

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 911 of 2022

**Shambhu Dey @ Sambhu Dey
Vs.
The State of West Bengal& anr.**

For the Petitioner : Mr. Manoj Kumar Mondal
Mr. Sanjib Bandyopadhyay

For the State : Mr. Debasish Roy
Mr. Arijit Ganguly
Ms. Debjani Sahu

For the Opposite Party No.2 : Mr. Ujjwal Datta

Heard on : 29.08.2024

Judgement on : 03.09.2024

Ajoy Kumar Mukherjee, J.

1. This application pertains to a prayer for quashing of the proceeding being A.C.G R case no 5728 of 2019 presently pending before learned 6th Judicial Magistrate, Alipore.

2. Petitioner's contention is that the petitioner had purchased a plot of land measuring about 4 cottah 2 chittak together with a room and a Shiv Temple on 24.02.2019 by a registered sale deed and after purchase he also mutated his name in respect of said property. It is further alleged since purchase petitioner is facing problem as some local people claim that the

said Shiv Temple is under a registered society which has registered office at the property of the petitioner. One Maniklata khamaru, since deceased, was the care taker of the property of the petitioner and she used to stay along with her daughter inside the property. However both of them later on died.

3. The opposite party no. 2 herein on 30.11.2019 made a written complain alleging *interalia* that at the instruction of petitioner herein some 7/8 unknown people threatened the complainant and others and restrained them from offering puja in the temple and when complainant and local leaders raised their voice, said miscreants became furious and started physically assaulting them and also torn the wearing apparels of the ladies and that they were carrying arms and broke temple gate and started rampage there. Consequently Netaji Nagar police station case no. 432 of 2019 under sections 147/148/149/341/323/354B/429/506/120B of IPC has been initiated against the petitioner. After completion of investigation police has submitted charge sheet on 29.7.2020.

4. Being aggrieved by the said proceeding petitioner no. 1 herein submits that the dispute between the parties are purely civil in nature over that piece of land and the opposite party no. 2 and her associates are trying to oust him illegally in order to grab the property. Further contention of the petitioner is that the FIR as well as charge sheet are collusive, abusive and a product of afterthought and both the FIR and charge sheet do not make out any case against the petitioner. Since the contentions of FIR have no basis to stand, there is no chance of conviction of petitioner at the end of trial. In fact the basic requirements of sections 147/ 148/ 149/ 341/ 323/

354B/429/506/120B of IPC are conspicuously absent both in the FIR and the charge sheet.

5. Petitioner further submits that during investigation learned Trial Court on eight occasions fixed date for recording the statement of the victim but statement could not be recorded due to her absence and on 21.7.2020 on the prayer of the investigation officer learned Trial Court dropped the recording of the statement. He further alleged that the FIR maker and his associates have strong political connection and taking advantage of the same, has made a baseless and false allegation. Though charge sheet have been submitted under sections 341/323/354B/506 of IPC but the basic requirements of said sections are conspicuously absent in the charge sheet as well as in the FIR.

6. In such view of the matter further continuance of the present proceeding will be an abuse of process of the court and as such he had prayed for quashing of the said proceeding.

7. Learned Counsel appearing on behalf of the opposite party no. 2 as well as learned counsel on behalf of the State argued that from the FIR as well as materials available in Case Diary clearly discloses offence of instigation and abetment against the present petitioner and the truth will come out only after completion of trial and as such this is not a fit case for quashing the proceeding at its threshold invoking jurisdiction of Court under section 482 of the Code of Criminal Procedure. It is further submitted on their behalf that due to lockdown the statement of the victim could not be recorded under section 164 Cr.P.C and moreover recording of statement under section 164 Cr.P.C is merely a part of process of investigation in order

to corroborate the substance of allegation but never a conclusive evidence. They further submit that if there is any so called loophole in the process of investigation the police authority can file supplementary charge sheet under section 173(8) of Cr.P.C. They further submit that the court should normally refrain from meticulous analysis of the case to find out whether the case would end in either conviction or acquittal and interference on the basis of FIR at the threshold is only to be done under very exceptional circumstances when it does not disclose commission of any offence.

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

9. From the FIR its appear that the allegation against present petitioner is that he is creating various disturbances for grabbing the Mandir premises for promoting purpose and on 30.11.2019 at around 4:30 p.m under petitioner's instruction seven/eight miscreants threatened complainant and restrained complainant and others from offering pujas at Shiv Temple and when local people raised their voice they became furious and started physically assaulting complainant and others and they also torn the wearing apparels and sarees of the said female devotees. Further allegation is that they were carrying arms in order to frighten them and they broke Mandir gate and started rampage there.

10. On perusal of the case diary it appears that during investigation police could not seize anything in support of any of the aforesaid allegation. They have only recorded statement of three persons under section 161 Cr.P.C. where the allegation against the present petitioner is omnibus and stereotype in nature. During investigation no evidence has been collected by the investigating authority in support of allegation of tearing wearing

apparels by anyone at the instigation of petitioner or rampage of temple at the instigation of the petitioner or that petitioner has instigated any people to assault complainant and other. On the contrary the FIR story is based on the terms "they". Infact during investigation police could not identify who are those 7/8 miscreants, who allegedly committed all the aforesaid offences at the alleged instigation of petitioner. Charge sheet has been submitted only against the petitioner. From the case diary, I did not find any prayer for further investigation, rather police admitted that during investigation, they could not identify who are FIR mentioned "they" who acted allegedly under the instruction of petitioner. The FIR story and collected materials against petitioner are omnibus in nature and is not at all believable to make out a case under the said sections. I do not find any other material in the case diary implicating present petitioner with the alleged offence.

11. In such view of the matter I find that the dispute between the parties is purely civil in nature where the complainant has tried to give a colour of criminality. The allegations made in the FIR coupled with materials collected during investigation leads to such an inherent absurdity that no law knowing person can reach a just conclusion that there is ground for proceeding against the petitioner herein and as such even if proceeding is allowed to continue conviction of present petitioner at the end of trial is bleak. Therefore, continuation of present proceeding any further, before the trial court will be mere abuse of the process of the court.

12. In such view of the matter **C.R.R 911 of 2022** is allowed.

13. The criminal proceeding being ACGR case no. 5728 of 2019 presently pending before 6th Judicial Magistrate, Alipore, South 24 parganas is hereby quashed.

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.)