

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2041 of 2023

**Sri Shyamal Kumar Ghosh & Anr.
Vs.
The State of West Bengal & Anr.**

For the petitioners	:	Mr. Moyukh Mukherjee Ms. Debottam Das Ms. Sarmistha Basak Mr. Samrat Mondal Ms. Awantika Bajpai
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For the opposite party No.2	:	Mr. Haradhan Banerjee Mr. Vivek Kr. Tripathi
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Heard on	:	01.07.2025
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Judgment on	:	11.09.2025
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Dr. Ajoy Kumar Mukherjee, J.

1. This is an application filed by the petitioners seeking quashment of CR case no. 234 of 2022, pending before learned Judicial Magistrate, 3rd Court Serampore, under section 323/406/427 of the IPC.
2. Petitioners' case is that one Narayan Chandra Bag was a premises tenant in respect of shop room under predecessor in interest of petitioner

no.1 Brindaban Ghosh at 48 Netaji Subhas Avenue, Serampore. Said original tenant Narayan died in December, 1998 but even after his death, his son who is the opposite party No.2/ instant FIR maker continued in possession in that premises. The petitioner no.1/ accused purchased the property in question after the death of Narayan and his specific case is that FIR maker/ opposite party no.2 herein, under the provision of West Bengal Premises Tenancy Act, 1997 has become a rank trespasser after 5 years of the death of his father said Narayan Chandra Bag who was the original tenant. The petitioner no.1/accused filed a suit for eviction against complainant/ opposite party no.2 and the said suit was decreed against the complainant/opposite party no.2 on contest. Being aggrieved and dissatisfied with the said judgment and decree dated 09.12.2014, the complainant/opposite party no.2 herein preferred a Title Appeal in the court of learned Additional District Judge, who remanded the suit before the trial court after setting aside the judgment and decree passed by the trial court. Being aggrieved by the said judgment of remand the petitioner no.1/accused preferred Miscellaneous Appeal before this High court being FMAT 618 of 2019, which is still pending for adjudication before this High Court.

3. Thereafter on April, 22nd, 2022 the complainant/opposite party no.2 made some illegal construction in front of the shop room in question and since the accused persons protested to such illegal activities, they were mercilessly beaten by the complainant/opposite party no.2.

4. Now in order to create pressure upon the accused persons/petitioner/owner, the complainant opposite party no.2/occupier filed the instant complaint before the Magistrate under section 200 of the

Code of Criminal Procedure with the allegation that the accused No.1 being the petitioner failed to fulfill his illegal desire of evicting the occupier/complainant illegally, did not give access to the electric meter causing pilferage of electricity. The accused no.1 started making construction over the said shop room premises after damaging the roof of said premises and he intentionally damaged almost the entire roof of the shop premises, resulting damage of equipment and other necessary accessories of the shop of the complainant and thereby caused damage of more than Rs. 50,000/-. The the complainant lodged a GDE being no. 1082 dated 16.05.2022.

5. Opposite party no. 2 further alleged in the complaint that accused no.1/petitioner herein again on 07.07.2022 along with the other accused taking advantage of temporary absence of the staff of the complainant, broke the wall of the shop room and had damaged the Xerox machine of the complainant by way of falling cement chunk, pluster and broken bricks and thereby caused damage of Rs. 50,000/- to the complainant. When the staff of the complainant noticed such illegal activities and raised hue and cry, then the accused persons became furious and threatened him with dire consequences and also tried to assault them physically and abused them with filthy languages. Thereafter when the complainant had reached the spot, they also assaulted the complainant by fist and blow and also threatened to kill the complainant. The complainant went to the P.S. for lodging complaint but the concerned police authority only made a GDE No. 529 dated 07.07.2022. It is further alleged in the complaint that by their illegal activities the accused persons have caused offence of theft of energy

from the meter of the complainant and have also caused offence of unlawful assembly with the intention to cause riot, refrained the complainant from making any case against the accused persons, causing public nuisance in the locality, caused hurt by physical assault, caused mischief by way of damaging the property, etc. and therefore, he lodged the complaint before the Magistrate.

6. Ld. Magistrate took cognizance and thereafter on examination of complainant's witnesses issued the process against the petitioners herein under sections 323/427/506 of IPC.

