

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1607 of 2014

In

CRAN 10 of 2024

Suresh Kumar Daga

-Vs-

The State of West Bengal

With

CRR 1608 of 2014

In

CRAN 10 of 2024

Nikunj Mimani

-Vs-

The State of West Bengal

For the Petitioner	: Mr. Dipanjan Dutta Mr. Sayan Sinha Mr. Surajit Saha
For the State	: Mr. Avishek Sinha
Heard on	: 03.10.2023, 24.01.2024, 08.04.2024, 07.10.2024, 13.01.2025
Judgment on	: 14.05.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioners praying for quashing of G.R. Case No.3973 of 2013 pending before the Learned

Additional Chief Metropolitan Magistrate, Kolkata, arising out of Burabazar P.S. Case No.643 dated 17th December, 2013 under Sections 323/341/114 of the Indian Penal Code, 1860 and 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 corresponding to quashing of the order dated 16th January, 2014 passed by the Learned Additional Chief Metropolitan Magistrate, Kolkata in G.R. Case No.3973 of 2013.

2. The instant revisional application was filed by the petitioners seeking quashing of G.R. Case No. 3973 of 2013, which arose out of Burrabazar Police Station Case No. 643 dated 17th December, 2013. The said criminal proceeding, pending before the Learned Additional Chief Metropolitan Magistrate, Kolkata, had been initiated under Sections 323/341/114 of the Indian Penal Code, 1860 and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The petitioners also prayed for quashing of the order dated 16th January, 2014, passed by the Learned Magistrate taking cognizance in the matter.
3. It was stated that the petitioners were shareholders and Directors of Lachmi Katra Private Limited, which had been in ownership and possession of premises located at 16, Jamunalal Bazaz Street, Kolkata-700006. The back portion of the said premises had suffered significant structural damage over time, necessitating development work. To that effect, a Memorandum of Understanding dated 27th November, 2003 had been executed between the company and one Ashok Sonkar, who was thereby appointed as the developer and caretaker of the said portion of the premises. In terms of the

MOU, Ashok Sonkar was obligated to pay Rs. 20 lakhs to the company prior to completion of the construction, of which only Rs. 5 lakhs had allegedly been paid.

4. The petitioners asserted that despite repeated demands, the outstanding balance had not been paid and that Ashok Sonkar had benefited from his position as caretaker. Additionally, one Sanjoy Goswami, appointed as accountant by Ashok Sonkar, had collected rent from the tenants but failed to deposit the same in the company's account. Upon confrontation, Mr. Goswami purportedly admitted to the misappropriation and committed in writing to return the amount.
5. It was further submitted that Ashok Sonkar had failed to fulfill his responsibilities under the MOU and had acted independently, allegedly introducing unknown persons into the premises and threatening the representatives of the company. On 20th September, 2013, the Calcutta Shop and Commercial Establishment Workers Union issued a letter containing a charter of demands in favour of Ashok Sonkar. Thereafter, on 8th October, 2013, Lachmi Katra Private Limited terminated the MOU and Ashok Sonkar's service as caretaker, with due communication sent by registered post. Despite the termination, he allegedly continued to occupy a room in the premises without authority.
6. Subsequently, further correspondence followed from the union, reiterating the charter of demands. Lachmi Katra Private Limited responded, stating that Mr. Sonkar had been engaged on a daily contractual basis and had already been paid, thereby denying any entitlement to additional benefits. It

was alleged that thereafter Mr. Sonkar, along with others, began harassing the petitioners and their representatives and attempted to extort money by repeatedly raising the same demands. Multiple complaints were made to the Burrabazar Police Station, but no effective action was taken.

