

35.
Ct.237.
14.01.2025
Bd.

CRR 4091 of 2017

Smt. Kalyani Saheba @ Kalyani Nandi
-vs-
The State of West Bengal & Anr.

Mr. Pratip Kumar Chatterjee
Mr. Asish Deb
Ms. Maitryee Chatterjeefor the petitioner.

Mr. Anand Keshri ... for the State.

This is an application under section 482 of the Code of Criminal Procedure wherein petitioner Smt. Kalyani Saheba @ Kalyani Nandi has prayed for quashing proceeding being G.R. Case No. 304 of 2017 qua the petitioner.

By way of lodging an FIR the defacto-complainant/opposite party herein alleged that on 26th February, 2017 at about 8.30 p.m. to 9.00 p.m. the accused persons illegally assembled and entered into the Mahasasan and abused with filthy languages and also ransacked the articles lying in the Mahasasan and they have also looted Rs. 1,200/- from Pranami Box. Over the said incident Ketugram Police Station Case No. 106 of 2017 dated 10.04.2017 was started under sections 447/379/504/506/34 IPC.

Mr. Chatterjee, learned counsel appearing on behalf of the petitioner submits that the property in question is a private Debottar property and present sebit of the said property are the legal heirs of the Banwari Mukunda Deb Bahadur. The petitioner further states that since long Sri

Dhruba Hari Bandyopadhyay, who is son in law of the petitioner herein, under the guidance of the petitioner, looking after the petitioner's aforesaid property, but some persons trying to grab the aforesaid property and they have instituted several civil suit, criminal cases, writ petitions against the petitioner. Previously on the self-same ground one CRR 2802 of 1997 was filed before this High Court and this Court allowed the said revisional application and directed the opposite party no. 2 to pay compensation of Rs. 10,000/-.

After completion of the investigation the police has submitted charge-sheet against the accused persons including the petitioner under sections 447/504/506/34 of the Indian Penal Code. Petitioner in this context submits that the allegation of committing criminal offence does not attract in the present case against the petitioner because possession of the property in favour of the complainant does not arise at all, as he is nothing but a stranger to the private Debottar property and implication of section 447 of the Indian Penal Code does not arise. Therefore the question of entering into the property in the possession of the complainant with intent to intimidate, insult or annoy the complainant does not arise.

It is further contended that by a Judgment dated 17.09.87 passed by this Court in C.O. 13148(W) of 1986, it has already been decided that concerned property is a

private Debottar property and not a public one and moreover the name of the petitioner and other legal heirs of Banowari Mukunda Deb Bahadur are recorded as rayet on behalf of Banawari Lal Jeu Thakur as seabait. So the question of possession by the complainant/opposite party no. 2 in any part of the property does not arise.

It is further submitted that the petitioner is now aged about 92 years and from the allegation made in the complaint it is clear that due to ill intention and only to harass and hackle the petitioner herein at her old age the instant case has been initiated by the opposite party no. 2 herein.

He further contended that the dispute is purely civil in nature and in view of guidelines laid down by the Apex Court in the case of ***State of Hariyana -vs- Bhajan Lal reported in 1992 SUPP (1)SCC 335***, the impugned proceedings is liable to be quashed as it manifestly accompanied with malafide intention and the same has been maliciously instituted with an ulterior motive of wrecking vengeance upon the petitioner. Accordingly, the petitioner has prayed for quashing the impugned proceeding qua the petitioner.

In spite of service opposite party no. 2 is not represented.

Mr. Keshri, learned counsel, appearing on behalf of the State placed the case diary and submits that during investigation only statement of three witnesses have been

recorded and he leaves the matter to the discretion of the Court.

I have considered the submissions made by the parties. The petitioner's case is their ancestor namely Jayadindra Banwari Govinda Deb Bahadur created Debottar Estate by Arpannama Deed No. 1055 which has been made as Annexure P-1 and as per Arpannama Deed grandson of Jayadindra Banwari namely Kumar Banowar Mukunda Deb Bahadur was the Sebait of the aforesaid Debottar property and petitioner's specific case is that current sebait of the private Debottar property are the legal heirs of Late Kumar Banowar Mukunda Deb Bahadur. It is also specific case of the petitioner that Shri Dhruba Hari Bandhopadhyay is son-in-law of the petitioner who is looking after the Debottar property under the guidance of the petitioner. Previously one Susthir Ghosh filed a case being Case No. 153 of 97 under section 147/380/295 I.P.C. and challenging the said complaint, the petitioner filed a revisional application being CRR 2802 of 1997 which was allowed by this Court. Thereafter, Balaram Ghosh and Others filed a suit being Title Suit No. 1 of 2006 against the legal heirs of the petitioner. In fact, the present complainant Nityananda Puri, filed five writ petitions before this High Court and all have already been either disposed of or dismissed for default.

I have also perused the materials collected during investigation and I find that the investigating authority has

recorded the statement of three witnesses namely the complainant S.N.Puri, N.C.Ghosh, P. Biswas. All of them made a general allegation alleging all accused persons abused him with filthy languages and/or assaulted without specifying any distinct allegation against any of the accused person and no specific role have been attributed against any of them in furtherance of the offence and the allegations under those sections are general and omnibus in nature and are not sustainable under section 504 or 506 of the Indian Penal Code. The dispute also appears to be civil dispute over the ownership and possession in respect of the property.

Petitioner has been charge-sheeted under sections 447/504/506/34 IPC. The materials in case diary does not disclose specifically any offence against the present petitioner under sections 504/506/34 IPC. Several litigations over right of possession either pending or has been disposed of. In the present context complainant did not appear nor challenged the petitioner's case of possession. However, there may be bona fide dispute over possession between the complainant and petitioner/accused with regard to the possession of Mahasasan.

Though the High Court ought not to interfere ordinarily by way of quashing criminal proceeding, yet as the materials available in the instant case shows a bonafide claim of civil right by the petitioner, it is an obvious duty to interfere in this proceeding without causing unnecessary

harassment or subjecting her to face a criminal proceeding because to allow the present proceeding in this case to continue against the petitioner will not in any way advance the cause of justice. This is also because bonafide claim of right to possess negatives the existence of intention to commit offence and therefore section 447 of IPC is not attracted as the entry of alleged trespasser is then dehors the intention envisaged in section 441 of IPC.

In such view of the matter, CRR 4091 of 2017 is allowed.

The impugned proceeding being G.R. Case No. 304 of 2017 arising out of Ketugram Police Station Case No.106 /2017 dated 10.04.2017 presently pending before learned Additional Chief Judicial Magistrate, Katwa, is hereby quashed, qua the petitioner, Smt. Kalyani Saheba @ Kalyani Nandi.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)

