

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

Present:

The Hon'ble Justice Partha Sarathi Sen

**CRR 3216 of 2011
With
CRAN 1 of 2024**

**Rabindra Narayan Bose & Anr.
Vs.
State of West Bengal & Anr.**

For the petitioners : Mr. Somopriyo Chowdhury
Mr. Dipayan Dan

For the State : Mr. Avishek Sinha

For opposite party No. 2 : Mr. Dipjyhoti Chakraborty

Heard on : 26.07.2024

Judgement on : 26.07.2024

PARTHA SARATHI SEN, J.:

1. The petitioners, the opposite party No. 1/State and the opposite party No. 2 are represented by their respective learned Advocates.
2. Mr. Sinha, learned Advocate for the State submits before this Court that on consideration of the *prima facie* materials as collected in course of investigation the I.O. has rightly submitted charge-sheet.

3. Since, CRAN 1 of 2024 is not available in the file this Court requests the learned Advocate for the opposite party No. 2 to handover an authenticated photocopy of the CRAN 1 of 2024.
4. The authenticated photocopy of CRAN 1 of 2024 as filed today is taken on record.
5. By filing the instant application under Section 482 Cr.P.C. the petitioners have prayed for quashing of all proceedings of C.G.R. No. 791 of 2007 as pending before the learned Judicial Magistrate, 9th Court, Alipore, South 24 Parganas under Sections 341/506/114 IPC arising out of Gariahat P.S. Case No. 64 of 2007 dated March 15, 2007.
6. For effective adjudication of the instant application the facts leading to initiation of C.G.R. No. 791 of 2007 is required to be discussed in a nut shell.
7. On March 15, 2007 the opposite party No. 2 lodged a written complaint with the Officer-in-Charge, Gariahat Police Station stating *inter alia* that he purchased 50 per cent share of premises No. 51G, Garcha Road, P.S. – Gariahat, Kolkata – 700019 (hereinafter referred to as the said ‘premises’) from one Smt. Namita Bose and after purchase when he moved his furniture and other belongings to the said purchased portion of the said premises through one of his family members namely, Gokul Bera. The said Gokul Bera was obstructed and pushed by the petitioner No. 1

(now dated being the husband of a co-owner one Smt. Ivy Bose) and the petitioner No. 2 being the son of said Smt. Ivy Bose who claimed that the said Smt. Ivy Bose is the co-owner of the said premises. On the basis of the said written complaint Gariahat Police Station No. 64 of 2007 dated 15.03.2007 under Sections 341/506/114 was started.

8. Investigation was taken up and on conclusion of the same charge-sheet against the present two petitioners have been submitted under Sections 341/506/114 IPC. The petitioners felt aggrieved with the filing of the said charge-sheet and thus approached this Court for quashing of the entire proceeding of C.G.R. No. 791 of 2001 as pending before the learned Trial Court.
9. Mr. Chowdhury, learned Advocate appearing for the petitioners at the very outset submits before this Court that from the materials as placed before this Court it would reveal that the said premises was at that material time jointly owned by one Ivy Bose the wife of the deceased petitioner No. 1 and the mother of the petitioner No. 2 and one Namita Bose and her family members and further the said Namita Bose is the sister-in-law (husband's brother's wife) of the said Ivy Bose.
10. It is further submitted by Mr. Chowdhury that the said premises was used as a dwelling house by both the family members i.e.; by the family members of Ivy Bose and Namita Bose. It is further

submitted that all on a sudden the said Namita Bose transferred her undivided share in the said dwelling house to the opposite party No. 2 who is the informant before the learned trial court and trouble started thereafter when the opposite party No. 2 and his family members made an attempt to occupy the alleged purchased portion of the said premises which is being exclusively used a dwelling house by the family members of the present petitioners and the said Namita Bose. It is further submitted by Mr. Chowdhury that in order to prevent the opposite party No. 2 and his family members the said Ivy Bose being the wife of the deceased petitioner No. 1 and mother of the petitioner No. 2 approached learned Civil Judge, Junior Division at Alipore by filing Title Suit No. 49 of 2007 with a prayer for declaration and permanent injunction along with a prayer for temporary injunction under Order 39 Rules 1 and 2 of the Cr.P.C. read with Section 151 Cr.P.C.

11. In course of his submission Mr. Chowdhury, learned Advocate for the petitioners draws attention of this Court to the Section 44 of the Transfer of Property Act, 1882. It is submitted that in view of the provision of Section 44 of the Transfer of Property Act there is no embargo of on the part of a stranger transferee to purchase a portion of the dwelling house but the said stranger purchaser cannot claim joint possession. It is submitted by Chowdhury that the present Opposite Party No. 2 being a stranger purchaser thus

cannot claim possession over any portion of his purchased property and, therefore, the present two petitioners are within their right to resist the opposite party No. 2 and/or his men. It is thus submitted that while conducting investigation the Investigating Officer has failed to consider such legal facet and thus wrongly submitted a charge-sheet before the learned trial court which ought not to have been accepted by the learned trial court.

