

CRR 4258 of 2017

Ratan Kumar Roy @ Ratan Kr. Roy
VS
STATE OF WEST BENGAL AND ORS.

Mr. Dr. Achin Jana
Mr. Falguni Bandyopadhyay
Mr. Prosenjit Ghosh
Mr. Riya Ballav
Mr. B. Dali
Mr. J. Dhar
Mr. Chetna Rustagi

...for the petitioner.

Mr. Anand Kesari
Ms. S. Dutta

...for the State.

Mr. Mukteswar Maity
Mr. Debesh Mishra
Mr. Manika Sarkar

...for the Opposite Party/Respondent.

1. Being aggrieved and dissatisfied with the proceeding, namely, Jadavpur Police Station Case no. 118 of 2012 dated 16th March, 2012 corresponding to ACGR No. 3238 of 2012, presently pending before learned Judicial Magistrate, 1st Court at Alipore, present Application has been preferred by the petitioner with a prayer for quashment of the said proceeding.
2. The allegation levelled in the complaint is that opposite party no. 2/complainant is a businessman carrying on his business in a rented accommodation at 54 Raja S. C. Mallik Road. After demise of original landlord Amalendu Mitra, in spite of repeated intimation, nobody agreed to issue rent receipt to the complaint. Opposite party no. 2 then started depositing rent before rent controller.

Thereafter petitioner along with unknown persons threatened him to oust from the Suit premises without taking due course of law.

3. On 6th March, 2012 when the opposite party went to the business place for opening the shop, he found another padlock in the door of the godown and he also found that breaking back side wall, all articles/goods were removed from the godown by the petitioner and they constructed another wall in the back portion of the door. As a result of which, opposite party is not in a position to enter into the godown.
4. It is further alleged that opposite party no. 2 is a *bona fide* tenant in respect of the said premises but without due process of law the petitioners are trying to evict the opposite party no. 2 forcibly and in spite of due intimation given to the local Police Station they had not taken any action. The petitioner herein were initially booked under Sections 406/120B/448/379/511 of the Indian Penal Code but after completion of investigation the police dropped the allegation of committing theft and submitted charge sheet only under Section 448/511/506/34 IPC against the petitioners.
5. Being aggrieved by the instant proceeding learned advocate appearing on behalf of the petitioner submits that before the instant proceeding a proceeding under Section 144(2) was started on 26.12.2011 by the petitioner wherein police had submitted a report where concerned police officer has disclosed that when police went to the alleged disputed godown for investigation

they found that there exists no godown and only the dwelling house of the complainant is there and it was further reported that the complainant is trying to grab the property from the two widowed women by filing fictitious litigation with concocted story to occupy the said premises.

6. He further submits that from the length and breadth of the First Information Report, it is evident that the story loomed large by the opposite party no. 2 is inherently improbable and absurd and no man of ordinary prudence would act on the same. Even if the prosecution story is accepted to be the gospel truth, then also the placement of facts singularly lacks either of the ingredients of the offence alleged.
7. In fact, the petitioner no. 2 and 3 are two aged widow lady and are suffering from different ailments and the opposite party no. 2 in order to grab the said property, illegally had tried to make entry in the said premises.
8. The allegations levelled in the FIR do not make out any offence against the present petitioners and the opposite party no. 2 is falsely claiming tenancy right under Late Amal Maity, without having any tenancy agreement or rent receipt or trade license. Accordingly, he prayed for quashing the instant proceeding.
9. Learned advocate appearing on behalf of the opposite party no. 2 submits that during investigation prosecution has seized the rent receipts and also upto date challan in support of tenancy agreement.

10. He further submits that from the letter dated 20th April, 1996, it also appears that there exist landlord-tenancy relationship in between the parties and the petitioner have made attempt to illegally trespass in the tenanted property and thereby tried to forcibly evict him from the schedule property.
11. He further submits that the materials available in the case diary discloses offence against the present petitioners and as such it is not a fit case for quashing the impugned criminal proceeding.
12. Mr. Keshri, learned advocate appearing on behalf of the State placed the case diary and also pointed out the three statements recorded during investigation under Section 161 Cr.P.C. and also the rent receipts and other documents to show that the petitioner is guilty of committing the alleged offence and as such he also submits that the interference of this Court invoking this Court's jurisdiction under Section 482 of the Code of Criminal Procedure is uncalled for and as such he also prays for dismissal of the instant proceeding.
13. I have considered submissions made on behalf of both the parties.
14. In the instant case, the allegations as revealed in the FIR is that the petitioners have made an attempt to make house trespass in the property in possession of the *de facto* complainant. In the case of *Abhishek Saxena vs.- State of Uttar Pradesh.*, reported in, *2023 SCC online SC 1711* the Apex Court held if ingredients of the offences are wanting in the charge sheet, no useful purpose is

likely to be served by allowing criminal prosecution to continue.

15. On perusal of the materials available in the case diary, I find that the prosecution during investigation has recorded the statement of three witnesses namely, Prabir Chakraborty, Pronob Banerjee and one Swapan Muhuri but I find that though they have alleged that suddenly they found that the window door of the wire house was removed completely and a cemented wall was built blocking the whole room and thereby the *de facto* complainant was completely prevented from using the said tenanted wire house, but I find, nowhere in the statements that it has been alleged that the present petitioners had made any attempt to make house trespass or they have committed any offence as alleged in the FIR.
16. Now in order to constitute offence of making attempt of house trespass it must be shown inter alia that the petitioners made any attempt to commit house trespass or that they made such attempt unlawfully with intention to commit an offence or intimidate, insult or annoy the complaint who was/is allegedly in possession. Materials available during investigation does not speak that the petitioners have done anything, which may attract any of the ingredients of section 448/511 of IPC.
17. Similarly even if for the sake of argument if it is taken to be true that the petitioners have threatened the complaint to evict him from the alleged tenanted portion

without taking due course of law that does not amount to criminal intimidation to attract section 506 of IPC.

18. The dispute between the parties appears to be purely Civil dispute between the landlord and the tenant and obviously their remedy lies before the Civil Court and it appears that there are sufficient reason to believe that complainant has made an attempt to criminalize civil dispute which is not permissible in the eye of law.
19. Having considered the overall facts and circumstances of the case and the materials placed before me, I find that on the basis of such materials the conviction of the present petitioners is bleak and further continuance of the present proceeding will be a mere oppose of the process of the Court.
20. In such view of the matter the CRR 4258 of 2017 is allowed.
21. The impugned proceeding being Jadavpur Police Station case no. 118 of 2012 dated 16th March, 2012 to SC gn 32 of 2012 pending before the learned Judicial Magistrate, 1st Court at Alipore is hereby quashed.
22. 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.)