medinipur at Tamluk, on 10th April 2019, alleging therein that, Sukumar Roy Rana along with 10 others forcefully entered into his premises at around 8.00 hours on 1st April, 2019 and they abused the complainant Badal Chandra Jana and his family and assaulted him when he protested against them. They

also outraged the modesty of his wife, stole his household utensils and one golden chain of his wife, damaged his household articles, during that course. The incident allegedly took place after 5 days of the passing of order of ad-interim injunction.

12. Learned Chief Judicial Magistrate Purba Medinipur forwarded the said complaint to the Inspector-in-charge of Tamluk Police Station on 18th April, 2019 at 10.25 am, upon which Tamluk Police Case number 224 of 2019 dated 18.04.2019, under Sections 447/448/323/354/379/506/34 of the IPC was started against Sukumar Roy and 10 others, and the same was endorsed to ASI Sankar Mandal for investigation. After Investigation I.O submitted charge-sheet vide number 349 of 2019 dated 28th July 2019 under Sections 447/448/323/354/506/34 of IPC against the accused persons, to the court of Ld. Chief Judicial Magistrate, Purba Medinipur, upon which Ld. Chief Judicial Magistrate, Purba Medinipur had taken cognizance of the offence under Sections 447/448/323/354/506/34 of I.P.C on 26.11.2019 and corresponding GR Case No. 806 of 2019 was started against petitioners under the same Sections. This charge-sheet and the order of cognizance is the subject matter of this revisional application.
13. Mr. Prabir Kumar Mitra, Ld. Counsel for petitioners contends that this criminal proceeding is not sustainable as the allegations are false, and have been labelled intentionally to harass the petitioners, bringing false judicial proceeding against the petitioners, due to personal grudge and enmity which amounts to the abuse of process of court.

14. He further submitted that petitioner No.10 Bijay Krishna Rana has been arrayed as an accused in this case, while his Air Ticket shows that he returned to Kolkata from Jeddah on 26th January, 2019 and left for Jeddah on 10th March, 2019, while occurrence was alleged to happened on 1st April, 2019; which clearly shows that he was not available in India at the time of occurrence, despite that he was charge-sheeted as an accused along with the petitioners, in most mechanical manner. Such defect created doubt as to the reliability of the chargesheet. So, he prayed for quashing of the order of cognizance taken by Ld. Chief Judicial Magistrate on a stale charge-sheet submitted by I.O on 28.07.2019.
15. Ld. Counsel further contended that in the background of longstanding feud between the both sides, O.P. 2 utilized the judicial proceedings and judicial forum as a tool to harass the other party for keeping them under pressure by bringing this criminal prosecution against the petitioners. It was also submitted that the instant complaint under Section 156 (3) of Cr.P.C was filed without filing any complaint under Section 154 (1) and 154 (3) of the Cr.P.C which was the necessary requirement to be complied first, as held by the Hon'ble Supreme Court in ***Babu Venkatesh & Ors. vs. State of Karnataka*** reported in ***(2022) 5 SCC 639*** and in ***Priyanka Srivastava & Anr. vs. State of Uttar Pradesh*** reported in ***(2015) 6 SCC 287***.
16. He also submitted that the complaint under Section 156(3) of the Cr.P.C was filed after 10 days of the date of occurrence of alleged

incident. Delay in filing of complaint cast doubt in the prosecution's story. So, the law always promotes prompt prosecution against the accused to prevent the element of embellishment, exaggeration and after thoughts. Therefore, he prayed for quashing of this charge-sheet and cognizance order.

17. On the contrary, Mrs. Debjani Sahu, learned Counsel for the State submits there are sufficient materials available on C.D to show the involvement of accused Bijay Krishna Rana in the alleged offence. The witnesses Padma Rani Jana, Manjusri Jana, Sunirmal Jana, Sukhdev Jana, Sukumal Jana, explicitly stated his name in their statements recorded under Section 161 Cr.P.C.

18. Ld. Counsel has also challenged the authenticity of the Air Tickets submitted by petitioners, because mere submission of air tickets could not be a sufficient proof of genuine travel of a person. A genuine presumption of actual travel can only be drawn on the basis of the board-in pass. Moreover, he submits that a question of admissibility of any document is a triable in nature. So, she prayed for its dismissal.

19. Indubitably, the petitioners prayed for the quashing of the charge-sheet number 349 of 2019 submitted on 28th July 2019 to the court of Ld. Chief Judicial Magistrate, Purba Medinipur and quashing of the order of cognizance of the offences taken by ld. Chief Judicial Magistrate Purba Medinipur on 26.11.2019.

20. Section 482 of the Cr.P.C provides inherent power to the High Court to quash any criminal proceedings only to give effect to an order under

the Code, to prevent abuse of the process of court, and to otherwise secure the ends of justice, so that the real and substantial justice (ex debito justitiae) can be done. This power of High Court is based on the principle of “quando lex aliquid alicui, concedit, concedere videtur id sine qua res ipsa esse non potest”. Though the power is wide, but has to be exercised sparingly, carefully and with caution. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In such cases, court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When a complaint is sought to be quashed, the court may examine the question of fact to look into the matter whether any offence is made out by the complaint even if the allegations are accepted in toto.

21. Moreover, Section 482 of Cr.P.C is an instrument by which the court ensures that no frivolous or unnecessary complaint would bother the people and that ends of justice are met, it also ensures that the process is not misused for fulfilling one's ulterior motive and no one is becoming the victim of the procedure. While deciding on such matters, court looks into the gravity of the case and then accordingly decides whether any proceeding should be quashed or not.

