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Ct. No. 3

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction

C.R.R. 63 of 2025

Sk. Janmohammed @
Sk. Janmahammad
Vs.
The State of West Bengal & Anr.

Mr. Jagriti Mishra
Mr. Avrojoyti Das
Ms. Mrinmayee Das
Mr. Rajdeep Das

...For the Petitioner

Mr. Nilay Chakraborty
Dr. Subhasish Misra

...For the State

Mr. Anand Bhandari
Mr. Urgan Lama
Mr. Mayank Bhandari

...For the Opposite Party No. 2

This is an application wherein the petitioner has prayed for quashing of the FIR, being Pradhan Nagar Police Station Case No. 23 of 2025 dated 11th January, 2025 under Section 3 of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as the said Act of 1989), corresponding to Special G.R. Case No. 1 of 2025 presently pending before learned Additional District and Sessions Judge, 1st Court at Darjeeling.

The petitioner's contention in respect of the present application is that he has arraigned as an accused alleging dispossession and/or occupation of land owned by a member of Schedule Tribe, though he is the lawful owner of the land and he has already filed a suit for declaration and injunction, wherein he has also obtained an ad interim order of injunction on 27.9.2024, in Title Suit No. 139 of 2024.

The de facto complainant herein while lodged this complaint has suppressed about the pendency of the said suit and order of injunction.

Moreover she herself has filed a suit, being Title Suit No. 9 of 2025 before the learned Civil Judge, Senior Division at Siliguri on 9.1.2025 wherein she has prayed for declaration of title and injunction in respect of the property within self-same plot no., which she also suppressed though the FIR was lodged after filing the said suit.

He further submits that from the Deed by which the petitioner is claiming ownership in the proper discloses that she is a resident of the State of Sikkim and as such it is not very much clear as to whether she can claim her right under the said Act of 1989 in the State of West Bengal. He further submits that on perusal of the FIR it appears that the Section mentioned in the FIR is no longer in force. However, for the sake of argument if it is taken that the allegation has been made under Section 3(1)(f) and 3(1)(g) of the said Act of 1989, then also there is no allegation that the petitioner has wrongfully occupies or has wrongfully dispossessed any member of the Schedule Caste and Schedule Tribe from her property.

He further submits that such non-disclosure of pending civil suits and other proceeding in the FIR should be treated as fatal for the complainant's case in view of the ratio laid down in the case of *Rasik Lal Patel and Anr. Vs. State of Karnataka*, reported in 2023 SCC OnLine Kar 47. He further contended, when the dispute is purely civil in nature and

involves question of possession and title of the property. The de facto complainant's attempt to convert a purely civil dispute into a criminal case, should be nipped in the bud. He further contended that the complainant must not be allowed to use the criminal proceeding as weapon of harassment against the petitioner, when it is apparent that the de facto complainant and petitioner herein have lodged their respective civil suits for redressal, though complainant herein has not obtained any interim relief against the petitioner in her suit.

In this context he relied on a decision in the case of *Usha Chakraborty and Anr. Vs. State of West Bengal & Anr.* reported in (2023) 15 SCC 135 and another decision of this High Court in the case of *Sreeniwas Agarwal and Anr. Vs. State of West Bengal & Anr.* reported in 2023 SCC OnLine Cal 2653.

He further submits that the bail prayer of the present petitioner has been rejected by this Hon'ble High Court, but rejection of a bail prayer cannot have any bearing upon the prayer for quashing of the criminal proceeding. In support of his contention he has relied on a decision of this Hon'ble Court passed in *C.R.R. 3448 of 2022 (Sanchari Mukherjee & Anr.)* and a decision of the Hon'ble Apex Court in the case of *Tajmul Hossain Shah Vs. State of West Bengal*, reported in 2006 1 CriLR 177 and contended that rejection of a prayer for bail cannot be a ground for rejection of the present revisional application because scope and object of Section 438 of the Cr.P.C. is limited but the scope under

Section 482 of the Cr.P.C. is wide and the Court can go further deep into the matter to come to a conclusion.

Learned Counsel appearing on behalf of the de facto complainant/private opposite party argued that the Division Bench has made clear observation that the allegations under the Act of 1989 prima facie has been established against the present petitioner and the investigation is at a very early stage and as such it would not be prudent to quash the proceeding at this initial stage of investigation. In reply to petitioner's contention that the de facto complainant is not a resident of West Bengal, he submits that name of the State in the Deed has been wrongly written as Sikkim but other portion of the address clearly reflects that the complainant's address is within the district of Darjeeling which is within the State of West Bengal. Learned Counsel further submits that the ad interim order of injunction granted by the Trial Court was made ex parte and as such the interim order cannot have any binding effect upon merit of the instant case. Accordingly, he submits that this is not a fit case to invoke inherent power under Section 482 of the Cr.P.C. to quash the said proceeding.

