

CRR 1549 of 2023

**Birendra Kumar Roy @ Birendra Kr. Roy & Ors.
Vs.
The State of West Bengal & Anr.**

Mr. Aniruddha Chatterjee Mr. Arnab Roy	...for the Petitioners
Mr. Biswajit Manna	...for the O.P. no. 2
Mr. Debasish Roy, Ld. PP Mr. Koushik Kundu	...for the State

This is an application seeking quashment of the proceedings being G.R. case no. 540 of 2013, presently pending before the court of the learned 4th Metropolitan Magistrate, Calcutta, arising out of Shakespeare Sarani Police Station case no. 67 of 2013.

The petitioners contended that an Ejectment suit being no. 885 of 2000 between the petitioner no. 1 and opposite party no. 2 and others is pending before the learned Second Bench, Small Causes Court, Calcutta, which has arisen out of landlord-tenant dispute and the dispute between the parties is purely civil in nature. He further submits that in the year 2012, the opposite party no. 2 herein lodged a complaint at Shakespeare Sarani Police Station contending that sometimes in the year 2011, he being the tenant had gone for a trip for seven days and after return, he found that the main door was lying locked but the garage door lock was tampered. After 17 months of the incident when the opposite party no. 2 got the opportunity to enter at her tenanted premises he allegedly found that the first floor flat had been ransacked and most of the cup-boards and showcase were

broken open and the articles were scattered all over the place. Various valuable papers and documents as well as several valuable articles were allegedly missing and/or stolen from the said flat. Therefore, FIR was lodged at Shakespeare Sarani Police Station, being case no. 328 of 2012 and after completion of investigation, the police submitted charge-sheet on 5.3.2013.

The opposite party no. 2 lodged the instant second complaint at the aforesaid police station pursuant to a letter of complaint which has been treated as an FIR, being the instant Shakespeare Sarani Police Station case no. 67 of 2013 under Section 341/506/509/114 of the Indian Penal Code, alleging inter alia that the petitioners herein have prevented agent of United India Insurance Company Limited, who came to the said premises for investigation to ascertain quantum of damage and also to take photographs, when the petitioners have threatened the agent with dire consequences and has snatched the visiting card of the agent. Complainant's further allegation is that the petitioners have abused the agent and the opposite party no. 2 with filthy languages and forced the agent to go out from the said premises.

After completion of investigation, the police has submitted charge-sheet wherefrom it appears that police has examined four witnesses during investigation. Thereafter, the petitioners filed application under Section 239 of the Code of Criminal Procedure, praying for discharge from the instant case. However, learned court below by the impugned order has rejected the prayer of the petitioners for discharge.

Being aggrieved by the said order, the petitioners herein submit that further continuance of the present proceeding will be

a mere abuse of process of the court as it transpires that the complain has been lodged just to harass the petitioners and over a decade multiple proceedings are being contested by and between the parties. The allegation levelled against the petitioners in the complaint does not constitute any offence under Section 341/506/509 of the IPC.

Referring the judgment reported in ***Bhajanlal's case, AIR 1992 SC 604***, the petitioners contended that since the present proceeding is manifestly attended with mala fide and ulterior motive for wrecking vengeance on the petitioners and with a view to spite him due to private and personal grudge, the court below ought to have allowed the petitioner's prayer for discharge.

Learned counsel for the opposite party submits that the allegation levelled in the complaint constitutes offence under Sections 341/506 of the IPC and since the trial court has decided to frame charge against the petitioners and to go for trial to unearth the truth, it would not be proper for the High Court to quash the proceeding.

I have gone through the petition of complaint as well as the materials collected during investigation. On perusal of the written complaint, it appears that the FIR maker has made the following allegations:-

- 1) When they decided to climb first floor, petitioners, Pawan and Papiya obstructed them.
- 2) Petitioner no. 1 herein/landlord prevented them from taking photographs by the agent, which he took for assessment of damages and they even forced to delete the photograph that were taken.

- 3) The accused persons threatened with dire consequences and had taken away agent's visiting card.
- 4) The petitioners were exceedingly abusive to all of them and forced the agent to leave the premises.

The complaint and the materials in the case diary do not specifically attribute what kind of threats or intimidation has been referred to. The charge-sheeted witnesses said during investigation that hot altercation took place between Mr. Lobo and accused no. 2, Ms. Papiya and thereafter in between their spouses and such conversation includes very abusive and vulgar languages, which made the witnesses embarrassed. Such statement of using abusive or vulgar language as recorded by investigating officer is attributable to both sides and moreover, in the complaint, complainant only stated "they were exceeding abusive to all of us" without any details as to how the petitioners were abusive.

No allegation has been levelled to insult the modesty of woman by uttering any particular words or gesture to attract Section 509 of IPC. The complaint also does not attribute any particular threat or intimidation except saying "*threatened with dire consequences*".

Before an offence of criminal intimidation to be made out against the accused it must be established even prima facie that the accused had the intention to cause alarm to the complainant. A review of the alleged threat reveals that complainant alleged about creating obstruction by landlord in entering alleged tenanted portion and at that time they were abusive, which are basically a landlord-tenant civil dispute,

rather than criminal intimidation. Therefore, from the materials on record the ingredients of offence under Section 506 or 509 of the IPC do not attract in the present context.

The allegations of wrongful restraint by the petitioners has not been substantiated during investigation. The witnesses who were examined during investigation, have not stated anything about wrongful restraint by the petitioners but they have only stated that hot exchange of words took place by both the parties i.e. men of landlord and men of tenant and both were abusive during hot altercation over the issue of getting entry and taking photographs at the alleged tenanted premises. Accordingly, it is palpably clear that the materials available during investigation, prima facie ingredients of an offence punishable under Section 341 of the IPC have not been disclosed.

Since prosecution failed to establish the offences levelled against the petitioner, Section 114 of the IPC can not have any application in the present context. The allegations are not being substantiated and can at best be said to have been made out on account of small skirmishes, which do not warrant for persecution.

The trial Judge while considering the question of framing the charges has the power of sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then he can proceed against the accused by framing

charge. In the instant case, without weighing the evidence, court below framed charge against the petitioners by making a casual remark that after going through the documents, he found that the allegations against petitioners are not groundless, and did not consider the misery that an accused is going to face for directing him to go ordeal of a criminal trial, which will ultimately lead to acquittal for want of evidence. Since it is the obligation of the trial court to consider the evidence at the time of framing charge even for limited purpose, which the court below had not done in the instant case, I have no other option but to conclude that the order impugned suffers from perversity and calls for interference by this court.

In such view of the matter, I find that the continuance of the present proceeding before the court below will be a mere abuse of the process of the court.

The impugned order dated 1.3.2023 passed in G.R. case no. 540 of 2013 stands quashed and as a result, the proceeding being G.R. case no. 540 of 2013, presently pending before the court of the learned 4th Metropolitan Magistrate at Calcutta also stands quashed.

CRR 1549 of 2023 is accordingly disposed of.

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

(Dr. Ajoy Kumar Mukherjee, J.)