7. On 29th November, 2013, Ashok Sonkar addressed a letter to the company demanding outstanding dues for construction-related work. The letter was received by the company on 21st December, 2013. It was stated that upon refusal by the company to comply, Mr. Sonkar threatened the petitioners with legal action. Thereafter, the petitioners came to learn that a complaint had been lodged by Mr. Sonkar, leading to registration of the FIR.
8. The complaint alleged that on 13th December, 2013, the petitioners had entered Mr. Sonkar's office, physically assaulted him, used abusive language, and threatened him with dire consequences, including statements specifically targeting his caste. A general diary entry was made on the same date, and Burrabazar P.S. Case No. 643 of 2013 was registered on 17th December, 2013. The final report/charge sheet was submitted on 15th January, 2014 and cognizance was taken by the Learned Magistrate on 16th January, 2014.
9. The Learned Advocate appearing for the petitioners submitted that the entire proceeding was the result of a false and malicious complaint lodged by Ashok Sonkar. It was contended that the dispute was of a civil nature pertaining to property and contractual obligations. Allegations of physical assault and abuse were denied, and it was stated that the complaint was motivated by an intention to harass the petitioners. It was further submitted

that the witnesses were persons aligned with Mr. Sonkar, including Sanjoy Goswami, who had himself admitted to financial misconduct.

10. The learned counsel for the petitioners contended that even if the statements in the FIR and charge-sheet were taken at face value, they did not disclose the ingredients of the offence under Section 3(1)(x) of the SC/ST Act. Specifically, it was submitted that there was no indication that the alleged incident took place within public view, which is an essential requirement under the statute. The FIR did not specify the caste of the complainant, the location as one within public view, or any other facts necessary to satisfy the statutory requirements.
11. It was also submitted that the proceedings were instituted with mala fide intent and were an abuse of process. The FIR was alleged to be vague, lacking specificity, and filed solely to exert pressure on the petitioners. Further, the petitioner contended that the appointment of the Investigating Officer did not comply with Rule 7(1) of the SC/ST (Prevention of Atrocities) Rules, 1995, rendering the investigation and consequent charge sheet legally infirm.
12. Additionally, the learned advocate for the petitioners submitted that the cognizance taken by the Learned Additional Chief Metropolitan Magistrate, Kolkata on 16th January, 2014 was without jurisdiction under Section 14 of the SC/ST Act read with Section 5 of the Criminal Law Amendment (Special Courts) Act, 1949. The submission was that the cognizance should have been taken by a Special Court designated under the said provisions.

13. On these grounds, it was urged that the proceedings including the FIR, the investigation, and the order taking cognizance be quashed. The learned Advocate contended that allowing the proceedings to continue in the absence of foundational facts necessary to constitute an offence under the SC/ST Act would be contrary to the principles laid down by the Hon'ble Supreme Court, particularly with reference to the necessity of prima facie material to justify such prosecution [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335].
14. The learned advocate submitted that the petitioners had been falsely implicated in the criminal proceedings arising out of Burrabazar P.S. Case No. 643 dated 17th December, 2013, registered under Sections 323/341/114 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which had culminated in G.R. Case No. 3973 of 2013. It was submitted that the initiation of the proceedings was actuated by malice and an intent to harass the petitioners. The case stemmed from a commercial dispute between the petitioners, who were Directors and shareholders of Lachmi Katra Private Limited, and one Ashok Sonkar, who had been appointed by the company as a caretaker by virtue of a Memorandum of Understanding dated 27th November, 2003.
15. It was argued that the said Ashok Sonkar had failed in his duties and breached the terms of the MOU, including non-payment of Rs. 15 lakhs due to the company out of the agreed sum of Rs. 20 lakhs. He had also failed to vacate the premises after termination of his services on 8th October, 2013.

According to the learned Advocate, the complaint filed by Ashok Sonkar on 13th December, 2013, leading to the said FIR, was a counterblast to the legal actions taken by the petitioners and the termination of his caretaker role. The complaint alleged that the petitioners entered his office and physically assaulted him while also using caste-based derogatory language, a claim strongly denied by the petitioners.

