

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

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

C.R.R 299 of 2023

**Rishikesh Jawahar @ Jawhar and Ors.
-Vs-
The State of West Bengal and Ors.**

For the Petitioners : Mr. Arnab Sengupta, Adv.
Mr. Deborshi Dhar, Adv.
Mr. Nirnoy Dutta, Adv.
Mr. Rajat Chandra Singha, Adv.

For the State : Mr. Aditi Shankar Chakraborty, Adv.
: Mr. Sourav Ganguly, Adv.

Hearing concluded on : 06.01.2025

Judgment on : 10.01.2025

Uday Kumar, J: -

1. The instant application was preferred under Section 482 of Code of Criminal Procedure for quashing of proceeding of Special G.R Case No. 05 of 2023, pending before Learned Judge, Special Court under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 – cum – Additional District Judge, at Darjeeling, arose out of Phansidewa Police Station Case No. 347 of 2013 dated 01.09.2013

under Sections 447/354/323/120B/379/34 of Indian Penal Code, 1860 read with Section 3(1)(v), 3(1)(xi) and 3(1)(xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on the written complaint of Florentia Tirkey filed under Section 156(3) of Code of Criminal Procedure to the Learned Additional Chief Judicial Magistrate, Siliguri on 29th August, 2023, who directed the Officer-in-Charge, Phansidewa to investigate into the allegations. The investigation culminated in a charge-sheet filed under Sections 447/354/323 /120B / 379 /34 of Indian Penal Code, 1860 read with Section 3(1)(v), 3(1)(xi) and 3(1)(xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on 26.05.2014, against 26 persons including the petitioners.

2. Briefly stated, opposite party no.2 Florentia Tirkey used to reside peacefully in a tin shed structure since 1985, along with her sons and daughters, which was constructed by her husband on a plot near Madati High School. He was a teacher in the said school. He retired in 1995 and expired in 1996, in said home. The accused persons desperately started to disturb her peaceful possession, for their evil desires. They became more violent particularly after the dismissal of her suit being Title Suit no. 14 of 2000 vide order dated 23rd April, 2007 of Learned Civil Judge (Junior Division), Siliguri on and Title Appeal 14(S)/2007 vide order dated 15th September, 2009 of the Learned Additional District Judge, 1st Court, Siliguri.

3. Since the opposite party no.2 occupying the suit property unauthorizedly, the petitioners sent her a notice for vacating the suit property on 28th May, 2010 but the said notice was returned with the postal endorsement "Payee is out of station for long time". A second notice was sent on 21st June, 2010, which was deemed as good service as the notice was returned with the postal endorsement of "Refused". Thereafter, the School Authority issued a notice through their advocate upon the complainant to vacate their quarter, but she did not.
4. Mr. Mamla Kujur, the Secretary of Madati High School filed a plaint on 5th February, 2011 for declaration of title of the scheduled property and recovery of possession of the premises in Schedule – B of the plaint after evicting the defendant / opposite party no.2 Florentia Tirkey on the ground that they are absolute owner of the property and the suit property was recorded in the name of Madati High School upon which Title Suit No. 14/11 was instituted before the Court of Learned Civil Judge (Junior Division), Siliguri. The defendant / opposite party no.2 (a) (b) (c) contested the suit by filing written statement stating therein that they are bona fide possessor of the suit land since 1985, openly, adversely and uninterruptedly against the whole world. The suit was decreed in favour of plaintiff school authority/ school authority on 01.11.2022. Said order attained finality as it was not challenged in the appellate forum by the parties. The execution proceeding is still pending.

5. Subsequently, Florentia Tirkey complained to Officer-in-Charge, Phansidewa that in the evening of 25.08.2013, the accused persons forcefully entered into her house, and damaged her household goods and valuables, assaulted her and her daughters with fist and blow and dragged them out from the house when they protested. Her daughter, Ujala Tirkey received injuries. She rushed to Phansidewa Primary Health center for treatment. The petitioners abused her by uttering their caste name in public view, with the intention to degrade their status in the society. They took away some belongings mentioned in the complaint and her electrical connection was disconnected by them.
6. Immediately, she approached Bidhannagar police station to lodge her complaint but they denied to record the same. They returned back and spent the night outside the home under the open sky. She approached Phansidewa Police station in the next morning to lodge an FIR but they also refused to register a case.
7. Under compelling circumstances, she filed a complaint under Section 156(3) of Code of Criminal Procedure against the teachers, staffs and school management to the Court of Learned Additional Chief Judicial Magistrate, Siliguri, upon which the impugned proceeding was initiated against the petitioners.
8. Mr. Arnab Sengupta Learned Counsel for the petitioners submit that:
 - a. Dominic Tirkey, husband of complainant Florentia Tirkey was appointed as the Assistant Teacher at Madati High School. He

was permitted to live with his family in a quarter situated on plot 141 (LR) within the school premises, since February, 1985.

