

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

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR 226 of 2022

Avijit Das & ors.

V/s.

The State of West Bengal & anr.

For the Petitioners: Adv. Sourav Ganguly,
 Adv. Rishita Chakraborty,
 Adv. Gopal Roy

For the Respondent No. 2. Adv. Sabir Ahmed,
 Adv. Hillol Saha Poddar,
 Adv. Mousumi Das,

For the State: Adv. Aditi Shankar Chakraborty, Ld. APP
 Adv. Abhijit Sarkar,

Heard on: 26th April, 2024

Date: 30th April, 2024

SUVRA GHOSH, J. :-

1. In the present application under Section 482 of the Code of Civil Procedure, the petitioners have prayed for quashing of the proceeding of C.R. case no. 2 of 2021 under Sections 448/427/506/24 of the Indian Penal Code pending before the learned Judicial Magistrate, 1st Court, Cooch Behar. Though the complaint was initially lodged under Sections 447/379/323/427/506/34 of the Indian Penal Code, the trial Court, upon receipt of report under Section 202 of the Code of Criminal Procedure, held that the material ingredients of commission of offence

punishable under Sections 448/427/506/34 of the Indian Penal Code was found against the accused petitioners.

2. Learned counsel for the petitioners has submitted that the 2nd petitioner Shankar Guha Majumdar was a tenant in respect of the premises in question under the 2nd opposite party and an agreement to that effect was entered into by and between them on 7th April, 2015. The 2nd petitioner transferred the tenancy in favour of the first petitioner in terms of the agreement upon intimation of the same to the landlord/2nd opposite party. The 2nd opposite party has filed an eviction suit against the 2nd petitioner in respect of the premises which is pending. The tenant has paid the rents up to date. The 2nd opposite party intimated the 2nd petitioner by a letter issued on 1st April, 2011 that the landlord intended to take up development work for which a four-storied building would be raised in order to accommodate the existing occupiers including this petitioner subject to reduction of space to some extent.
3. Learned counsel has further submitted that upon receiving possession of the premises, the 1st petitioner found on 4th November, 2020 that the shutter lock of the premises was blocked by some miscreants for which the said petitioner lodged a General Diary before the Kotwali Police Station. It was observed by the learned trial Court in the civil suit that the 1st petitioner was in possession of the premises. The petitioners have been falsely implicated in the present complaint and no incident has alleged occurred at all. The complaint does not contain any ingredient of offences punishable under Sections 448/427/506/34 of the Indian

Penal Code and proceeding with the case any further shall be complete abuse of the process of law.

4. Learned counsel has placed reliance on the authority in ***Abhishek Saxena vs. State of Uttar Pradesh & anr.*** reported in **2023 SCC OnLine SC 1711** in support of this contention.
5. Per contra, learned counsels for the opposite parties have submitted it is not in dispute that the 2nd petitioner is a tenant in respect of the premises in question under the 2nd opposite party. The evidence referred to by the petitioners deals with disputed questions of fact which cannot be considered by the Court in an application under Section 482 of the Code. Such questions can be determined only at the time of trial. *Prima-facie* case has been made out against the petitioners in the complaint which is sufficient to dismiss the present application. Learned counsels have placed reliance on the authorities in ***Koppiseti Subbharao vs. State of Andhra Pradesh*** reported in **(2009) 12 Supreme Court Cases 331** and ***Mohd. Allauddin Khan vs. State of Bihar & ors.*** reported in **(2019) 6 Supreme Court Cases 107** in support of their contention.
6. I have considered the submission made on behalf of the parties as well as material on record.
7. It is trite law that jurisdiction under Section 482 of the Code ought to be exercised with extreme care, caution and circumspection and should not be used to stifle or axe down a legitimate prosecution. The test is whether uncontroverted allegations as made out in the complaint *prima-facie* establish the case and also whether continuation of such complaint

shall amount to abuse of the process of law. Mere insertion of certain provisions in the complaint does not by itself make out a *prima-facie* case under the said provisions and it is the substance of the complaint which has to be taken into consideration.

8. Admittedly an eviction suit is pending between the 2nd petitioner and the 2nd opposite party. As observed by the Hon'ble Supreme Court in the authority in Md. Allauddin Khan (supra), pendency of an eviction suit between the parties is essentially a civil dispute which cannot be a ground for quashing of a criminal complaint. Also, the High Court has no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code as contradictions and/or inconsistency in the statement of witnesses is essentially an issue relating to appreciation of evidence which can be gone into by the trial Court. The same preposition has been echoed in the authority in Koppiseti Subbharao (supra).
9. In the authority in Abhishek Saxena (supra), the Hon'ble Supreme Court has dealt with the basic ingredients of the offences alleged in order to come to a conclusion whether First Information Report and Charge-sheet can be quashed under Section 482 of the Code.
10. The moot question for consideration herein is whether the ingredients of offence under Sections 448/427/506/34 have been *prima-facie* made out in the complaint. Section 448 envisages that whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which

may extend to one thousand rupees, or with both. House-trespass has been defined in Section 442 of the code as follows:-

“Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is set to commit house-trespass”. Criminal trespass has been defined in Section 441 as underunder:

“Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult of annoy any person in possession of such property..... is said to commit criminal trespass.”

11. In the case in hand, the complaint does not *prima-facie* disclose any ingredient of criminal trespass and consequentially any ingredient of house-trespass since admittedly the 2nd petitioner is a tenant in respect of the premises in question and an eviction suit filed by the 2nd opposite party is pending against him. The premises having been transferred by him in favour of the first petitioner upon intimation to the landlord in terms of the tenancy agreement, no *prima-facie* ingredient under Section 448 has been made out in the complaint.
12. Section 427 of the Code deals with mischief causing damage to the amount of fifty rupees. The complaint does not *prima-facie* disclose any such allegation.
13. Section 506 pertains to criminal intimidation. Criminal intimidation has been defined in Section 503 of the Code as hereunder:-

“Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation”.

14. The complaint barely says that the petitioner abused the members in filthy language. No act alleged in the complaint comprises criminal intimidation as defined in Section 503.
15. In the light of the observation made hereinabove, this Court inclined to hold that no *prima-facie* ingredients of offence punishable under Sections 448/427/506/34 of the Indian Penal Code have been made out in the complaint and the contents of the complaint do not disclose the offences as alleged. As such, continuation of such complaint shall amount to abuse of the process of law.
16. In result, the proceeding, being C.R. case no. 2 of 2021 under Sections 448/427/506/24 of the Indian Penal Code pending before the learned Judicial Magistrate, 1st Court, Cooch Behar, is quashed.
17. CRR 226 of 2022 is allowed accordingly.
18. There shall however be no order as to costs.
19. Copy of the judgment along with Lower Court record be sent to the Court of the learned Judicial Magistrate, 1st Court, Cooch Behar for information and necessary action.

20. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)