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Ct. No. 237

C.R.R. 2583 of 2019

**Debasis Banerjee
Vs.
The State of West Bengal & Anr.**

*Mr. Shibaji Kumar Das
Mr. Dipendu Sarkar*

...For the Petitioner

*Mr. S.S. Imam
Ms. Puspita Saha*

...For the State

IA No. CRAN 6 of 2024

This application pertains to a prayer for quashing of proceeding being G.R. Case No. 1137 of 2018 presently pending before learned Additional Chief Judicial Magistrate, Kalyani.

The allegations leveled in the written complaint by the opposite party No. 2 herein inter alia in brief are to the effect that she had moved a petition for injunction before the Civil Court at Kalyani, in a suit being Title Suit No. 87 of 2018 and the learned Civil Court after hearing granted an ad interim order to maintain status quo in respect of the nature, character and possession of the suit property till further order.

It is further alleged that the certified copy was served to the office by speed post. It is alleged that petitioner Debasis Banerjee and others, were aware of the learned Court's order but they did not intimate her about their arrival nor did they appear before the learned Court seeking permission to enter the house. It is further alleged that on the date of occurrence, petitioner informed her that he expected to get

access to her family home but was stranded on the road with his wife and luggage and he had entered in his room and common area violating Court's order of injunction. It is further alleged that petitioner's sudden arrival in the suit property after four months after the death of their youngest brother, followed by breaking open the house and changing lock is clear violation of order of injunction and also suspicious in nature and complainant suspects that petitioners have done this unlawful act in her absence with bad intention. The complainant further alleged that she is unaware, whether personal belongings kept in the ancestral house are pilfered or not by the accused person.

Accordingly, she lodged FIR and the investigation started and after completion of investigation, the Investigating Authority has submitted charge sheet against the petitioner under Section 448/427/188 of the Indian Penal Code.

Mr. Shibaji Kumar Das, learned Counsel appearing on behalf of the petitioner submits that from the facts and circumstances of the case and from the contents of FIR, as well as charge sheet it is evident that the complainant/opposite party No. 2 herein is petitioner's sister-in-law and petitioner also co-sharer and co-owner of the the premises in question being No. B-7/16, Kalyani Township, P.O. & P.S. Kalyani, District – Nadia and accordingly, even if an order of status quo in her favour was passed by the learned Civil Court, it will imply that the petitioner herein can remain in the said premises and has right of egress

and ingress into the same, which cannot be said to be a violation of the order passed by the learned Civil Court or it cannot amount to trespass by causing mischief so that it can attract the offences as alleged.

Learned Counsel further submits that from the documents itself it reveals that no offence under the provisions of Section 448/427/188 of the Indian Penal Code has been made out against the petitioner herein. In fact, the petitioner herein under the capacity of being a co-owner and co-sharer, resides in the said premises and has right to egress and ingress and such fact is totally overlooked by the Investigating Authority while submitted the charge sheet against the present petitioner.

He further submits that the allegation leveled against the present petitioner are totally false, frivolous and baseless and made with an ulterior motive and mala fide intention of harassing him. Accordingly the petitioner has prayed for quashing of the impugned proceeding.

In spite of service private opposite party 2/defacto complainant is not represented.

Learned Counsel appearing on behalf of the State leaves the matter to the discretion of the Court.

I have gone through the FIR as well as the materials collected during investigation as appearing in the Case Diary including the statements recorded under Section 161 of the Code. From the facts and

circumstances of the case, it appears that the dispute between the parties is purely civil in nature and the FIR maker has tried to criminalize the civil dispute. Even if there is any violation of any order of injunction by the petitioner herein, the opposite party has appropriate remedy under the Civil Procedure Code to go for contempt proceeding under the Code but by no means it constitutes any offence either under Section 448 or 427 or 188 of the Indian Penal Code. Moreover, it is not in dispute that the petitioner is also a co-sharer of the said property and accordingly Section 448 of the Code has got no application in the present case. There is nothing to show in the case disary that the petitioner has caused any mischief over the property of the FIR maker.

In such view of the matter I find that further continuance of the present proceeding against the petitioner will be sheer abuse of process of the Court. In such view of the matter, the application, being CRR 2583 of 2019 is allowed.

The impugned proceeding, being G.R. Case No. 1137 of 2018 arising out of Kalyani Police Station Case No. 539 of 2018 presently pending before the learned Additional Chief Judicial Magistrate, Kalyani is hereby quashed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Dr. Ajoy Kumar Mukherjee, J.)

