

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.R. 1538 of 2011**

**Asoke Lal Das @ Asok Lal Das & Anr.  
-Vs-  
The State of West Bengal & Anr.**

For the Petitioners : Ms. Anasuya Sinha

For the Opposite Party No.2 :Mr. Ayan Bhattacharyya  
(Amicus Curiae) Ms. Afreen Begam

Heard on : 15.04.2024, 14.05.2024, 18.09.2024

Judgment on : 13.12.2024

**Ananya Bandyopadhyay, J.:-**

1. The instant revisional application has been filed by the petitioner praying for quashing of the proceeding being Complain Case No.1703 of 2004 (T.R. No.697/04) under Sections 380/323/34 of the Indian Penal Code pending before the Learned 2<sup>nd</sup> Judicial Magistrate, Alipore, South 24 Parganas.
2. The petitioners and the opposite party no. 1 are the relatives. Petitioners no.1 had filed a title suit being no.208 of 2001 pending before the Learned 1<sup>st</sup> Civil Judge, Junior Division at Alipore against his father for declaration and permanent injunction in respect of the property situated at 10/51, Netaji Nagar, P.S.-Jadavpur, Kolkata – 700040. Since the institution of the

aforesaid title suit the sisters of the petitioner no.1 including opposite party no.2 apprehended loss of share in their ancestral property.

3. Petitioners further stated that on 14.12.2003 the opposite party no.2 and her sister threatened the petitioners and expelled them of their residence and locked up a room which the petitioners used as their home altar. The petitioners and other members of their family were compelled to spend the entire day on road. Subsequently, the wife of the petitioner no.1 lodged a General Dairy being no.1286 dated 14.12.2003 at Jadavpur P.S. informing about the aforesaid incident. Around 10 p.m., with the intervention of local police station and local people the petitioners were allowed to enter their residence.
4. Petitioners further stated that on 31.03.2004 opposite party no.2 filed a complaint before the Learned Sub-divisional Judicial Magistrate at Alipore against the petitioners, inter alia, alleging commission of offences punishable under Sections 380/341/506/323/34 of the Indian Penal Code.
5. Petitioners further stated that in the petitioner of complaint it was, inter alia, alleged as follows:-

*“That the father of the opposite party no.2 is the absolute owner of premises no.10/51, Netaji Nagar, P.S. Jadavpur, Kolkata – 700040 and the petitioners have been residing in the said premises and the mother of the opposite party no.2 expired in February, 1989 and as such her father became alone and the petitioner no.1 did not look after his father and forcefully occupied the entire first floor. As per request of her father of the opposite party no.2 along with all her ornaments and valuable documents*

*came to the said premises and such belongings were kept in an almirah in a room on the first floor allotted to her by her father. On 08.10.2003 at about 9 a.m., when opposite party no.2 went to the said room to bring out her ornaments which was under lock and key, she was resisted by the petitioners and was assaulted by them as a result of which she sustained injuries on her forehead.”*

6. Petitioners further stated that the Learned Magistrate took cognizance and transferred the case to the Learned Judicial Magistrate, 2<sup>nd</sup> Court, Alipore for disposal. The opposite party no.2 and another witness namely Bipasa Biswas were examined and summons was issued against the petitioners.
7. In spite of specific direction upon the P.S. for production of the seized articles, the order was not complied and several dates were fixed for compliance of such order. Subsequently, on 19.08.04 the prayer of the petitioner no.2 under Section 205 of the Code of Criminal Procedure was allowed.
8. Thereafter, on 18.10.04 the Officer-in-Charge, Jadavpur P.S. was directed to show cause as to why he had not sent the report and seizure list as directed to him. By order dated 02.02.05 the Learned Magistrate being shocked and disgusted with the conduct of the Officer-in-Charge, Jadavpur P.S., was pleased to issue warrant of arrest against him.
9. Petitioners further stated that the police report revealed the following:-
  - a) Both the parties claimed the custody of the seized articles although neither party filed any document in support of their ownership.

b) The key of the almirah was in custody of the opposite party No.2 and the same was not seized.

c) Nothing was specified about the nature of articles kept in the almirah.

10. Petitioners further stated that on perusal of the report the Learned Magistrate by order dated 17.10.2005 was pleased to direct the Officer-in-Charge, Jadavpur Police Station to seize the key of the almirah and prepare a list of articles and send a report within 14.02.06. No such report was sent as directed till 05.12.06. Finally, on 31.03.07 the report was received.

11. Petitioners further stated that it appeared from the report dated 06.06.06 that some more time was required to comply with the order dated 17.10.05 and as such on 10.08.07 the Learned Magistrate was pleased to direct the Officer-in-Charge, Jadavpur Police Station to report as to why the order was not complied.

