

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

CRR 1123 of 2018

IA No. CRAN 1 of 2018 (Old No: CRAN 3498 of 2018)

Satyabrata Barik @ Mithu.

Vs.

The State of West Bengal & Anr.

With

CRR 4190 of 2017

Sujata Dutta

Vs.

State of West Bengal & Ors.

For the petitioner in CRR 4190 :Mr. Tapas Dutta, Adv.
of 2017 & opposite party no. 2 Mr. Mrityunjoy Halder. Adv.
in CRR 1123 of 2018

For the petitioner in CRR 1123 :Mr. Sourav Chatterjee, Adv.
Of 2018 & opposite party nos. Mr. Souvik Nandy, Adv.
2 & 3 in CRR 4190 of 2017 Mr. Soumya Nag, Adv.

For the State in CRR 1123 of :Mr. Saryati Datta, Adv.
2018

Heard On : : 22.08.2023, 01.09.2023,
26.09.2023, 07.12.2023,

07.12.2023, 11.12.2023,
21.12.2023, 25.01.2024,
01.03.2024, 01.05.2024,
13.05.2024, 21.05.2024,
24.06.2024

Judgment On :

19.07.2024

Bibhas Ranjan De, J. :

1. The instant revision application has been preferred with a prayer for quashment of the proceedings in connection with A.C.G.R. No. 7191 of 2016 arising out of Haridevpur Police Station Case No. 712/2016 dated 22.12.2016 under Sections 341/506 of the Indian Penal Code (for short IPC), presently pending before the Ld. Judicial Magistrate, 6th Court, Alipore.
2. The prayer for speedy disposal of the proceeding in connection with that instant case which is pending before the Court of Ld. Judicial Magistrate, 6th Court, Alipore has been made by the petitioner in connection with CRR 4190 of 2017.
3. Both this revision applications are taken up together for disposal via this common judgement.

Brief facts:-

4. On 11.11.2016 at about 22:00 hours the petitioner herein in connection with CRR 1123 of 2018 along with another person came to the house of the opposite party no. 2 herein and directed the husband of the opposite party no. 2 to sign on some papers and to deliver duplicate key of the common car parking space otherwise they shall have to face dire consequences. Subsequently, the opposite party no. 2 found that somebody had put a padlock in the main entrance gate of the car parking space from outside and the car and other articles were inside that space.

4.1. Finally on 22.12.2016 at 2.30 hours when the opposite party no. 2 herein and her husband tried to open that padlock and enter into their premises at 73, Raja Rammohon Roy Road by taking assistance of a key maker, the accused/petitioner came to the spot and obstructed as well as threatened the key maker which resulted in the key maker leaving the subject premises. It was further alleged that the petitioner restrained the opposite party from entering into their own premises. He

also obstructed and threatened the key maker which is a criminal offence.

4.2. Finally on 22.12.2016 the opposite party no. 2 filed a written complaint with the Haridevpur Police Station which resulted in initiation of Haridevpur Police Station Case No. 712/2016 under Section 341/506 of IPC against the petitioner herein.

4.3. During investigation Police collected statement of available witnesses and accordingly filed a charge sheet against the accused/petitioner under Section 341/506 of IPC. Subsequently, the accused surrendered before the Court of Ld. Additional Chief Judicial Magistrate on 26.12.2016 and was enlarged on bail. Being aggrieved by and dissatisfied with the impugned proceeding already mentioned above, the petitioner filed the instant revision application.

Arguments Advanced:-

With respect to CRR 1123 of 2018:-

5. Ld. Counsel, Mr. Sourav Chattejee, appearing on behalf of the petitioner in connection with CRR 1123 of 2018 has mainly contended that the entire dispute arose out of an altercation

regarding open space which is purely civil in nature and no criminal proceeding should be allowed to proceed further.