- b. He was entrusted to impart agriculture work education on a strip of land. He superannuated from his service in 1995, and died on 25th September, 1996 by a snake bite, but he did not vacate or quit the possession of the said quarter to the school authority on the ground of non-preparation of his pension papers and service book. However, school authorities allowed the complainant /wife to overstay in the quarter on compassionate grounds, after the unexpected death of Domonic Tirkey.
- c. The Teacher-in-charge of said school requested complainant to vacate the premises vide a memo bearing number 218/M.H.S/99 dated 15th May, 1999. She agreed to vacate possession of the quarter on the receipt of pension, gratuity and provident fund with other dues.
- d. The school authority again requested the complainant to vacate said quarter vide a memo bearing no 238/ M.H.S./ 99dated 13th October, 1999, after the grant of provident fund, but she expressed her inability to quit the vacant possession of said quarter in their favour due to requirement of pension, vide her letter dated 30th October 1999.

- e. Conversely, she instituted a civil suit for declaration of her title in respect of suit land i.e., the scheduled property on the ground of adverse possession to the Court of the Learned Civil Judge (Junior Division) Siliguri, being Title Suit No. 14/2000, but it was dismissed on contest by the Trial Court on 23th April, 2007.
 - f. She challenged the order before Learned Additional District Judge, 1st Court, Siliguri in Title Appeal No. 14(S)/2007 which was also dismissed on being contest on 15th September, 2009.
9. Mr. Sengupta cited categories of cases illustrated under Point No. 7 of Paragraph No. 102 mentioned in *State of Haryana v. Bhajan Lal* wherein it has been stated that:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) *****

(2) *****

(3) *****

(4) *****

(5) *****

(6) *****

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

Basing on it, he prayed for quashing of this proceeding on the ground that it was maliciously instituted with ulterior motive for wreaking vengeance against the petitioners as they had taken steps for taking possession of the school’s quarter.

10. Per contra, the Learned Advocate for the State submits that there is no patent irregularity in the criminal proceeding initiated on the written complaint of Florentia Tirkey as it was initiated on the direction of Learned Additional Chief Judicial Magistrate, Siliguri and after proper investigation the charge-sheet has been submitted. The factual irregularity or discrepancies, if any, should not be a ground for quashing of the proceedings, rather the petitioner can take benefits of such discrepancies during trial. The pending dispute shows their strenuous relationship, which may affect both sides. There is nothing on the record to show the malice of complaint against the petitioner.
11. Admittedly, the tone and tenor of this revisional application is to quash the criminal proceeding on the ground of false implication. The power of quashing is inherent to the High Court by virtue of Section 482 of the Code of Criminal Procedure, 1973 corresponding to Section 528 of The Bharatiya Nagarik Suraksha Sanhita, 2023. It provides that:

“482. Saving of inherent powers of High Court —Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

12. It is settled principle of law that the power under Section 482 of the Code of Criminal Procedure has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr. P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.
13. In the background of existing facts and circumstances, application of physical force is very natural and, in that situation, taking legal recourse by way of filing complaint under Section 156(3) of Code of Criminal Procedure is just and proper and not amount to abuse of process of Court.
14. On the contrary, nothing is on record to show ulterior motive of opposite party no.2. Mere pending of suits would not sufficient to attract ulterior motive of complainant. Prima facie, Investigating Officer also found her allegations true and then he filed charge-sheet after investigation.

15. I do not find any patent irregularity, illegality or impropriety in the instant criminal proceeding. The only bone of contention is the unauthorized possession over the quarter, number of litigations are the natural consequent. As such the case illustrated under Point No.7 of Paragraph 102 of *State of Haryana v. Bhajan Lal* (Supra) would not be applicable here because they are mere illustrative and not exhaustive and its application may vary from case to case, in the context of specific facts and circumstances.
16. Accordingly, the instant CRR 299 of 2023, alongwith applications, if any, is deserved to be dismissed.
17. The CRR 299 of 2023 is dismissed on contest.
18. There is no order as to the cost.
19. Interim order/orders, if any, stands vacated.
20. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)