12. Even then the order was not complied and on 03.01.09 the Officer-in-Charge, Jadavpur Police Station was warned to carry out the order dated 17.10.05.

13. On 25.05.09 the Officer-in-Charge, Jadavpur Police Station was directed to appear in person before the Learned Magistrate and even such order could not secure the appearance of the Officer-in-Charge, Jadavpur Police Station.

14. By an order dated 28.07.09 the Learned Magistrate issued non-bailable warrant of arrest against the Officer-in-Charge, Jadavpur Police Station.

15. No execution report of warrant of arrest was received and on perusal of a report it was found that the room under question was under lock and key and the key was with one Sub-Inspector, Rajat Kumar Sarkar.

16. On 03.02.10 the Officer-in- Charge, Jadavpur Police Station was directed to comply with order dated 17.10.05 by breaking the door in presence of both sides.
17. In spite of such specific direction no report was received and the Officer-in- Charge, Jadavpur Police Station was directed to appear in person in default the matter was to be reported to the Secretary, Government of West Bengal, Home Department.
18. On 31.08.10 the petitioners made a prayer for speedy trial and the same was allowed and 03.01.11 was fixed for appearance of the Officer-in- Charge, Jadavpur Police Station and evidence. On the date fixed the Presiding Officer was on leave and next date was fixed on 08.03.11.
19. On 08.03.11 the Officer-in- Charge, Jadavpur Police Station submitted a report that the opposite party No.2 was not present and in view of the same he failed to execute the order the Learned Magistrate.
20. By order dated 08.03.11 the Learned Magistrate was pleased to direct the opposite party No.2 to communicate to the Officer-in-Charge, Jadavpur Police Station and was pleased to fix 26.05.2011 for evidence.
21. Petition of complaint do not make out any case far less a case under Section 380 of the Indian Penal Code against the petitioners.
22. At the time of filing the petition of complaint list of articles which were allegedly stolen was not appended to such petition.
23. There was no explanation as to why the opposite party No.2 who was residing in Padda Pukur Area would carry all her belongings including her

ornaments and valuable documents to her parental home when she went to stay there to look after her ailing father.

24. Learned Advocate for the petitioners further submitted as follows:-

- i. The opposite party no.2 failed to make out a case pertaining under Section 380 of the Indian Penal Code against the petitioners.
- ii. In order to charge a person under Section 380 of the Indian Penal Code, there are certain ingredients that must be proven –
  - a) The moveable property must be taken out of the possession of another person.
  - b) The taking out of the moveable property must be done without the consent of the other person.
  - c) When the property is moved to render its taking, it is said to be theft.

[Reliance was placed on the decision in *State of Maharashtra Vs. Vishwanath Tukaram Umale and Others* reported in (1979) 4 SCC]

- iii. The report dated 10.06.2005 stated that when the seizure was conducted the keys of the alleged almirah was in the custody of opposite party no.2. Hence, the possession of the key with opposite party no.2 suggested that the articles were never taken out of her possession without her consent. Hence, it proved that the opposite party no.2 fabricated the false allegations against the petitioners with the ulterior motive to harass them.

- iv. Even the written complaint filed by the opposite party no.2 dated 31.03.2004 did not mention anything related to the taking of the articles out of the possession of the opposite party no.2 without her consent. The false fabricated resistance too fails to make out the offence of theft vested on the petitioners.
- v. Allegedly, the first incident of resistance and assault upon the complainant took place on 08.10.2003 but the complaint was filed on 31.03.2004.
- vi. The instant case was an outcome of mala-fide and vengeance between siblings to the ancestral property. It was an outcome of the title suit filed by the petitioners.
- vii. There has been an unnatural long delay in the disposal of the instant case which was filed in 2004 and was dragged for years with no fault edged on the part of the petitioners.
- viii. The unnatural delay was caused contrary to the need for expeditious trial. According to the settled judicial interpretation reasonable expeditious trial remained as an integral part of the fundamental right to life and liberty enshrined under Article 21 of the Indian Constitution which was thus thoroughly negated in respect of the present petitioners.
- ix. Hence, in that case, no development has taken place in the same since 2011.
- x. Thereby the span of 11 years shows that incase if the instant proceeding was allowed to be continued further, it would result in

nothing but financial and mental agony to the petitioners. The unreasonable delay has already caused enough suffering to the petitioners.

- xi. The mental agony along with the financial expenses which the petitioner have to undergo coupled with the delay will inherently result in impairing the petitioner's ability to defend himself as persuaded in the Constitutional mechanization upholding the just and reasonable procedure as manifested within the ambit of Article 21 of the Indian Constitution.
- xii. The unusual delay in the disposal of the proceeding will affect the defence of the opposite party tantamounting to the ultimate effect on the administration of justice causing gross miscarriage of justice.

