

CRR 2865 of 2017

**Abdul Bari Khan & Ors.
Vs.
Tapan Maitra & Anr.**

Mr. Pratip Kumar Chatterjee Ms. Maitrayee Chatterjee	...for the petitioners
Mr. Siddhartha Sankar Mondal Ms. Arunima Das Sharma	...for the O.P. no. 1
Mr. Suman De Mr. Kaustav Banerjee	...for the State

This application pertains to the prayer for setting aside the order dated 27.7.2017 and thereby to quash the proceeding being G.R. case no. 144 of 2010 arising out of Thanapara Police Station case no. 04 of 2010 dated 7.2.2010.

Petitioners contended that the petitioner no. 1 is aged about 65 years and is suffering from various ailments. Petitioners further submit that on 7.2.2010 at about 9 A.M. in the morning about 39 persons attacked the house of the petitioners. The attackers started pelting bricks and also hurled abusive language upon the petitioners. They also threatened to ransack the house of the petitioners. In fact, the petitioners had called police over telephone but later on, police arrested the petitioner no. 1 and thereafter interim bail was granted in his favour.

The petitioner no. 1 in connection with aforesaid incident, initiated a criminal proceeding being Thanapara police Station case no. 6 of 2010 dated 11.2.2010 under Section 147/148/427/506 of the Indian Penal Code. After completion of

investigation, police has submitted charge sheet in the said criminal proceeding.

Petitioners further submit that the opposite party herein also lodged instant complaint over the self-same incident and on the basis of such complaint, Thanapara Police Station case no. 4 of 2010 dated 7.2.2010 was started. In the present proceeding, police has submitted charge sheet against the present petitioners under Section 325/326/506/34 of the Indian Penal Code. It is further submitted that the charge has already been framed by the trial court and one of the witnesses on behalf of the prosecution has also been examined.

However, being aggrieved by the said proceeding, petitioners submit that the complaint was lodged to escape themselves from the offence committed by them. In fact, no prima facie case has been made out in the complaint against the petitioners. He further submits that the court below also did not apply his judicial mind while framing the charge against the petitioners. He further submits that tenor of the allegation made against the petitioners and the statements of the witnesses as recorded in the present case, if the same is evaluated in the light of the case, it would reveal that the initiation of the present proceeding is based on a concocted story merged with fabrication and false statements. Even if the present application is taken on their face value and accepted in their entirety, it does not prima facie makes out case against the petitioners. Accordingly, the petitioners have prayed for quashing the impugned proceeding.

Learned counsel for the opposite party no. 1 raised vehement objection and contended that the trial has already been started

and truth will reveal at the end of the trial and at this stage, prayer for quashing of the impugned proceeding does not arise.

Learned counsel for the State placed the case diary and submitted that there are sufficient materials against the present petitioners. Accordingly, the court below has already framed charge and trial has also been commenced. He further submits that the injury report collected during investigation also corroborates the allegations made in the FIR. Accordingly, he prayed for dismissal of the present application.

I have considered the submissions made by both the parties. On perusal of order impugned dated 27.7.2017 it appears that three accused persons prayed for discharge on the ground of alibi, and the fourth one on the ground that he all along bears good moral character and that such type of allegations cannot be imputed against him. The trial court rightly decided that the plea of alibi can only be decided after trial. Moreover, on perusal of the case diary, it appears that the FIR and the materials collected during investigation including injury report and the statements made by the witnesses recorded under Section 161 of the Code clearly makes out a prima facie case for proceeding against the petitioners. The materials disclosed against them involves fair question of trial. The trial has already been commenced after framing of charge. I do not find anything that continuance of trial would be abuse of the process of court. This is not a fit case for quashing the present proceeding invoking jurisdiction under Section 482 of the Code.

CRR 2865 of 2017 thus stands dismissed. However, since the case is pending for a long time, the court below is directed to

expedite the final hearing of the proceeding and to make every endeavour to conclude the entire proceeding preferably within a period of six months from the date of communication of the order, without being influenced by any observations made herein.

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

(Dr. Ajoy Kumar Mukherjee, J.)