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sg 2024
Ct. No. 3

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction**

C.R.R. 43 of 2024

**Sahinaj Khan
Vs.
The State of West Bengal & Anr.**

**Mr. Arjun Chowdhury
Ms. Pratusha Dutta Chowdhury
Ms. Riya Agarwal**

...For the Petitioner.

**Mr. Saikat Chatterjee
Mr. Chattu Roy**

....For the State.

Opposite party is not represented in spite of service.

Being aggrieved by the proceeding in connection with Matigara Police Station Case no. 814 of 2023 dated 3rd October, 2023 under Sections 447/188/34 of the Indian Penal Code, being G.R. Case no. 3771 of 2023, presently pending before the Court of learned Additional Chief Judicial Magistrate, Siliguri, petitioner has preferred this application with a prayer for quashing of said proceeding.

It is submitted that the petitioner is bona fide purchaser of a part of the suit property by a registered deed and petitioner thereafter mutated her name in the revenue record and a new khatain being khatain no. 4856 was opened in her name.

Thereafter petitioner came to know about the pendency of a partition suit in the Court of learned Civil Judge (Senior Division)

Siliguri and after obtaining certified copy she finds that the description of another person similar to that of petitioner has been cited as defendant no.15 in the said suit being Title (P) Suit No. 11 of 2018.

However, petitioner did not receive any summon of the said suit for obvious reason that her name is not appearing as defendant in the cause title of the said partition suit. In the said suit an interim order of injunction was passed directing parties to maintain status quo.

However, petitioner thereafter with her utter surprise find that a police complaint has been lodged against the petitioner herein which gives rise to presumption that the petitioner herein has violated the order of injunction and has continued with the construction work.

Mr. Chowdhury, learned Counsel appearing on behalf of the petitioner submits that the allegations made in the complaint even if assumed to be true, the remedy for such violation can be addressed under the relevant provision of the Code of Civil Procedure. In fact, the dispute arises out of civil proceeding, pending before the Civil Court and the Court which is in seisin of the matter is the appropriate judicial authority to look into the allegations of defacto-complainant and to take remedial steps in accordance with the provisions of Code of Civil Procedure. The invocation of penal laws and putting the criminal law machinery into motion is an abuse of process of law in the facts and circumstances of the present case.

He further submits that the FIR should not have been

registered as no cognizable offence has been made out and the police authority violating the Apex Court direction in ***Lalita Kumari Vs. State of Uttar Pradesh, (2013) 14 SCR 713*** put the criminal law in motion mechanically in the present context. He further submits that though the dispute between the parties is purely civil in nature and colour of criminality has been imbibed only to implicate the petitioner/accused person in a criminal law and exert pressure upon her to settle the civil disputes between the parties, which is not permissible in law.

Mr. Chatterjee, learned Counsel appearing on behalf of the State submits that materials available so far during investigation clearly suggests that the offence under Sections 188/447 has been well established against the present petitioner and its too early to say that the criminal proceeding initiated against the petitioner is liable to be quashed.

I have considered the submission made by both the parties. On perusal of the contents of the FIR it is very much clear that the FIR maker has stated that the Civil Judge has passed an interim injunction in the form of status quo upon both the parties with a further direction not to change nature and character of the property and in spite of that, some people named in the FIR including present petitioner in violation of injunction order are raising construction over the said property and for which Section 447 and Section 188 attracts in the present case.

In this context, it is to be mentioned that Section 195(a)(i) Cr.P.C bars the Court from taking cognizance of any offence under

Section 188 of the IPC unless there is a written complaint by the public servant or Court concerned for violation of his lawful order. Admittedly in the present context the Officer who has passed the order has not lodged complaint under Section 188 of the Indian Penal Code. The provision of Section 188 of the Indian Penal Code read with Section 195(a)(i) of the Cr.P.C. cannot be evaded by describing the offence as one being punishable under some other sections of the I.P.C and cognizance of such offence cannot be taken by mis-describing or by putting wrong level in it. In **C. Muniappen Vs. State of Tamil Nadu**, AIR 2010 SC, 3718, Supreme Court has held in para 25 as follows :

“ Thus in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant whose lawful order has not complied with. The complaint must be in writing. The provisions of Section 195 Cr.P.C are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction”.

In such view of the matter it is clear that in the present context section 188 IPC has got no application.

In connection with the offence punishable under Section 447 the Code, prosecution is to satisfy the ingredients described in Section 441 of the IPC. In this context learned Counsel appearing on behalf of the petitioner strenuously argued that the petitioner has purchased the land and has mutated her name in the land revenue record and accordingly she has sufficient document to show that

she is in possession of the property and under such circumstances entering into the property by the petitioner in a property possessed by another person does not arise in the present context. Accordingly, the main ingredients to attract criminal trespass as stated in Section 441 of the Code is clearly absent in the preset case and as such Section 447 of IPC also does not attract.

Furthermore from the cause title of the suit where order of injunction in the form of status quo was passed, it appears that in the cause title in place of defendant no. 15 one "Shahnar Khan D/o of Zahid Khatun" has been impleaded but the name of present petitioner admittedly is "Sahinaz Khan wife of Zahid Khan". Accordingly I find substance in the contention that even if there is any injunction order in the form of status quo passed in respect of the suit property, that order was not served upon the present petitioner and for which also criminal trespass in the property in question by the petitioner with intent to annoy, intimidate or insult does not arise at all.

It has been held in series of decision that power under Section 482 of Cr.P.C. has to be exercised sparingly and in the interest of justice. But allowing the present criminal proceeding to continue inspite of the fact that the allegations levelled in the FIR do not make out any offence would amount to an abuse of process of Court and therefore in such cases power under Section 482 has to be exercised. While saying so, I have kept in mind the parameters laid down in different judgements including Bhajan Lal's Case, 1992 Supp (1) SCC 335 and have examined the complaint and I am

clearly of the view that necessary ingredients of any offence far from offence either under Section 188 or under Section 447 have not been made out in the complaint. In fact the petition of complaint is a vague one and except the bald allegation that the petitioner herein and some others are raising construction violating injunction order, nothing further has been stated in the complaint. Therefore in my opinion, if the allegations made in the complaint are taken on their face value, the alleged offences have not been made out.

Accordingly present application being CRR 43 of 2024 is allowed. The criminal proceeding being G.R. Case no. 3771 of 2023 presently pending before the Court of Additional Chief Judicial Magistrate, Siliguri is hereby quashed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)