16. The learned advocate further argued that the allegations, even if taken at face value, did not satisfy the essential ingredients of an offence under Section 3(1)(x) of the 1989 Act. It was emphasized that the alleged incident occurred within the private office of the complainant, which was not accessible to or within the view of the public. In support of this contention, the learned Advocate referred to the absence of any averment in the FIR that the location of the incident was a place within "public view," which is a requisite condition under the statutory provision. Moreover, it was contended that the FIR failed to mention the caste of the complainant or identify any circumstances to support the invocation of Section 3(1)(x) of the 1989 Act.
17. It was further submitted that the witnesses listed in the charge-sheet were closely associated with the complainant and that one of the key witnesses, Sanjoy Goswami, had previously admitted to misappropriating funds of the company and had assured repayment. The credibility of the witnesses, it was argued, was therefore questionable. The learned Advocate also submitted that the complaint and FIR were inherently improbable and no

reasonable person could have reached the conclusion that the petitioners committed the alleged offences.

18. The learned advocate asserted that the filing of the FIR and the subsequent charge-sheet constituted an abuse of the process of law. It was submitted that the allegations were absurd, vague, and clearly motivated by a desire to pressurize and malign the petitioners following a commercial fallout. Further, it was argued that the appointment of the investigating officer had not complied with Rule 7(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, which mandates investigation by an officer not below the rank of Deputy Superintendent of Police, specifically appointed for the purpose. The learned Advocate contended that non-compliance with the statutory rule rendered the investigation invalid.
19. Additionally, the learned advocate submitted that the Additional Chief Metropolitan Magistrate, Kolkata, who took cognizance of the offence on 16th January, 2014, in G.R. Case No. 3973 of 2013, did not possess jurisdiction under Section 14 of the 1989 Act read with Section 5 of the Criminal Law Amendment (Special Courts) Act, 1949. It was argued that the said Court was not a Special Court designated under the statute to try offences under the SC/ST Act, and thus the cognizance taken was without authority of law.
20. In view of the above, it was contended that the entire proceedings were liable to be quashed. The learned Advocate emphasized that the allegations, even if accepted as true, failed to attract the provisions of Section 3(1)(x) of the 1989 Act, as the core ingredients including public view, specific caste-

based insult, and intent were missing. The continuation of the proceedings would result in grave injustice to the petitioners and would amount to the abuse of the process of the Court.

21. The learned advocate concluded that the impugned proceedings arising out of G.R. Case No. 3973 of 2013 pending before the Additional Chief Metropolitan Magistrate, Kolkata, were not sustainable in law, and prayed for the relief as sought in the revisional application. The argument also highlighted the lack of independent and unbiased investigation, improper jurisdiction, and non-fulfilment of statutory conditions necessary for the prosecution under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
22. Considered the submissions of the Learned Advocate representing the State who submitted that the parties had jointly filed a petition before the Trial Court for withdrawal of the proceedings which, however, was kept pending. Nonetheless since the complaint did not reveal commission of any cognizable offence, the instant revisional applications should be quashed.
23. Considering the materials on record and the charge-sheet submitted in G.R. Case No.3973 of 2013 arising out of Burrabazar Case No.643 dated 1712/2013 under Sections 323/341/114 of the Indian Penal Code, 1860 and 3(I)(X) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities Act) 1989 filed on the basis of a complaint dated 13.12.2013. Apart from mere allegations did not reveal any cognizable offence to allow it to proceed resulting abuse of the process of law.

24. In view of the above discussions, the proceedings being G.R. Case No.3973 of 2013 pending before the Learned Additional Chief Metropolitan Magistrate, Kolkata, arising out of Burabazar P.S. Case No.643 dated 17th December, 2013 under Sections 323/341/114 of the Indian Penal Code, 1860 and 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed.
25. Under such facts and circumstances, the criminal revisional applications being CRR 1607 of 2014 and CRR 1608 of 2014 are allowed.
26. Accordingly, the instant criminal revisional applications being CRR 1607 of 2014 and CRR 1608 of 2014 are disposed of. Connected application, if any, also stand disposed of.
27. There is no order as to costs.
28. Case Diary, if any, to be returned forthwith.
29. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
30. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)