Learned Counsel appearing on behalf of the State placed the Case Diary and pointed out the statements recorded under Section 161 of the Cr.P.C. and contended that during investigation, strong prima facie case has been made out against the petitioner and as such he raised objection against the petitioner's prayer for quashing the impugned

proceeding/investigation.

I have considered the submissions made on behalf of both the parties. It is not in dispute in the present context that both the parties have placed their Title Deed in respect of the same plot number and also in respect of their purchased portion of the property. It is true that both the parties have filed suit for declaration and injunction in respect of their respective purchased portion. Obviously whether there is any wrongful occupation and wrongful dispossession or not in connection with the disputed plot of land shall be the subject matter of the Civil Court where both the parties have rightly approached for declaralton of their title. On perusal of the materials available so far in the Case Diary, I find that during investigation, the Investigating Agency has recorded the statement of the witnesses which prima facie discloses offence against the petitioner/accused person.

Petitioner herein also approached before the Division Bench of this Hon'ble Court for anticipatory bail, being C.R.M.(A) 19 of 2025 where his bail prayer was rejected. There is no quarrel with the proposition of law that rejection of bail prayer may not be a ground for non-consideration of the prayer made in the instant application filed under section 482 of Cr.P.C. wherein the petitioner has prayed for quashing of the proceeding. However, the observation made by the Division Bench of the same High Court in respect of the self-same accused may not be totally irrelevant while considering the application

under Section 482 of the Cr.P.C. In the instant application the Court is only required to satisfy whether any cognizable offence prima facie has been made out against the accused person or not.

The observation made by the Division Bench of this Court while disposing of the said application for bail, being C.R.M. (A) 19 of 2025 in paragraph 5 to 7 may be reproduced below :

“5. Learned counsel challenges the credibility of the said allegation on the score that illegal erection of the gate hindering egress and ingress to de facto complainant’s land is not pleaded in the prior civil suit. From the averments in paragraphs 14 and 15 of the plaint it is clear the de facto complainant alleged interference and disturbance to possession as well as ingress and egress on the land in the suit. It cannot be said that there is no averments in the plaint with regard to the foundational facts which are alleged in the FIR.

6. We have also satisfied ourselves on the strength of evidence collected during investigation i.e. videography of the spot which shows illegal construction made on the de facto complainant’s land.

7. In light of the aforesaid incriminating materials prima facie disclosing offences under the Act of 1989 we are of the opinion application for anticipatory bail is not maintainable and the same is accordingly dismissed.”

In view of the aforesaid observation, it is quite clear that even though the petitioner might have a good case to show that he is in possession of the land which he has purchased and the Trial Court prima facie granted ex parte injunction in favour of the petitioner on the satisfaction of his prima facie possession but the fact remain that there is serious dispute among parties about wrongful occupation or wrongful

dispossession over the land belonging to a member of Schedule Caste/ Schedule Tribe.

From the various judicial pronouncements it is no more res integra that exercise of Power under section 482 Cr.P.C. to quash a criminal proceeding is only when an allegation made in the FIR and/or the materials collected during investigation does not constitute the ingredients of the offence alleged. Interference by the High Court is to prevent the abuse of process of any Court or otherwise to secure the ends of justice.

In **Zandu Pharmaceuticals Works Ltd. –vs- Md. Sharafat Haque (2005) 1 SCC 122**, Supreme Court held that the High Court being the highest Court of a State, should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produce before the Court and the issues involved whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient materials.

In **Chand Dhawan –vs- Jawarhar Lal (1992) 3SCC 317**, it was observed by Apex Court that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the FIR to be unacceptable. At this stage while dealing with application under section 482 Cr.P.C. the Court should not act on annexures to the petitions, which cannot be termed as

evidence without being tested and proved.

When the factual position of the case at hand is considered that there is serious allegation and counter allegation of wrongful possession and/or wrongful dispossession over piece of land belonged to a member of scheduled caste/scheduled tribe, it cannot be said that it attracts any of the clauses laid down in paragraph 102 of Bhajanlal's case reported in (1992) Supp 1 SCC 335.

Therefore, the matter required to be investigated at length and since the de facto complainant has made out a prima facie case which discloses from the contents of the FIR, I find that this is not a fit case where the criminal proceeding can be quashed invoking this Court's inherent power under Section 482 of the Cr.P.C.

In such view of the matter C.R.R. 63 of 2025 stands dismissed.

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

(Dr. Ajoy Kumar Mukherjee, J.)