25. Considered the submissions of the Learned Amicus Curiae for the opposite party no. 2.

26. In ***Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.***<sup>1</sup>, the Hon'ble Apex Court held as follows:-

*“70. In the criminal complaint, by order dated 8-10-2010, the Magistrate has taken the cognizance of the offence under Section 380 IPC — “Theft in dwelling house, etc.” In order to constitute theft, the following ingredients are essential:*

- (i) Dishonest intention to take property;*
- (ii) The property must be moveable;*
- (iii) It should be taken out of the possession of another person;*
- (iv) It should be taken without the consent of that person;*
- (v) There must be some removal of the property in order to accomplish the taking of it.*

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<sup>1</sup> (2019) 16 SCC 610

**71.** *Intention is the gist of the offence. It is the intention of the taker which must determine whether taking or moving of a thing is theft. The intention to take “dishonestly” exists when the taker intends to cause wrongful loss to any other which amounts to theft. It is an essential ingredient of the offence of “theft” that the movable property should have been “moved” out of the possession of any person without his consent. “Movable property” is defined in Section 22 IPC, which reads as under:*

**“22. “Movable property”.**—The words **“movable property”** are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.”

**72.** *“Dishonestly” has been defined in Section 24 IPC, which reads as under:*

**“24. “Dishonestly”.**—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.”

**73.** *“Wrongful gain” and “Wrongful loss” have been defined in Section 23 IPC, which read as under:*

**“23. “Wrongful gain”.**— **“Wrongful gain”** is gain by unlawful means of property to which the person gaining is not legally entitled.

**“Wrongful loss”.**— **“Wrongful loss”** is the loss by unlawful means of property to which the person losing it is legally entitled.

**Gaining wrongfully : Losing wrongfully.**— A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.”

27. It has been averred in the complaint petition that the father of the opposite party No. 2, was the owner of premise no. 10/51, Netaji Nagar, P.S Jadavpur, Kolkata-700040, where the petitioners were residing. The owner had been living alone, and it was alleged that petitioner no.1 took no

responsibility for looking after his father and forcefully occupied the entirety of the first floor. On her father's request, opposite party no. 2 arrived at the premise with all her ornaments and valuable documents which she stored in an almirah located in a room on the first floor allotted to her by her father. On 08.10.2003, at about 9 a.m. when she tried to retrieve her ornaments from her almirah which was under lock and key, she faced resistance from the petitioners and was assaulted by them, resulting in injuries on her forehead.

28. The petition of the complaint did not disclose any criminal offence at all much less any offence either under Section 380 of the I.P.C. The entire complaint did not mention any overt act or specific role of the present petitioner to have been involved in the alleged offence. As per the report dated 10.06.2005, the keys were with opposite party No. 2 and the articles were under lock and key. It was questionable as to how the opposite party No. 2 had alleged that the petitioners were able to have access to the valuables to steal articles as they were under lock and key and opposite party No. 2 possessed the keys. Furthermore, no medical reports had been attached in the Case Diary to assert that the opposite party had received any injuries on her forehead, thus the allegation of physical assault had not been proved. The dispute primarily as apparent from the material on record was civil in nature which had been given a colour of criminality to frustrate and pressurize the petitioners.

29. The intention to cause wrongful gain, dishonesty, being the primary element to determine the act of the theft was absent. The keys to the almirah in a locked room were not in the possession of the petitioners.
30. To saddle the petitioners with criminality and imputations for subserving personal grudge and grievance is abhorrent and must be detested. The Courts exercising criminal jurisdiction are burdened with cases of serious importance and impact and to address these kind of premeditated, absurd, harrassive complaints must be discouraged and nipped in the bud without taking cognizance applying judicious reasoning at the very first instance.
31. To allow to continue with such deliberate and frivolous complaints will definitely result in the process of abuse of law and accordingly the proceedings being Complain Case No.1703 of 2004 (T.R. No.697/04) under Sections 380/323/34 of the Indian Penal Code pending before the Learned 2<sup>nd</sup> Judicial Magistrate, Alipore, South 24 Parganas is quashed.
32. In view of the above discussions, the criminal revisional application being CRR 1538 of 2011 is allowed.
33. Accordingly, CRR 1538 of 2011 is disposed of.
34. There is no order as to costs.
35. I record my appreciation for the able assistance rendered by Learned Advocate, Mr. Ayan Bhattacharyya as Amicus Curiae in disposing of this appea.
36. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

37. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

**(Ananya Bandyopadhyay, J.)**