

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 421 of 2022
Sri Ashok Kumar Sarkar @ Asok Kumar Sarkar
Vs.
The State of West Bengal

For the petitioner : Mr. Debasis Kar

For the State : Mr. Debasish Roy
Mr. Imran Ali
Ms. Debjani Sahu

Heard on : 26.09.2024

Judgement on : 01.10.2024

Ajoy Kumar Mukherjee, J.

1. This application for quashing has been preferred challenging the impugned proceeding against petitioner herein, being G.R. Case no. 439 of 2020 arising out of Ketugram Police Station case no. 217 of 2020 dated 25.06.2020 under section 448/409/354/34 of the Indian Penal Code, presently pending before learned Additional Chief Judicial Magistrate, Katwa.

2. In the written complaint defacto complainant alleged that on 30.05.2020 at about 10.00a.m when she was engaged in households work, all the accused persons came in front of complainant's house and started abusing her with filthy language and when she raised her protest, all of them trespassed into her house and assaulted her and also outraged her modesty. The local people assembled at the spot and seeing them the petitioner along with other accused persons fled away.

3. The petitioner obtained anticipatory bail from learned sessions judge Purba Burdwan. The investigating authority after completion of investigation have submitted charge sheet against all the five FIR named accused persons including the present petitioner.

4. Mr. Kar learned counsel appearing on behalf of the petitioner submits that present case is nothing but counter blast of the case in which the petitioner herein is the complainant and the opposite party no.2 herein/complainant along with others are the accused persons. He further submits that the petitioner has also filed a civil suit being T.S. 147 of 2018 concerning property dispute among the parties which is pending before learned Civil Judge (Senior Division), Katwa but the FIR maker in the written complaint has suppressed about the pendency of said proceeding. He further submits that the present case has been initiated only for the purpose of harassing the petitioner by somewhat means, knowing fully well that the petitioners are residing far away from the alleged place of occurrence. It has been further argued by the petitioner that the ingredients of the offences alleged against the present petitioner are sadly missing in the present case and complainant/O.P. no.2 has tried to use the criminal court

as the engine of oppression and her only motive is to entangle the innocent petitioner with false criminal cases. He further submits that there exists *bonafide* property dispute among the parties and as such the defacto complainant cannot accuse the petitioners herein on the allegation of house trespass.

5. He further submits that on careful perusal of the complaint as well as materials available in the case diary, it appears that no specific allegation has been attributed against the present petitioner either in connection with house trespass or outraging modesty or about insulting the complainant concerning her modesty. The allegations are omnibus in nature and the proceeding is manifestly attended with *malafide* and with an ulterior motive for wrecking vengeance on the petitioner with a view to spite him due to private and personal grudge arising out of private and personal family dispute.

6. Learned counsel appearing for the State placed the case diary and submits that in the FIR the complainants allegation clearly constitute cognizable offence and the investigation has also been culminated into a charge-sheet and as such the prosecution should get an opportunity to prove the case. Accordingly the present proceeding should not be quashed without having a trial.

7. Opposite party No.2/complainant is not represented.

8. I have considered submissions made by both the parties.

9. From the case diary it appears that during investigation police has recorded statement of four witnesses, who have made almost similar statement and most importantly none of the said witnesses have attributed

any specific allegation against the present petitioner and omnibus statements hardly constitute the offence as mentioned in the charge sheet. Beside the aforesaid statement of four witnesses recorded under section 161 of the code of criminal procedure, I do not find any other incriminating material in the case diary.

10. Having considered the materials available in the case diary as well as in the background of dispute between the parties and taking the allegations made against present petitioner at its face value and as correct in their entirety, I am unable to persuade myself to hold that the contents of the materials available before me discloses the offences as alleged in the FIR against present petitioner. Applying the law laid down in **Bhajan Lal's Case (AIR 1992 SC 604)** to the instant case, it can safely be concluded that the petitioner's case clearly falls within the ambit of first, third, fifth and seventh category of para 108 of the said judgment. It has been held time and again that the court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused /petitioner.

11. In such view of the matter, I find that the continuance of further proceeding against the present petitioner will be mere abuse of the process of the court.

12. In such view of the matter the proceeding being CRR 421 of 2020 is allowed. The impugned proceeding being G.R. 439 of 2020 presently pending before additional chief judicial magistrate Katwa is hereby quashed qua the petitioner Shri Ashok Kumar Sarkar @ Asok Kumar sarkar.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)