22. Some instances have been explained by the Hon'ble Supreme Court in the case of ***Nagawwa vs. V.S. Konjalgi*** reported in **(1976) 3 SCC**

736, under which the order of a Magistrate issuing process against the accused can be quashed or set aside:

- (1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
- (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
- (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

23. This provision reinstates that justice is paramount and a litigant shall not indulge in venting out its animosity or vindictiveness through a formal legal procedure against a person, who may actually be innocent. At the same time the Courts should be cautious and with very great care consider all circumstances of the case before quashing a complaint or charge sheet.

24. In this respect, Hon'ble Supreme Court illuminated the scope of section 482 Cr.P.C. in paragraph 102 of **State of Haryana V. Bhajan Lal** reported in **1992 Supp (1) SCC 335**, wherein it has been laid down that: -

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercising of the extraordinary power under article 226 or the inherent powers under section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

- 1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prime facie constitute any offence or make out a case against the accused;*
- 2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police*

officers under section 156(1) of the Code except under an order of a Magistrate within the purview of section 155(2) of the Code;

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against accused;

4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under section 155(2) of the Code;

5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party;

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously

instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

25. For quashing of any criminal proceedings, the ground must come under any of the categories enumerated in the **Bhajan Lal's** case (supra), but none of the category is satisfied herein. However, the other ground for quashing of this proceedings, as raised by the petitioners, are factual in nature, which can only be decided by the trial court on proper evidence. Plea of alibi of Bijoy Krishna Rana is also depends on the proof or disproof of facts. Such question cannot be decided by a revisional court merely on the statement of parties made in petition.
26. Indeed, trace of land dispute first appears from the order of Ld. Sub-divisional Magistrate 1st Court, Tamluk, passed on 01.03.2019 in connection with the M.P case no.108/2019 filed under Section 144(2) of the Cr.P.C. Subsequently, on 25th March 2019 petitioner instituted a Title Suit No.71 of 2019 for declaration of his title over the suit land along with an application for ad-interim injunction, upon which Learned Civil Judge 2nd Court, Tamluk, passed an order to restrain both the parties from changing the nature and character of the suit land. The said order was passed on 26th March, 2019. O.P.2 got offended by this order.
27. In the background of hostility between the parties, O.P.2 Badal Chandra Jana brought a criminal prosecution against the petitioner by filing a written complaint filed under Section 156 (3) of the Cr.P.C. to

the court of learned Chief Judicial Magistrate, Purba Medinipur at Tamluk on 10.04.2019, upon which Tamluk Police Case No. 224 of 2019 dated 18.04.2019, under Sections 447/448/323/354/379/506/34 of the IPC was started.

28. On the basis of the statements of Padma Rani Jana, Manju Sree Jana and Suniramal Jana, Sukhdev Jana, Sukumar Roy, recorded under Section 161 of Cr.P.C., and consultation of OPD Patient card of Badal Chandra Jana dated 01st April 2019 issued by District Hospital, Purba Medinipur at Tamluk, where he visited for the treatment of his injuries as an outdoor patient, chargesheet was filed against the petitioners including Bijay Krishna Rana by the Investigating Officer, whereupon Ld. C.J.M. Purba Medinipur at Tamluk has taken cognizance of the offence under Sections 447/448/323/354/506/ 34 of I.P.C on 26.11.2019.

29. In any event, I do not find any irregularities or abuse of the process of court either in filing of charge sheet or in taking cognizance of the offences by Ld. CJM vide impugned order dated 26th November 2019.

30. In respect of other irregularities as to the complaint under Section 156 (3) was filed without exhausting the provisions of Section 154 (1) or (3), Hon'ble Supreme Court has held in **Babu Venkatesh & Ors. vs. State of Karnataka** reported in **(2022) 5 SCC 639** that an application under Section 154 (1) and 154 (3) of the Cr.P.C is necessary to file prior to filing of a petition under Section 156 (3) of Cr.P.C.

31. Apparently, the aforesaid requirement of filing of an application under Section 154 (1) and 154 (3) of the Cr.P.C prior to filing of this criminal proceeding under Section 156 (3) of the Cr.P.C has not been complied in this case. O.P.2 filed this application directly to the Court of Ld. C.J.M, Tamluk, will be detrimental to the petitioner for invoking the authority of the Magistrate under Section 156(3) of Cr.P.C.
32. However, these are the matters relating to the procedural defects, which can only be decided on the basis of appreciation of the evidences adduced by the parties during Trial, by the court of first instance. Such question cannot be determined by the revisional court merely on the basis of the statement of parties.
33. Other similar factual issues of delayed filing of complaint case are also relating to procedural defects, which are triable in nature, shall be determined on appreciation of evidences.
34. Moreover, pending civil cases are not a bar to bring prosecution against a party to the suit. There are no such immunities given to the parties.
35. In view of the aforesaid discussions, I find that this revisional application is deserved to be dismissed as is devoid of merits, because the authorities have acted lawfully and the grounds sought for quashing of the impugned orders, are triable in nature.
36. Therefore, I find that intervention of this Court is not required, as no irregularity, illegality, impropriety or abuse of process of Court is prima

facie appears from the said charge-sheet and/or from the said order of taking cognizance of the offences by the learned CJM.

37. Accordingly, the instant revision is dismissed. However, Ld. Trial Judge is directed to conclude its trial preferably within six months from the date of receiving of this order.

38. There is no order as to the cost.

39. Application, if any, stands dismissed accordingly.

40. Interim orders, if any, shall stand vacated.

41. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)