

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 184 of 2024
(Assigned Matter)

Sisir Saha & Ors.
Vs.
The State of West Bengal & Anr.

For the Petitioners	: Mr. Pawan Kumar Gupta, Mr. Antarikhya Basu, Ms. Sofia Nesar, Mr. Sayan Mukherjee, Ms. Madhumita Basak.
For the State	: Mr. Debasish Roy, Ld. P.P. Mr. Bitasok Banerjee, Ms. Suvashree Patel.
For the Opposite Party No. 2	: Mr. Prosenjit Mukherjee, Mr. Samrat Banerjee.
Hearing concluded on	: 09.12.2024
Judgment on	: 14.01.2025

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the entire proceeding being GR case no.3205 of 2023 arising out of Serampore PS case no.607 of 2023 dated

18.12.2023 under Sections 323, 307, 379 and 120B read with Section 34 of the Indian Penal Code, 1860 pending before the learned Additional Chief Judicial Magistrate, Serampore, Hooghly.

2. The allegations made in the application under Section 156(3) of Criminal Procedure Code filed before the learned Additional Chief Judicial Magistrate, Serampore against the petitioners herein are as follows:-

“2.....complainant purchased a piece of land measuring about 01 katha, 03 chittak, 23 Sft, under Mouza Mahesh, J.L. No.15, comprised in C.S. and R.S. Dag No.1782 and 1783, which is located beside Ramkrishna Road under P.O.-Mahesh, P.S.- Serampore, which is within the ambit of Ward No.24, of Serampore Municipality, under A.D.S.R. Serampore which was duly registered before Additional Registrar of Assurance – III, Kolkata on 31.10.2014 and which was recorded in Book No.I, CD Volume No.9, Pages from 5890 to 5913, being No.03947 for the year 2014.

3.....complainant purchased the afore property from Subedar Khan, S/o Late Salamat Khan, of 41, Bansbagan, P.O.-Kamarhati, PS – Belgharia, Dist. – North 24 Parganas, Kolkata – 700058 and Mastu Mia, S/o Late Salamat Khan, of 18/2, Dasu Babur Bagan, P.O. – Kamarhati, PS – Belgharia, Dist. North 24 Parganas, Kolkata – 700058, through their Constituted Attorneys namely (1) Wakil Ahamed,

S/o Sher Mohamad, residing at 11/R, P.K. Das Lane, P.O.-Rishra, PS – Serampore, Dist- Hooghly (2) Mohammad Shamim Anwar, S/o Late Gulam Ahmad, residing at 27/A, P. K. Das Lane, PO – Rishra, PS – Serampore, Dist. – Hooghly and (3) Mohammad Nayeem, S/o Late Inayat Ali, residing at 47/A, Ramkrishna Road, PO – Rishra, PS – Serampore, Dist. – Hooghly. Subsequently your complainant came to know that the persons namely Subedar Khan, Wakil Ahamad and Md. Shamim Anwar was arrested in connection with Serampore PS Case 53/2023 dated 08.02.2023, under section 420/467/468/409/120B/34 IPC for fraudulently sell of property through fraudulent power of attorney. That your complainant went to Serampore police station in this regard to lodge a complaint but the Investigating Officer of the aforesaid case incorporated his name as witness and your complainant gave statement under section 164 Cr.P.C. before the Judicial Magistrate, Serampore.

4. That on 22.11.2023 at about 10.20 AM, when your complainant went to the grocery shop near Khatir Bazar, Rishra the Accused persons namely, 1) Sisir Saha, S/o Late M. N. Saha, residing at 30/A, P.K. Das Lane, PO – Rishra, PS – Serampore, Dist. – Hooghly, Pin – 712248, 2) Imtiyaz Ahamed, S/o late Muntaz Ahamed, residing at 13/A, P.K.Das Lane, PO – Rishra, PS – Serampore, Dist. – Hooghly, Pin – 712248, 3) Md. Jamir, S/o Late Md. Habib, residing at 47/F, Ramkrishna Road, PO – Rishra, PS – Serampore, Dist. – Hooghly, Pin -712248, 4) Mustafa Khan @ Binod, S/o Late Kazim Khan,

residing at 37/2, Ram Krishna Road, PO – Rishra, PS – Serampore, Dist. – Hooghly, Pin – 712248, 5) Md. Aftab Alam, S/o Md. Nizamuddin residing at 12/A, Ram Krishna Road, PO – Rishra, PS – Serampore, Dist. – Hooghly, Pin 712248, 6) Md. Ashraf, S/o Late Md. Mustaqim, residing at 61/D, Ram Krishna Road, PO – Rishra, PS – Serampore, Dist. – Hooghly, Pin – 712248 and 7) Pankaj Jha, S/o Shiv Shankar Jha, residing at 1/A, Rai Land Road, PO – Mahesh, PS – Serampore, Dist. Hooghly, Pin – 712202, suddenly attacked your complainant jointly with iron rod and assaulted him. Imtiyaz Ahamed and Sisir Saha choked the neck of your complainant by strangulation from his back side and Md. Jamir, Mustafa Khan @ Binod and Md. Aftab Alam assaulted your complainant with iron rods with intention to kill him. By such sudden attack your complainant fell down on the ground and taking advantage of the situation Md. Ashraf and Pankaj Jha snatched away his gold chain of 01 Bhorī from your complainant's neck. That by the intervention of the local people your complainant somehow saved his life and all the accused persons fled away by giving threat if your complainant go to Court or police station his life will be under threat. Subsequently your complainant went to the Serampore Walsh Sub-Divisional Hospital along with his family member for treatment and treated there. Thereafter your complainant went to Serampore Police Station several times for taking necessary legal action against the accused persons but till

today no action has been taken against the accused persons.”

3. The petitioners' case is that they have been falsely implicated in the present case and they are mere witnesses to the said transaction and there is no prima facie case as alleged by the complainant against them.
4. Learned counsel for the petitioners further submitted that the present case was initiated on the basis of an application under Section 156(3) of Cr.P.C. It is submitted that the mandatory provision of Section 154 of Cr.P.C. has not been complied with by the complainant and he has relied upon the judgment of ***Priyanka Srivastava & Anr. vs State of Uttar Pradesh & Ors., (2015) 6 SCC 287.*** As such, the order registering the FIR on the direction of the Magistrate is not in accordance with law and the FIR against the present petitioners is to be quashed.
5. Learned Public Prosecutor has brought notice of this Court to **paragraphs 4 and 5 of the application under Section 156(3) of Cr.P.C.** wherein it prima facie appears that the mandatory provision of Section 154 of Cr.P.C. has been duly complied with by the complainant / opposite party no.2.
6. Learned Public Prosecutor on placing the case diary has relied upon the **injury report at Page 24 of the case diary** wherein it

appears that the injury is simple in nature **but there are several injuries sustained by the complainant Asgar Ali.**

7. The incident in this case though revolves around a land dispute, there being an injury report in this case with injuries therein, making out a prima facie case in respect of the offences alleged against the petitioners herein, the present case should be permitted to proceed towards trial.

8. In **Ramveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave Petition (CRL.) No. 2953 of 2022, decided on April 20, 2022**, the Supreme Court held:-

*“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under **Section 482** of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under **Section 482** of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.**”*

9. Interfering in such a prosecution would amount to abuse of process of law.

10. **CRR 184 of 2024 is thus dismissed.**

- 11. Trial Court to proceed in accordance with law.**
- 12.** All connected Applications, if any, stand disposed of.
- 13.** Interim order, if any, stands vacated.
- 14.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 15.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]