

6.11.2025
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Ct no. 3

**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

**CRR 269 of 2025
With
CRAN 1 of 2025**

**Somdev Mukherjee
Vs.
The State of West Bengal & Anr.**

Mr. Nigam Ashis Chakraborty	
Mr. Agniva Banerjee	
Mr. Arijit Ghosh	...for the Petitioner
Mr. Somnath Ghosal	
Mr. Debjit Kundu	...for the O.P no. 2
Mr. Aditi Shankar Chakraborty, Ld. APP	
Mr. Abhijit Sarkar	...for the State

The petitioner herein has prayed for quashing of the proceeding in connection with Siliguri Police Station case no. 96 of 2025, presently pending before the learned Additional Chief Judicial Magistrate at Siliguri. In the written complaint dated 15.2.2025 filed by the defacto-complainant, who is the Managing Director of M/s. Siliguri Cinema and Trading Company Private Limited (hereinafter called as "Company") the allegation levelled against the petitioner inter alia to the effect is that one Swapna Mukherjee, daughter of Durgapada Mukherjee transferred a portion of the property belonging to company in favour of the petitioner in illegal

manner by virtue of deed of conveyance dated 20th December, 2006 knowing fully well that the said land is absolutely owned by the company and it transpires that they have also made several deeds though Swapna Mukherjee did not have the right to purchase or sale of the said land.

Being aggrieved by the instant proceeding, learned counsel for the petitioner submits that deceased father of the petitioner namely, Mallar Mukherjee inherited the property as co-owner described in the Schedule-A from the petitioner's grandfather late Durga Pada Mukherjee. After the death of Rajani Kanta Mukherjee, father of the said Durgapada Mukherjee who is the grandfather of the petitioner gave a lease of a portion of his inherited homestead land with structure to the said company for a period of nine years on 4.6.1947 by entering into an agreement dated 5.6.1947. Subsequently in the year 1953, the West Bengal Estate Acquisition Act came into existence and by virtue of such Act of 1953 all the lands beyond the ceiling limit got vested with the State, except the land where the provision of Section 6(1)(a)(b) of the Act of 1953 applies. According to petitioner, the present plot of land comes under the said exception clause as it is a homestead land as indicated in the lease deed of 1947 and as such, as per exception laid down in Section 6(1)(a)(b) of the Act of 1953, it cannot be vested to the State of West Bengal.

Late Durgapada Mukherjee challenged the aforesaid vesting by filing an appeal but such appeal was subsequently withdrawn due to non-prosecution.

Thereafter, on 4.7.1978, the widow of Durgapada Mukherjee namely, Late Usha Mukherjee executed her last will bequeathing her rights and shares in the entire estate including the schedule property in favour of the mother of the petitioner. The said will was probated after the demise of said Usha Mukherjee in favour of the mother of the petitioner being Misc.(Probate) 60 of 2002 by the then district delegate at Darjeeling on 27.4.2006.

Petitioner's further contention is that the lease of the property was for a period of nine years and after the death of Rajani Kanta Mukherjee, son of Durgapada Mukherjee inherited the property and after the demise of Durgapada Mukherjee, the father of the petitioner, namely Mallar Mukherjee inherited the same along with other legal heirs. Petitioner has bought 1/5th share of his aunt in the aforesaid property by virtue of a deed dated 20.12.2006. However, it transpires that the company illegally mutated the name of the property in connivance with the BL& LRO office. In fact, the petitioner never relinquished their right title and interest in the said property non the company has ever got any document from the petitioner or any other legal heirs showing that the

legal heirs of Durgapada Mukherjee have relinquished their right title and interest in the property in favour of company.

Petitioner's further contention is that the petitioner after having knowledge of the instant case, had preferred an application under Section 482 of the BNSS for anticipatory bail and while disposing such application, the court is of the clear view that the dispute between the parties is primarily civil in nature and as such, the bail was granted. Civil suits have also been filed in connection with the said property and the questions regarding the aforesaid vesting of the property and whether the property comes under the exception clause laid down in Section 6(1)(a)(b) of the Act of 1953 or not, is pending for decision before the Apex court being SLP no. 1529 of 2025 and the previous dismissal of appeal cannot stand in the way as there cannot be estoppel against statute.

Learned counsel for the petitioner strenuously argued that the order of the Apex Court passed just before the initiation of the FIR, prima facie shows that as on date, the petitioner has been able to make out a prima facie case so far as the ownership of the schedule property is concerned. In fact, after passing the aforesaid order by the Apex Court, the complainant has initiated the proceeding as an afterthought. The petitioner is a bona fide purchaser of the property being sold by his aunt namely, Swapna Banerjee @ Mukherjee and therefore, the allegation of forgery or criminal breach of trust

have not at all made out at any form. Therefore, the charges as enunciated under Section 316(2) and other sections of the BNS is not made out. The complainant has lodged the FIR suppressing the material facts regarding the passing of the order dated 2nd August, 2024 and 13th September, 2024 by the High Court and the order dated 24th January, 2025 passed by the Supreme Court. Furthermore, this is clear case of delayed FIR and the complainant has not explained the cause of delay. The instant proceeding is absolutely frivolous, concocted and no ingredient of criminal offence is established even on prima facie basis and as such, the proceeding is liable to be quashed.

