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Ct. No. 3

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

**C.R.R. 208 of 2024
Sri Sunny Thapa
Vs.
The State of West Bengal & Anr.**

<i>Mr. Sudipto Kumar Mazumdar, Senipr Advocate</i>	
<i>Mr. Shubhankar Dutta</i>	
<i>Ms. Neema Dolma</i>	<i>...For the Petitioner</i>
<i>Mr. Aditi Shankar Chakraborty</i>	
<i>Mr. Aniruddha Biswas</i>	<i>...For the State</i>
<i>Mr. Deborshi Dhar</i>	<i>...For the De Facto Complainant</i>

Supplementary affidavit filed on behalf of the petitioner is taken on record.

This is an application wherein the petitioner has sought for quashing of proceeding, being Matigara Police Station Case No. 233 of 2024 dated 06.04.2024, being G.R. Case No. 1211 of 2024 under Section 188, 427, 447 of the Indian Penal Code, which is presently pending before the court of learned Additional Chief Judicial Magistrate, Siliguri.

It is alleged in the FIR, that Bijay Kumar Sah purchased the property in dispute and he use to look after the property with the help of opposite party No.2 who is a caretaker. On the date of occurrence, opposite party No. 2 came to know that some persons are making boundary wall from the Southern side of the property. On getting such

information, the caretaker reached the spot and found that the accused persons have trespassed in the schedule mentioned property with an intention to grab the land by making illegal boundary wall. On being asked the petitioners became rude and started quarrel with him and also threatened him with dire consequence. It is further alleged in the FIR that one Title Suit, being No. 261 of 2021 was filed by the owner of the property, Bijay Kumar Sah against two persons, namely, Harka Bahadur Chettri and his son, Bikash Chettri, which is pending before learned Civil Judge (Junior Division), Siliguri and in the said suit learned Civil Court after taking into consideration the documents placed before the Court, by an order dated 15th July, 2022 was pleased to direct both the parties of the suit not to change the nature, character and possession of the suit property till disposal of the suit. It is further alleged in the FIR that even having full knowledge about the order of the learned Court dated 15th July, 2023, the accused persons illegally trying to change the nature and character of the suit property in sheer violation of the order of the learned Court dated 15th July, 2022.

Mr. Sudipta Kumar Mazumdar, learned Senior Counsel appearing on behalf of the petitioner submits that the aforesaid injunction order was not passed against the petitioner and he is not a party to the suit. This is a glaring example how the criminal proceeding are being abuse. In fact, in violation of mandate of law and without

making any preliminary enquiry and even without examining the documents of title and possession, the investigating authority is continuing the criminal proceeding. Accordingly, he has prayed for quashing the aforesaid proceeding.

Mr. Debtorshi Dhar, learned Counsel appearing on behalf of the opposite party/de facto complainant submits that the petitioner herein, in spite of specific knowledge about the order of injunction have clearly violated the same and was making construction on the suit property, which attracts Section 188 of the Code. Moreover, the property, is in possession of the complainant/ but accused person had illegally, trespassed and for which Section 447 also attracts in the present context. It is too early to say that the allegations levelled against the petitioner does not attract criminality and it would not be proper to close investigation at it's threshold, invoking inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code.

I have considered the submission made on behalf of the parties. On perusal of the documents annexed to the supplementary affidavit as well as with the application it appears that there is a civil dispute between the parties about the possession and extent of boundary and for which the owner has already initiated appropriate proceeding before the Civil Judge, which is admittedly pending for adjudication. The materials so far collected by the Investigating Agency during

investigation also clearly suggests that the dispute between the parties are purely civil in nature.

Needles to say that section 195(a) (i) Cr.P.C. bars the court from taking, cognizance of any offence punishable under section 188 IPC unless complaint is lodged by the public servant whose lawful order has not been complied with. Compliance of such provision is mandatory and if complaint lodged under section 188 without complying section 195(a) (i) of Cr.P.C., the trial/conviction would be void abinitio being without jurisdiction. Here admittedly the court who had passed the injunction order had not lodged complain under section 188 IPC for non compliance of his order and as such section 188 IPC has got no application in the present context, Moreover no injunction order was passed against the petitioner herein, nor any order of injunction was served upon him, so on that score also, section 188 does not lie against present petitioner.

In order to constitute offence under section 447 IPC, ingredients in section 441 of IPC are to be full filled. First part of section 441 clearly stipulates that accused must enter upon property in the possession of another. Here by way of filing documents by way of supplementary affidavit, petitioner pointed out that he is in possession in respect of his purchased property where he is raising construction as per sanctioned building plan. When there is serious dispute between the

parties about extent of boundary and possession of the property and the matter is sub-judiced before a competent civil court, there is hardly any scope to say that petitioner entered upon such property with intent to commit offence or to intimidate, insult or annoy any person who is in possession. Accordingly offence punishable under section 446 also have got no application in the present context.

Though section 427 has been put with the alleged offence to make the offence weighty but no allegation fulfilling condition under section 425 of IPC has been alleged anywhere in the complaint.

Having considered the facts and circumstances of the case and the materials collected so far during investigation including the complaint I find that the dispute is purely civil in nature, which could only be adjudicated by a Civil Court and the petitioner has only made an attempt to colourize civil dispute into a criminal proceeding, which if allowed to continue, it will cause sheer abuse of process of Court.

In such view of the matter, C.R.R. 208 of 2024 is allowed and all further proceedings of Matigara Police Station Case No. 233 of 2024 dated 06.04.2024 under Section 188/427/447 of the Indian Penal Code, being G.R. Case No. 1211 of 2024 presently pending before the learned Additional Chief Judicial Magistrate Court, Siliguri 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.

(Ajoy Kumar Mukherjee, J.)