

APPELLATE SIDE

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

ABIRA MUKHERJEE & Ors.

THE STATE OF WEST BENGAL & Ors.

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1. This revisional application under Section 482 of the Code of Criminal Procedure has been filed by the present petitioners for quashing of a proceeding being complaint case no. 1892 of 2023 under Section 447/448/504/506/379/34 of the Indian Penal code.

Brief fact of the case

- 2.** The fact of the case in a nutshell is that, that one Manindranath Mukherjee since deceased was the owner of a two storied building situated at premise no 47A, Shakari para Road, Bhawanipuur Police Station, Kalighat. Said Manindranath Mukherjee since deceased had two sons namely Samir Kumar Mukherjee and Shyamal Kumar Mukherjee. Samir Kumar Mukherjee died as bachelor and Shyamal Kumar Mukherjee died on June 9, 1987 leaving behind him his widow Abira Mukherjee the petitioner no. 1 and minor son Subhojit Mukherjee, the petitioner no. 2 here in as his sole legal heirs and or successors.
- 3.** The further case of the petitioners are that the said Mandira Nath Mukherjee executed a deed of trust in respect of his estate and appointed the petitioners as beneficiary of the said Trust which was duly registered in the Office of Registrar of Assurances, Kolkata on December 2, 1991. One Rampratap Shaw @ Shah was the monthly tenant in respect of a shop room situated on the ground floor of premises no 47A, Dhirendranath Ghosh Road, Bhawanipur, Police Station, Kalighat, was running his business of cattle food and subsequently started using the shop room as STD booth which continued up to 2009. The de-facto complainant is an employee of Rampratap Shaw @ Shah. A suit for declaration of permanent injunction was filed by the petitioner no. 2 against the opposite party no 2 in respect of the said shop room now pending before the Learned 4th Court of Civil Judge (Junior Division) being Title Suit no 978 of 2023.

- 4.** On 22rd June, 2023 at about 11.30 A.M the petitioner no. 2 found the Opposite Party no. 2 , trying to demolish and remove the shutter of the said shop room accompanied by some labourers and some goons and on enquiry he replied claiming to be authorised by Rampratap Shaw to start a new type of business. A chaos was created over the issue and the petitioner no. 2 lodged one written complaint with Kalighat P.S. on June 24, 2023. The petitioner no. 2 also moved an application under Order 39 , Rule 1 and 2 read with Section 151 of the Code of Civil Procedure and vide an order dated July 4, 2023 the Learned 4th Court of Civil Judge (Junior Division), Alipore passed an order restraining the present Opposite Party no. 2 from creating any 3rd party interest in respect of Schedule B property till August 4, 2023 which was extended from time to time and was in force till filing of this revisional application. It is the further case of the petitioner that the Opposite Party no. 2 by violating the order of injunction passed by the said Civil Court forcefully occupied the suit premises that is the shop room and a written complaint was lodged by the present petitioner no. 2 on July 8, 2023 and July 10, 2023 and further filed an application under Order 39, Rule 2 (A) read with Section 151 of the Code of Civil Procedure before the 4th Court of Civil Judge (Junior Division)
- 5.** The Opposite Party no. 2 also filed a suit for declaration and injunction against the present petitioners on July 10, 2023 pending before the said 4th Court of Civil Judge (Junior Division) being title suit no 777 of 2023 and also moved an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure for an order of ad interim injunction to the said order was refused by the said Court.
- 6.** It is the specific contention of the petitioner that being unsuccessful in obtaining such interim order the Opposite Party no. 2 filed further suit for

declaration and permanent injunction on July 14, 2023 being Title suit no 953 of 2023 before the said 4th Court of Civil Judge (Senior Division) at Alipore by suppressing the fact of the earlier suit and thereby obtained and interim order of injunction restraining the present petitioners not to evict the Opposite Party no. 2 in due course of law.

7. After that the Opposite Party no. 2 all on a sudden filed one application under Section 200 of the Code of Criminal Procedure before the Learned Chief Judicial Magistrate at Alipore on July 11, 2023 which was registered as C-1892 of 2023 and now pending before the 9th Court Judicial Magistrate, Alipore and the said court took cognizance for commission of offence punishable under Section 447/448/504/506/379/34 of the Indian Penal Code against the petitioners. The petitioner has come before this court for quashing of the entire proceeding.