6. Mr. Chatterjee has further argued that the facts and circumstances of the instant case make it amply clear that the opposite party no. 2 has instituted this proceeding in order to create pressure upon the developer to deliver the other car parking space in favour of her for which they do not have any right, title and interest.
7. Before parting with, Mr. Chatterjee has also raised objection towards the behavior of opposite party no. 2 which clearly shows that she is hell bent to use the process of criminal law to harass the petitioner herein with an ulterior motive to wreak vengeance.
8. In order to substantiate his claim, Mr. Chatterjee has relied on some cases which stand as follows:-
 - ***Haji Iqbal alias Bala through S.P.O.A vs. State of Uttar Pradesh & Ors.*** reported in **2023 SCC OnLine SC 946**
 - ***Haji Iqbal alias Bala through S.P.O.A vs. State of Uttar Pradesh & Ors.*** reported in **2023 SCC OnLine SC 948**
 - ***State of Haryana & Ors. vs. Bhajan Lal & Ors.*** reported in **1992 Supp (1) SCC 335**

- ***Vineet Kumar Goel vs State of Uttar Pradesh and Anr*** reported in **2017 (13) SCC 369**
- ***Ahmad Ali Quarashi & Anr vs. State of Uttar Pradesh and Anr*** reported in **2020 (13) SCC 435**
- ***Raj Kumar Mondal vs. State of West Bengal*** reported in **2021 SCC OnLine Cal 2069**

9. Per contra, Ld. Counsel, Mr. Tapas Dutta, appearing on behalf of the opposite party no. 2 in connection with CRR 1123 of 2018 has mainly contended that if merely a Civil Suit is pending or there is prima facie civil dispute, it does not absolve the accused from criminal proceeding. In a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the complainant that itself cannot be a ground to quash a criminal proceeding. It is a settled proposition of law that both civil and criminal proceedings can run concurrently.

10. While exercising jurisdiction under Section 482 of the Cr.P.C the real test for the High Court is to assess whether the allegation made in the complaint discloses a cognizable offence or not. If the complaint prima facie discloses commission of the same then the High Court should not interfere by

exercising extra ordinary power as there is hardly any scope to assess credibility of the allegation made in the complaint.

11. Before parting with, Mr. Dutta has argued that the High Court should not generally exercise power under Section 482 of the Cr.P.C. after order of taking cognizance and issuance of process against the accused is being given by the Court below.

12. In order to substantiate his argument, Mr. Dutta relied on a following cases:-

- ***Rakhi Mishra vs. State of Bihar*** reported in **(2017) 16 SCC 772**
- ***Vijayander Kumar & Ors. vs. State of Rajasthan & Anr.*** reported in **(2014) 3 SCC 389**
- ***Mahant Abhey Dass vs. Gurdial Singh & Ors reported in AIR (1971) SC 834***
- ***Syed Askari Hadi Ali Augustine Imam & anr. vs. State (Delhi Administration) & Anr. reported in (2009) 5 SCC 528***

13. Ld. Counsel, Mr. Rana Mukherjee appearing on behalf of the State has relied on the case diary and stated that there is sufficient evidence collected during investigation to establish a prima facie case against the petitioner herein.

Ratio of the cases relied on behalf of the parties:-

14. From careful scrutiny of the cases relied on behalf of Mr. Chatterjee following ratios have come up for consideration which can be summarized as follows for brevity of discussion:-

- Inherent power given to the High Court under Section 482 of Cr.P.C is with the purpose and object of advancement of justice. In case the process of Court is tried to be abused by any person the Court has to thwart that attempt at the very threshold.
- If the Court is satisfied that the criminal proceeding initiated by the complainant is with an ulterior motive due to private and personal grudge then that proceeding is liable to be quashed.
- If the petitioner comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance,

then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely.

- In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines in order to exercise jurisdiction under Section 482 of the Cr.P.C.

15. Per contra, Mr. Dutta has also relied on some cases mentioned above in order to swing the attention of this Court in his favour. After careful perusal of the referred cases the following ratios have been highlighted which are as follows:-

- At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to ascertain whether a prima case is made out for summoning the accused persons. At this stage, the Magistrate is not required to consider the defence version nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not.

- A given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a cognizable offence or not.
- It is settled proposition of law that a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the Criminal Court upon arriving at the satisfaction that there exists a prima facie case.
- If the allegations made in the complaint prima facie suggest that there can be a slightest possibility that the accused might have committed the offence alleged then he must stand trial and no order of quashment should be given while adjudicating matters of similar nomenclature.