7. Mr. Mukherjee learned counsel for the petitioner submits that on the basis of an incident that allegedly took place on 10th November, 2022 at 10.30 P.M. accused persons/petitioners herein have initiated a criminal proceeding being Serampore P.S. case no. 479 dated 09.12.2012 against opposite party no.2 herein/complainant and said investigation has already been culminated into a charge sheet

8. Being aggrieved by the instant complaint case being CR No. 234 of 2022 filed against the present petitioners, Mr. Mukherjee submits that the proceeding is absolutely *malafide* in nature, since the allegation of raising illegal construction by the accused persons/petitioner is far from the truth because they have raised such construction upon obtaining necessary building sanction plan from the municipality and such contention of the accused person is also evident from the fact that no civil suit claiming injunction has been filed by the complainant/opposite party no.2 for restraining the accused persons/petitioner from carrying out such construction in question nor he had filed any Writ Application challenging

the construction in question raised by the accused persons/petitioner. He further contended that the allegation of accusing theft of energy by the accused persons/petitioners as stated in the complaint is absolutely *malafide* since no such complaint has been taken out before the concerned authority of CESE Ltd. by the complainant/opposite party no.2. The allegation of public nuisance is also a concocted story, since none of the local residents has come forward to depose in respect of the allegation as raised by the complainant/opposite party no.2 in the complaint. During initial deposition the person who deposed on behalf of the complainant has admitted that he is an employee of the complainant and as such no reliance can be placed upon the deposition of such interested witness.

9. Therefore, the issuance of process by the learned Magistrate suffers from inherent lack of jurisdiction and the dispute between the parties is purely civil in nature and the complain case has been initiated with a frivolous motive to put pressure upon the accused persons /petitioners so that they should not pursue the Civil appeal pending before the High Court and also after realising that they have little chance of success in the civil proceeding. The allegations made in the complaint does not disclose offence justifying continuance of the proceeding. Therefore Mr. Mukherjee has prayed for quashing of the instant proceeding.

10. Mr. Haradhan Banerjee learned Counsel appearing on behalf of the opposite party no.2 submits that the complainant Subir Bag lodged complaint under section 323/427/506 IPC and all the ingredients of offences are present in the complaint. He further argued that civil suit for recovery of possession pending in High Court in second appeal, does not

give a premium to the accused to commit offence under the abovementioned sections. Therefore, both second appeal and the criminal case can continue. He further submits that the argument of present petitioner about making false allegations in complaint as well as in initial deposition are not to be tested at this stage to come to a conclusion as to whether they are true or false. In this context he relied upon the decision of ***Binod Kr. and others Vs. State of Bihar and another***, reported in **(2014) 10 SCC 663**. He further submits that though the petitioners herein have referred the charge sheet submitted in connection with GR 2426 of 2022, but it was initiated by the petitioners herein and as such it has no bearing upon the present complain case lodged by opposite party no.2. Furthermore the offence is non compoundable and hence after preliminary examination of witnesses charge will be framed and at this stage the prayer for quashing the proceeding does not lie. The court took cognizance of offence and issued summons on the basis of materials on record and therefore, there is nothing wrong on the part of learned Magistrate and as such this is not a fit case where the proceeding can be quashed invoking Courts jurisdiction under section 482 of the Cr.P.C.

Decision

11. The allegation under section 323 deals with voluntarily causing hurt to any person and to attract the said section there must be cogent evidence to establish firstly that the victim was actually hurt and secondly the hurt was voluntarily caused by the accused and that such hurt can be proved through direct evidence, circumstantial corroboration or medical records and thirdly such hurt was caused by accused with intention of causing hurt

or knowledge that he would thereby cause hurt. Therefore, the injury must be real causing bodily pain, deceased or infirmity to the victim and not speculative or presumptive and the intention to cause hurt also must be evident from the conduct of the accused and the resulting physical harm.

12. In the present case though the complainant alleged that he was physically assaulted by fist and blows, kicks and was also threatened but such assertions are neither specific nor supported by credible medical or evidentiary material. Complainant Subir Bag in his initial deposition on 30.09.2022 claimed he was physically assaulted and treated by a private doctor but he failed to furnish any document to show, which doctor allegedly treated him and in the absence of such document the complainant's claim of causing hurt which is supposedly involved multiple blows and caused sufficient injury and which necessitated treatment, hardly finds any substance. In initial deposition there is also contradiction in the evidence of two witnesses because while Subir Bag claims that he and his staff were beaten, PW2 Nitai Kundu explicitly states that he was only pushed and abused and that only complainant Subir Bag was beaten. Therefore, the testimony of Nitai Kundu being the only eye witness significantly dilutes the claim of actual hurt

13. So far as the allegation causing mischief by the petitioners/accused person is concerned, the offence of mischief can be made out under section 425 only when a person intentionally or knowingly cause destruction of property or any change to it which diminishes its value or utility and he does so with the intention to cause wrongful loss or damage to the person to

whom the property belongs. Without the establishment of this intention or knowledge, no offence of mischief under section 427 can arise.