Submission

8. The Learned Advocate appearing on behalf of the petitioner argued that the incident alleged was of 8th of July, 2023 when the complaint was filed on July 11, 2023 without giving any plausible explanation. The proceeding is absolutely civil in nature and the complaint is maliciously filed with an ulterior motive only to rope the petitioners in the criminal proceeding. The Learned Advocate further argued that there is clear suppression of fact by the Opposite Party no. 2 while obtaining subsequent order of ad interim injunction about the order of refusal passed by the concerned Court in connection with a separate proceeding filed by him. It was further argued that petitioner no. 2 is the owner of the property and petitioner no. 1 is mother of the petitioner no. 3 the wife of the petitioner no. 2. It is nothing but a tenant dispute which has

been tried to give a colour of criminal intent and is not maintainable in the eye of law.

9. Per contra the learned Advocate representing the Opposite Party strenuously argued that the opposite Party no 2 is an advocate by profession and Rampratap Shaw @ Gupta being the father of the Opposite Party no. 2 was a tenant in respect of the suit property under the petitioners. During lifetime of the father of the Opposite Party no. 2 he and his father used the suit property as study room and office cum chamber and after demise of his father by way of succession he became a tenant under the petitioners in respect of suit premises. He continued to use the suit premises as his chamber and almost after a decade the petitioners started threatening him to evict illegally from the said premises. The incident happened on 8th July, 2023 and the GD lodged no. 681 on the very date on July 8, 2023. The complaint was lodged on 11th of July, 2023 and the reason has been assigned by the de-facto complainant for lodging the same on that date. It is argued that mere pendency of civil proceeding cannot curtail the right of the complainant to lodge a complaint where offence is committed by a person. On 18th of July, 2023 there was no order of injunction and it is denied that he is an employee as alleged. The learned Advocate relied upon the decision in ***Kathyayini Versus Sidharth P.S. Reddy and Ors***¹.

10. The Learned Advocate further denied of suppression of mentioning the previous suit as on the date the previous suit was withdrawn and only the title suit no. 953 of 2023 subsisting. A revisional application being CO no. 440 of 2024 was filed by this Opposite Party and by an order dated September 3,

¹ 2025 SCC Online SC 1428

2024 direction was given to withdraw it to the 4th Court of Civil Judge analogues trial and disposal of title suit 953 of 2023 and title suit no. 978 of 2023.

- 11.** The Learned prosecution argued that the on completion of investigation the charge sheet has been furnished which prima facie established the allegations against the petitioner and hence he should face the trial.

Analysis

- 12.** Heard the submission. It can be gathered from the record that the suit filed by the petitioner no 2 in the year 2023 against the opposite party was for declaration that the defendant is a stranger trespasser in the suit premises and for permanent injunction to restrain him from creating third party interest and also not to alienating or changing the nature and character. The Opposite Party no. 2 also filed a suit for declaration against both the petitioners that he is a tenant in respect of the suit plot and prayed for permanent injunction restraining the petitioners from entering into the suit property with force and from dispossessing him without due process of law. Both the suits are pending before the court of civil judge ,Senior Division at Alipore .In the suit filed by the opposite party no 2 obtained an order of interim injunction restraining the petitioners to dispossess him without due process of law till 10.8.2023. From the record it further transpires that a Suit for Defamation was also filed by the opposite party no 2 against the present petitioners along with the wife of the petitioner no 2.In this backdrop the complaint was filed under section 200 Cr.P.C by the opposite party against the petitioners including the sister of petitioner no 1 .The date of incident mentioned was on 8.7.2023 at about 5 p.m. when the petitioners trespassed into his chamber and abused him with

filthy languages and threatened to oust him .The date of incident of demolition and removal of shutter was on 22.6.2023 which was the cause of action for filing the suit for declaration by the petitioner no. 2 and in order to protect his interest the order of injunction was granted against the Opposite Party no. 2 restraining him from creating the third party interest till 4.8.2023 .