Learned counsel for the State placed the case diary and leaves the prayer made by the petitioner to the discretion of the court.

Learned counsel for the opposite party no. 2/defacto-complainant vehemently opposed the prayer for quashment and he relied upon a judgment of the Apex Court in **Somjeet Mallick Vs. State of Jharkhand and others** reported in **(2024) 10 SCC 527** and contended that the investigation is still in progress and the proceeding should not be quashed at this stage. The High court before considering the prayer for quashment, should give sufficient opportunity to the investigating agency to collect materials in support of their contention. Since the allegation levelled in the FIR including the materials so far collected during investigation, if taken on

their face value prima facie discloses cognizable offence against the present petitioner, so the High Court at this stage, is not supposed to decide the correctness of the allegations made in the FIR.

Learned counsel for the opposite party further contended that they have obtained the property by virtue of the operation of law laid down in the West Bengal Estate Acquisition Act, 1953 since the property has been vested free from all encumbrances and the Government of West Bengal thereafter declared the petitioner as Rayet in respect of the said land and their names have been mutated long back in 1980, which prima facie shows their right title and possession in the property. On the contrary, the petitioner failed to produce any document in respect of right title and interest in the property and therefore, the forgery is apparent on the face of the record and it is not a fit case to invoke court's inherent jurisdiction under Section 482 of the Code to quash the instant proceeding.

I have considered the submissions made by both the parties and have also gone through the materials available in the case diary. On perusal of the FIR, it appears that the allegation levelled against the petitioner in substance is that aforesaid Durgapada Mukherjee entered into an agreement and thereby transferred the property by way of lease in favour of the company thereby empowered the company to construct the building and installed machineries for the purpose of cinema

hall and thereafter, the statute namely, the West Bengal Estate Acquisition Act, 1953 (in short Act of 1953) came into being and as such, the lessee has become non-agricultural tenant under the Act of 1953 and their further case in the FIR is that because of excess land owned by Durgapada Mukherjee beyond the ceiling limit, this particular property vested to the Government of West Bengal and thereby the petitioner became direct tenant under the Government of West Bengal and in the year 1986, the company has become Rayet of the said landed property. It is further alleged in the FIR that the Misc. appeal of Durgapada Mukherjee challenging the vesting was disallowed and the petitioner was all along aware that the company became the absolute owner of the schedule land by operation of law and the property has been allotted to them by dint of the aforesaid Act of 1953. However, in the year 2022, a civil suit was filed by the grand-daughter of Durgapada Mukherjee claiming ownership of the landed property in Title suit no. 95 of 2022 and at the same time, an injunction application was also filed but the concerned civil court rejected their prayer for injunction. In spite of that one of the daughter of Durgapada Mukherjee had transferred the portion of the land in favour of petitioner, Somdev Mukherjee quite illegally through registered deed of conveyance dated 20.12.2006 knowing fully well that the said company is absolute owner of the landed property and their names have entered in the record of rights and though

they did not have any right to purchase the said property, have purchased the same and not only that on the basis of the said deed, petitioner, Somdev Mukherjee and others also executed several deeds in favour of the different persons.

It is now well settled that the extraordinary power under Section 528 of BNSS can be exercised by the High Court, either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Where allegations made in the FIR and materials collected during investigation even if taken at their face value and accepted in their entirety do not prima facie constitute any offence or makes out any case against the accused, where allegations do not disclose the ingredients of alleged offence, where the criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge, the power under Section 528 of BNSS may be exercised.

On perusal of FIR and materials collected during investigation in the instant case, I am satisfied that no case is made out against the petitioner and the pendency of the proceeding against him before the court below is an abuse of process of court. When the ingredients of the Sections 316(2) or 318(2) or 336(3) or 340(2) or 61(2) are tested with the facts and circumstances of the present case, I find that there is no such

allegation either in the FIR or in the materials collected so far during investigation which can make out a prima facie case against the petitioner.

It is well settled in view of **Weelu Chopra & another Vs. Bharti (2010 Cri.L.J.448)** that in order to lodge a proper complaint mere mention of the sections and the languages of those sections is not be all and end all of the matter, what is required to brought in the notice of the court is the particulars of offence committed by accused and role played by him in committing the alleged offence.

When I see the instant complaint, I find that substance of the complaint is petitioner knowingly purchased/sold property from a person who has no authority to sell but facts and circumstances discloses from the pending litigations that there are bona fide dispute among the parties over ownership of land which is purely a civil dispute and parties have already taken due course of action before appropriate civil courts.

Having considered overall facts and circumstances of the case, CRR 269 of 2025 is allowed. The instant proceeding being Siliguri Police Station case no. 96 of 2025, presently pending before the learned Additional Chief Judicial Magistrate at Siliguri is hereby quashed.

Connected application, if any, is also disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)