14. In the present case while the complainant has alleged in the complaint that on 07.07.2022 the accused persons broke the wall of his shop during the lunch break and thereby caused damage to a Xerox machine worth Rs. 50,000/-, the actual circumstances described in the complaint and initial deposition given by the complainant and his employee failed to make out the ingredients of section 425 IPC, firstly because intent to cause wrongful loss is clearly absent in the allegation and the allegation is also vague in the absence of any specific evidence that the accused persons deliberately damaged the equipment with a wrongful objective to cause economic harm or destroy the property. The damage, if any, caused as a consequence of a civil property dispute allegedly occurred during confrontation. It is not in dispute that there are ongoing legal proceedings concerning occupation of shop premises and there is also background of alleged landlord tenant confrontation and the construction work was previously undertaken in May 2022. Moreover, the deposition of Nitai Kundu does not clearly support the allegation of mischief or deliberate damage. In the absence of any specification, the evidence of Nitai Kundu that the accused person had broken the slide of the shop and the roof of the shop and had damaged electric wire for which Xerox machine got damaged, is not consistent with the allegation made in the complaint which speaks of the wall being broken and Xerox machine being damaged falling debris and such inconsistent narrative raises doubt as to how exactly the damage occurred and whether it was caused intentionally or knowingly.

Furthermore there is nothing to show that the alleged mischief caused damage exceeding Rs. 50/-or the damage caused to the tune of Rs.50,000/-. Any amount of damage has not been substantiated by any document, bill, photograph, report or technical assessment of the damage. The mere claim of monetary loss is not sufficient and there is no attempt in the deposition or complaint to explain the extent of damage or how it was calculated or how the property lost its functionality.

15. So far the allegation under section 506 of IPC is concerned which deals with criminal intimidation, it must be established that the accused gave a threat to the complainant with the intent to cause harm and that such threat pertains to causing injury/destruction of property/harm to reputation or similar wrongful consequences and in addition to that there must be clear evidence that the complainant was actually alarmed by such threat and was thereby compelled to refrain from doing something which he was legally entitled to do or was coerced into doing something which he was not bound to do. This dual test of threat and alarm is foundational element for criminal intimidation under the law.

16. In the present case the allegation made by the complainant are vague and devoid of the essential requirements to constitute offence under section 506. The only reference to a threat occurs in paragraph (8) of the complainant wherein it is stated that the accused persons after allegedly assaulting the complainant *“threatened to kill him by any means”* , is absolutely general in nature and lacks any description of the words used in the context, in which the threat was made or any immediate consequence that followed from such threat. Moreover, there is no indication that the

threat was accompanied by any weapon or that complainant was put in such fear or alarm that he was deterred from pursuing legal recourse. On the contrary it shows that the complainant immediately went to the police station and lodged a second GDE on the same day which does not indicate that he was intimidated or coerced into silence.

17. Mere utterance of abusive language or verbal aggression unless accompanied by specific threatening gesture and demonstrable intent, it does not amount to criminal intimidation under section 506 of the IPC. There is no allegation that the complainant was so alarm by the threat that he was compelled to change his course of lawful conduct. Therefore the absence of alarm or compulsion nullifies the applicability of section 506. Moreover, in the initial deposition, neither the complainant nor his witness Nitai Kundu has corroborated the case of eminent threat to life or property and their depositions fail to substantiate the alleged threat with clarity. While both initial depositions mentioned that the accused was aggressive and abusive, only the complainant evasively stated that the accused persons threatened him with dire consequences and it has not been corroborated by Nitai Kundu nor there is any indication in the evidence of either witness that alleged threat caused any fear, alarm or change in conduct of the complainant. In order to attract the offence under Section 506 IPC more than casual or abusive language requires. In the absence of real and serious threat, vague utterance arising out of disputes arising from existing civil confrontation cannot be stretched to bring the charge of criminal intimidation.

18. Therefore, it is clear that the allegations are exaggerated and manufactured to convert a civil dispute into a criminal complaint. The long standing background of civil dispute casts a doubt on the spontaneity and genuineness of the allegations lodged in the complaint. When the entire allegation made in the complaint is viewed in totality, the allegations against the accused reveals an acrimonious but essentially civil dispute wherein the criminal proceeding is uncalled for. The order pertaining issuance of process by learned Magistrate under section 204 Cr.P,C is not only cryptic but also reflects non-application of mind and therefore perverse.

19. Relying upon the judgment of ***Madhav Rao jiwaji Rao Scindia & anr.Vs. Sambhaji Rao Chandroji Rao anger & Ors***, reported in **(1988) 1 SCC 692**, it can be said that where the uncontroverted allegation as made in the complaint does not prima facie establish the ingredients of the offence either under section 323 or under section 427 or under section 506 of the IPC and where the chance of ultimate conviction is bleak and no useful purpose is likely to be served by allowing the criminal prosecution to continue, it would be expedient and in the interest of justice not to allow the continuance of such criminal proceeding any further.

20. In such view of the matter **CRR 2041 of 2023** is allowed. The impugned criminal proceeding being CR Case no. 234 of 2022, pending before Id. Judicial Magistrate 3rd Court at Serampore is hereby quashed. Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)