12. In course of his submission Mr. Chowdhury, learned Advocate for the petitioners places his reliance upon a reported decision of the Hon'ble Supreme Court ***Ramdas vs. Sitabai & Ors.*** reported in ***(2009) 7 SCC 444.***
13. Mr. Chowdhury thus submits before this Court that it is a fit case for quashing the proceeding as pending before the learned trial court.
14. *Per contra*, Mr. Chakraborty, learned Advocate appearing for the opposite party No. 2 draws attention of this Court to the authenticated copy of CRAN 1 of 2024 as filed today and as has been taken on record. Attention of this Court is drawn to Page 19 of the said interim application *vis-à-vis* the orders passed by the learned Civil Judge, Junior Division, Alipore in Title Suit No. 28 of 2015 arising out of Title Suit No. 49 of 2007. It is submitted by Mr. Chakraborty that from the materials as placed before this Court today it would reveal that the vendor of the opposite party No. 2,

i.e., Smt. Namita Bose transferred her share in the said premises and further it would reveal that learned Civil Judge, Junior Division by its order dated 05.12.2017 had dismissed the injunction application by holding that the plaintiff who is the mother of the petitioner No. 2 and the wife of the deceased petitioner No. 1 has failed to make out a *prima facie* case and further the injunction application has already become infructuous.

15. Before coming to a logical conclusion of the instant application I propose to look to the provision of Section 44 of the Transfer of Property Act which is quoted below in vertatim:

“44. Transfer by one co-owner: Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor’s right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.”

16. This Court also proposes to look to the provision of Section 482 Cr.P.C. which is as under:

“482. Saving of inherent powers of High Court: Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

17. Keeping in mind the proposition of law as has been enacted by the legislatures it appears to this Court that *prima facie* materials have been placed before this Court that in the premises in question originally the family members of the Smt. Ivy Bose and family members of the Smt. Nomita Bose (the vendor of the opposite party No. 2 herein) use to reside jointly and their portions were not demarcated.
18. Materials have been placed before this Court that the entire property was being used for dwelling purpose by Smt. Ivy Bose and Smt. Namita Bose and their family members. Trouble arose when Smt. Namita Bose transferred her undivided share to the opposite party No. 2 and when the opposite party No. 2 made an attempt to enter into the said premises.
19. On perusal of the provision of Section 44 of the Transfer of Property Act it appears to this Court that there is no legal bar for

a stranger to purchase a portion of a immovable property from a co-owner. However, in the event, such property is a dwelling house of a undivided family the said stranger transferee that is; who is not a member of a family cannot claim joint possession in respect of the said dwelling house. It is undisputed that the opposite party No. 2 is a stranger to the family of “Bose”. It is also not disputed that the opposite party No. 2 had purchased undivided share of the said premises which is being wholly used as dwelling house and, therefore, the petitioners being the husband and the son of the Ivy Bose being a co-owner of the said premises has every right to resist the joint possession of the opposite party No. 2 which the Investigating Officer while conducting investigation failed to notice.

20. At this juncture, I may safely place reliance upon the reported decision of Ramdas (Supra) wherein the Hon’ble Apex Court express the following view:

“19. In view of the aforesaid position there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the court.”

21. The scope of Section 482 Cr.P.C. in quashing a criminal proceeding has been elaborately discussed in the reported decision of ***Gian Singh vs. State of Punjab and Another*** reported in ***(2012) 10 SCC 303*** in the following manner:

“61. The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim’s family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and

the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of

justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

62. In view of the above, it cannot be said that B.S. Joshi [(2003) 4 SCC 675], Nikhil Merchant [(2008) 9 SCC 677] and Manoj Sharma [(2008) 16 SCC 1] were not correctly decided. We answer the reference accordingly. Let these matters be now listed before the Bench(es) concerned.”

22. In view of the discussion made hereinabove, this Court has every reason to believe that the present petitioners being the husband and the son of the co-owner, Ivy Bose of the said premises are within their right to resist the possession of a stranger to the said premises that is the opposite party No. 2 herein and the dispute between the parties are predominately civil in nature and, therefore, in considered view of this Court learned trial court is not justified to accept the charge-sheet as submitted in connection with the aforesaid P.S. case and is also not supposed to take cognizance of the said case.
23. In view of the discussion made hereinabove this Court finds sufficient merit in the instant application.
24. Accordingly, the petition as filed under Section 482 Cr.P.C. stands hereby allowed. Consequently, all further proceeding of C.G.R.

No. 791 of 2007 as pending before the learned Judicial Magistrate, 9th Court, Alipore, South 24 Parganas including the charge-sheet No. 194 of 2007 dated 12.11.2007 and the FIR No. 64 of 2007 dated 15.03.2007 stand hereby quashed.

25. Accordingly, **CRR 3216 of 2011** along with all connected interim applications is thus disposed of.
26. Since a prayer has been made on behalf of the opposite party No. 2 to take back the certified copy of Title Suit No. 28 of 2015 arising out of Title Suit No. 49 of 2007 as passed by learned Civil Judge, Junior Division, Additional Court, Alipore, such prayer is allowed.
27. Liberty is given to the petitioners to take back the original certified copy of all orders in connection with Title Suit No. 28 of 2015 arising out of Title Suit No. 49 of 2007 of the Court of learned Civil Judge, Junior Division, 1st Additional Court at Alipore.
28. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(PARTHA SARATHI SEN, J.)