

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 912 of 2022

**Shambhu Dey & Anr.
Vs.
The State of West Bengal & Anr**

For the Petitioner	:	Mr. Manoj Kumar Mondal Mr. Sanjib Bandyopadhyay
For the State	:	Mr. Debasish Roy Mr. Sujan Chatterjee
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 64 of 2020 presently pending before learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas.

2. Petitioner's contention is that the petitioner had purchased a plot of land measuring about 4 cottahs 2 chittaks 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 no. 1 is facing problem as some local people claim that the said Shiv Temple is under a registered society which has it's registered

office at the property of the petitioner. Petitioner no. 2, since deceased, was the caretaker of the property of the petitioner no. 1 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 04.01.2020 made a written complaint alleging *inter alia* that the deceased petitioner and her daughter used to threaten the opposite party no. 2 everyday with abusive languages showing one sharp cutting weapon whenever she used to go to temple to offer puja and accused Suchitra Khamaru since deceased had torn clothing of complainant at the instruction of petitioner no. 1 herein on 04.01.2020. Consequently Netaji Nagar Police Station case no. 6 of 2020 had been initiated under sections 114/354/509/506 against the petitioner and said deceased Manicklata and Suchitra. After investigation police has submitted charge sheet on 13.03.2020.

4. Being aggrieved by the said proceeding petitioner no. 1 herein submits that the dispute between the parties are purely civil in nature and the opposite party no. 2 and her associate are trying to oust him illegally in order to grab the property. Further contention of the petitioner no. 1 is that the FIR as well as charge sheet is 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 no. 1 at the end of trial. The basic requirement of sections 114/354/509/506 of IPC are conspicuously absent both in the FIR and the charge sheet. 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.

5. 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 the case diary clearly discloses offence of instigation and abetment against the present petitioner no. 1 and the truth will come out only after conclusion 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.

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

7. From the FIR, it is clear that the only allegation levelled in the FIR is that the petitioner no. 2 since deceased abused the complainant with insulting languages every day when she used to go to the Shiv Temple to perform daily worship ritual and on the alleged date of occurrence i.e. on 04.01.2020 deceased accused Suchitra Khamaru had torn clothing of the complainant at the instruction of accused/petitioner no. 1. On perusal of the case diary it appears that during investigation no seizure was made in connection with any torn clothing and only statement of complainant has been recorded under section 164 Cr.P.C wherein she has alleged that deceased Manicklata Khamaru had torn her clothing and complainant further stated that petitioner no. 1 herein was found therein at the time of occurrence. She has not attributed any specific allegation against present petitioner while making statement before Magistrate. Police recorded statement of three witnesses during investigation and the allegation made therein against petitioner no. 1 is also evasive and omnibus in nature. I do

not find any other material in the case diary implicating present petitioner no. 1 with the alleged office.

8. 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 allegation that whenever complainant used to go to the temple, everyday, at the instigation of petitioner no. 1 other deceased accused persons abused her with filthy languages, is evasive in nature since nowhere she had registered such complain, before lodging the present FIR. In her statement recorded under Section 164 of the Code she has also not implicated petitioner no. 1 and the statement of victim recorded under Section 161 by the police during investigation does not tally with the statements made by the same complainant before Magistrate under Section 164 of the Code of Civil Procedure. The facts and circumstances clearly suggest that the conviction of presentation petitioner no. 1 at the end of trial is bleak and as such continuance of further proceeding before the trial court will be mere abuse of the process of the court.

9. In such view of the matter **C.R.R 912 of 2022** is allowed.

10. The criminal proceeding being A.C.G.R case no. 64 of 2020 presently pending before learned Additional Chief 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.

(AJAY KUMAR MUKHERJEE, J.)