13. Therefore from the above the longstanding civil dispute over the suit premises regarding the status of the Opposite Party no. 2 are well founded. Whether the opposite party is a tenant or trespasser can only be decided by the civil court .It is a settled proposition of law that merely because a civil dispute is pending cannot ipso facto take away the right of a person from initiating criminal proceeding if he alleges of commission of criminal offences but in order to maintain that the primary essential ingredients must subsist to attract any penal section. In the decision relied upon by the Learned advocate of the opposite party in ***Kathyayini vs Siddharth P.S Reddy and ors (supra)*** it was held in paragraph 8 that:-

‘8. It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party ,he is not precluded from setting in motion the proceedings in criminal law .’

It was further held that pendency of civil proceedings on the same subject matter, involving the same parties is no justification to quash the criminal proceedings if a prima facie case exists against the accused persons.

14. Therefore it should be prima facie evident that the complaint lack sufficient materials to constitute an offence and also during investigation nothing

evinces to constitute the offences in respect of which the charge sheet is submitted. The High Court is not denuded to exercise the inherent power where the continuation of criminal proceeding would amount to an abuse of the process of law or where the dispute is purely of civil nature and criminal colour has been artificially given to it.

15. On close scrutiny of the entire complaint it is evident that the opposite party did not specify the role attributed by the present petitioners as allegations were made against four accused persons in respect of an incident dated 8.7.2023. It is further apparent that the complainant mentioned about a chamber in respect of which the tenancy was claimed when the specific case of the petitioner s are that the originally the tenancy was given to Rampratap Shaw in respect of a shop room and the present opposite party is claiming to be the son of Rampratap Shaw . The petitioners filed application under Order 39 Rules 2(A) for violating the order of injunction granted in his favour and also lodged a complaint before Kalighat Police station as the Opposite Party forcefully took the possession of that shop room. The allegations against the present petitioners are found omnibus in nature without specifying any role attributed against petitioners when the petitioner no. 1 is an aged lady. Nothing is mentioned as to how the aged lady can threatened the Opposite Party no. 2 with dire consequences. No gesture or word spoken can be found, Similarly, the materials collected during instigation also do not suggest that prima facie enough materials exists to constitute the offence as alleged. Therefore on the face of it no ingredients can be found to attract the offences alleged was made out against the petitioners specially when civil disputes are pending between the parties which are the root cause of all disputes. That

apart the Learned Co-ordinate Bench while admitting this revisional application observed the manner in which the cognizance was taken by the learned Magistrate. On perusal of the order dated 25.7.23 it is apparent that the Learned Magistrate after examining the complainant under Section 200 Cr.P.C observed that prima facie offence made out against the accused persons and directed to issue process despite the fact that order issuing process is a serious matter. It is settled law that the Magistrate is required to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and to ascertain whether that would be sufficient for proceeding against the accused. In this case the complainant before the Court stated about assault when the complaint was absolutely silent about the same.

16. The scope of Section 482 is wider than that of discharge proceedings ,as in quashing petitions the accused may rely on documents outside the charge sheet to demonstrate abuse of the process of law in order to prevent the abuse of the process of law. Furthermore the criminal prosecution must not be permitted as an instrument of harassment or private vendetta as held time and again by the Hon'ble Apex Court.

17. In the present case from the nature of allegations made coupled with the fact of pending civil dispute over the suit property and other proceeding including a suit for defamation claiming Rs. 50,000/- in respect of the self-same allegation on the same day which express otherwise that the Opposite Party no. 2 for opted both civil and criminal forum alleging defamation.

Conclusion

- 18.** Therefore on cumulative assessment of the entire gamut of the case and the content of the written complaint as well as from the materials collected during the investigation it is apparent that the dispute is purely civil in nature and over the same incident suit for defamation has also been filed by the Opposite Party no. 2 claiming Rs. 5,00,000/- and also Title suits are pending between the parties. There is apparent the non-application of mind by the Learned Magistrate in taking cognizance when the embellishment was clearly apparent from the statement of the complainant and the content of written complaint and the Learned Magistrate issued the process without arising any reason.
- 19.** Therefore this Court is of the view that if the proceeding is allowed to be continued it would be abuse of the process of the Court.
- 20.** Hence this criminal revisional application stands allowed. The entire proceeding is quashed against the petitioners.
- 21.** No order as to costs.
- 22.** Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(CHAITALI CHATTERJEE DAS,J.)