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05.08.
2024
Ct. No.
237.

C.R.R. 2133 of 2015

**Gourhari Mistry & Ors.
Vs.
The State of West Bengal & Anr.**

Mr. Bipin Baidya,

.... For the petitioners.

Mr. Anand Keshari,
Ms. Poulami Bose,

.... For the State.

Affidavit of service filed by the petitioner is taken on record, in spite of service opposite party is not represented.

This is an application wherein petitioner has prayed for quashing the proceeding being Joynagar Police Station case no. 100 of 2013 dated 04.02.2013 corresponding to G.R. case no. 587 of 2013, presently pending before the Additional Chief Judicial Magistrate, Baruipur, District 24-parganas (South).

Petitioner contended that on 5.01.2023, opposite party no.2 herein filed an application under Sections 156(3) of Cr.P.C. before the learned Magistrate for a direction upon police to start investigation treating the complaint as FIR. It is inter alia alleged in the complaint that they have purchased a piece of land from the erstwhile recorded owner and since purchase they are in exclusive possession over the said land and the accused persons have no right title or interest over the said land but on several occasion they tried to take forcibly possession over the said land. It is further alleged that on 31.12.2023 at about 2.30 -3.00 P.M., all the accused persons armed with deadly weapons forcibly entered into the said land and started to cut the valuable trees standing over the said land

and were also catching fishes from their pond and when the complainant and his family members raised objections accused persons abused them with filthy languages and assaulted them and in order to save their lives, they started crying for help. Local people came to the spot and rescued them but the accused persons have stolen fishes from their pond and also cut down 22 valuable trees. The accused persons thereafter assured to amicably settle the dispute which ultimately failed. As such they filed aforesaid application before the Court below and on the basis of the direction made by the learned Court, police started aforesaid Joynagar Police Station case no. 100 of 2023 dated 04.02.2013 under Sections 147/447/323/504/4276/379/34 of the Indian Penal Code corresponding G.R. case no. 587 of 2023 against accused persons.

It is further submitted that after completion of investigation police has submitted chargesheet against the accused persons under Sections 147/447/323/504/4276/379/34 of the Indian Penal Code.

Petitioner submits that the petitioners are members of rival political party and as such opposite party no.2 lodged aforesaid false complaint against the petitioners and during investigation police did not collect any evidence regarding commission of offence by the petitioners as alleged. It is further submitted that the petitioner no. 3 herein is a teacher of a High School in the State of Jharkhand and he used to reside at Jamshedpur permanently with his family. It is further submitted that at the relevant time when the alleged incident occurred petitioner no. 3 was bed ridden at his residence at Jamshedpur which is evident from the medical certificate issued by the Doctor but opposite party no.2 out of personal grudge falsely

implicated him also with present case. The allegations against the other accused/petitioners are also false and motivated. It is further submitted that there is no material in the record that the petitioners have committed any offence as alleged in the charge-sheet. Accordingly petitioners are prayed for quashing the entire proceeding.

Learned Counsel appearing on behalf of the State submits that sufficient materials have been collected against the petitioners during investigation and the case is pending for trial before the Trial Court and at this stage it would not be proper to quash the entire proceeding because only after the end of trial the truth will reveal. Accordingly learned Counsel on behalf of the State opposed the prayer made by petitioner herein.

I have considered the submissions made by the parties and also perused available materials. From the facts of this case and upon perusal of the contents of the FIR and materials in Case Diary against the petitioners, it appears that complainant alleged that "all accused persons have committed offences as alleged" but no specific allegations have been made against either of the petitioners herein and no specific role attributed in furtherance of the general allegation made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence and the allegations are vague and omnibus. The statement recorded under Section 161 Cr.P.C. even does not show as to which accused has committed what offence and what is the exact role played by the petitioners in the commission of alleged offence. Mere casual reference of the names of the petitioners

who are mostly family members without allegation of active involvement in the matter, would not justify taking cognizance against them.

Under such circumstances it would be abuse of the process of law to allow the prosecution to continue, on the basis of a vague and general complaint and materials collected so far, are also absolutely silent about the precise acts of the petitioners.

In ***Bhajan Lal's Case 1992 Supp (1) SCC 335***, the Apex Court held that the Court would be justified in quashing the proceeding if the allegations are so absurd and inherently improvable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

In view of the above, CRR 2133 of 2015 is allowed.

Proceeding being Joynagar Police Station case no. 100 of 2013 dated 04.02.2013 being G.R. case no. 587 of 2013 presently pending before the Learned Additional Chief Judicial Magistrate, Baruipur, District 24-parganas (South) is hereby quashed.

Urgent Photostat certified copy, if applied for be given to the parties upon compliance of all legal formalities.

(Ajoy Kumar Mukherjee, J.)