Analysis:-

16. Before delving deep into the merit of this case, I would like to discuss the general and consistent law laid down by the Honb'le Apex Court in exercising extra ordinary jurisdiction under Section 482 of the Cr.P.C. In a number of celebrated

judgements the Hon'ble Apex Court has handed down some vital elements which are as follows:-

- The inherent power of High Court under Section 482 of Cr.P.C for quashing has to be exercised sparingly with circumspection and in the rarest of rare cases.
- Exercise of inherent power under Section 482 of Code of Criminal Procedure (for short Cr.P.C) is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely be ended in acquittal.

17. The High Court in exercise of his jurisdiction under Section 482 of Cr.P.C does not function either as a Court of appeal or revision, also having no power to conduct a mini trial and only the power which can be exercised is namely,

- a) to give effect to an order under the Cr.P.C,
- b) to prevent abuse of the process of the Court, and
- c) to otherwise secure the ends of justice.

18. At this juncture, I cannot refrain myself from reproducing the eloquent principles laid down by the Hon'ble Apex Court in the celebrated judgement of **Bhajan Lal** (supra) which held as follows:-

“ 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 exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 of 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 prima 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 FIR 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 the 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.”

19. Before winding up, I think it would be profitable to refer certain observations of the Hon’ble Apex Court in dealing with

cases of similar nomenclature as depicted in the landmark judgement of **Haji Iqbal** (supra) which stands as follows:-

“...In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation...”

- 20.** Having gone through the written complaint along with evidence collected during investigation as appears from the case diary, I **do not** find that the allegation made therein even if taken on their face value and accepted in their entirety **do not** prima facie constitute any offence or make out a case against the petitioners /accused or where allegations made in the complaint and the evidence produced in support of the same **do not** disclose the commission of **any cognizable offence** and make out a case against the petitioners/accused, to exercise the extra ordinary inherent power to quash the proceeding of this case. From the case diary, it appears that all

the statements made by the available witnesses recorded during investigation, cannot be said to be contrary to the contents of the complaint. Moreso, whether the alleged occurrence as depicted in the complaint took place on that specific date or not cannot be ascertained with conviction by this Court while exercising power under Section 482 of the Cr.P.C. All this material contradictions with regard to the alleged occurrence is a subject matter of trial.

21. Now referring to the argument advanced on behalf of Mr. Chatterjee on the issue of the dispute being civil in nature i.e. relating to open space in the subject premises and no criminal case can be made out from the said dispute, but contents of the written complaint suggests some acts on the part of the petitioner in connection with CRR 1123 of 2018 attracting penal provisions under the IPC. That apart, according to settled principle of law there is no bar in allowance of concurrent proceeding of civil and criminal cases arising out of the self same dispute.

22. Now coming to the next argument raised by Mr. Chatterjee regarding the unwarranted behavior on the part of the Counsel appearing on behalf of the opposite party no. 2

herein cannot be the subject matter of this revision application.

23. In the light of the aforesaid discussion, I am not agreeable with the view of Mr. Chatterjee that any of the parameters enumerated in the case of ***Bhajan Lal*** (supra) squarely applies to the case at hand as the contents of the complaint along with evidence collected during investigation itself do not prima facie indicate that all allegations made therein are mala fide or instituted with an ulterior motive at this very stage of the proceeding.

24. Discussions made hereinabove clearly boils down to a position that this Court cannot quash the proceeding invoking power under Section 482 of Cr.P.C.

25. As a sequel, the revision application being no. CRR 1123 of 2018 stands dismissed with no order as to costs.

With respect to CRR 4190 of 2017:-

Arguments Advanced:-

26. Ld. Counsel Mr, Dutta appearing on behalf of the petitioner prayed for necessary directions for expeditious disposal of this case.

27. On the contrary, Mr. Chaterjee appearing on behalf of opposite party no. 2 has contended that direction for expeditious disposal cannot be entertained at this nascent stage.

Decision:-

28. It is true that the proceeding was initiated in the year 2016. It is also fact that the proceeding is at a very nascent stage against the opposite party no. 2.

29. Therefore, though I am not inclined to pass any direction upon the Ld. Trial Court to dispose of the case within a specified time but this Court expects expeditious disposal of the case in accordance with law which was put into motion in the year 2016.

30. In the light of the aforesaid observation the revision application being no. CRR 4190 of 2017 stands disposed of accordingly.

31. Interim order, if there be any, stands vacated.

32. Connected applications, if there be any, stand disposed of accordingly.

- 33.** All parties to this revision application shall act on the server copy of this order downloaded from the official website of this Court.
- 34.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]