

14.

Ct.29

CRR 4790 of 2024

13.04.2026

Bd.

Arindam Dutta Chowdhury & Anr.

-vs-

The State of West Bengal & Anr.

Mr. Ganesh Shrivastava

Mr. Sukanta Das ... for the petitioners.

Mr. Md. Adil Badr

Ms. Debolina Das ... for the State.

Affidavit of service filed by the petitioners is taken on record.

In this application petitioners have prayed for quashing of the proceeding being GR Case No. 576 of 2024 presently pending before the Chief Judicial Magistrate, Jhargram.

The case made out against the petitioners in the complaint is that the opposite party no. 2 constructed one multi-storied building upon joint venture agreement with the petitioner no. 1, who took his owner's allocation and sold out some residential flats from his allocation. The petitioner no. 1 had taken Rs. 10,00,000/- by two cheques from the opposite party no. 2 at the instance of his wife with a promise to refund the same after selling owner's allocation. It is alleged that on several times petitioners were requested to refund the said amount and ultimately petitioners asked the opposite party no.2 to come on June 28, 2024 to have the money refunded. When the opposite party no. 2 came to the office of petitioners, they assaulted him and tried to murder him and also threatened him not to ask for refund of the said money.

It is also alleged that petitioners attacked the opposite party no. 2 with intent to murder him in order to cheat and misappropriate said amount of Rs. 10,00,000/-.

Being aggrieved by the aforesaid proceeding, learned counsel for the petitioners submits that the petitioners were not physically present at place of occurrence at Jhargram and on the relevant day and time the petitioners were in Kolkata for the purpose of registering a Deed of Conveyance pertaining to purchase of a residential flat from M/s. Mega City Apartments Private Limited and the said deed was presented for registration at 14.57 hours on June 28, 2024 at the office of the ARA –I Kolkata. Therefore the allegations leveled in the complaint are absurd.

It is further submitted that even if the entire allegations leveled in the complaints are taken to be true, it do not disclose the offence of cheating, in the absence of means rea, nor it discloses the offence of criminal breach of trust, in absence of any allegation of entrustment. A bare perusal of section 506 of the Indian Penal Code makes it clear that to constitute offence under the said provision the accused person must have threatened someone with injury to his person, reputation or property with an intention to cause alarm to the complainant and accused did so to cause the victim to perform any act, which he is not bound to do, but in the present case prosecution has failed to disclose any evidence in support of the same and no material has also been placed on record, on the basis of which one can arrive at a conclusion that the petitioners have made any such threat to the opposite party and therefore the allegations leveled in the

complaint do not have any leg to stand. He further submits that the place of occurrence situates at a distance of about 170 K.M. from the Registry office, where petitioners were found on that day and therefore it is apparent that the petitioners have been deliberately and falsely implicated in the impugned proceeding without any basis at all. Therefore, they prayed for quashing of the impugned proceeding.

Opposite party no. 2 is not represented.

Learned counsel for the State placed the case diary and submits that during investigation prosecution has recorded statements of witnesses and after completion of investigation, the police have already submitted charge-sheet under section 406/420/341/323/308/506/34 of the Indian Penal Code, against the petitioners. However, he leaves the prayer made by the petitioners to the discretion of the court.

I have gone through the materials available in the case diary. It appears that during investigation the complainant has made statement that all the petitioners have slapped him when he demanded Rupees ten lakhs from them. The other witness is his driver, who stated that all on a sudden the petitioners have tried to assault him. Another witness Gora Chand Mahata stated that after hearing hue and cry when he reached the spot, he found that Subrata Babu was assaulted and the petitioners are fleeing away from the spot. Witness Shib Das Ghosh has stated that after hearing hue and cry when he reached the spot Subrata Babu was found to have been assaulted and he further noticed that the petitioners were fleeing away from the spot. No other

incriminating material collected during investigation against the petitioners. The investigating agency did not collect any evidence during investigation which can discard the petitioners' alibi that they were 170 Km away from the place of occurrence as appearing in a registered deed. On the contrary, it appears that the dispute in connection with the realization of money, are basically civil in nature and a civil suit being Other Suit no. 1 of 2021 has already been filed. By an order dated 12.6.2024 the petitioners have also obtained an order of injunction. It further appears that an appeal has also been preferred over the self-same issue before the West Bengal Consumer Dispute Redressal Commission being FA 164/2024 against order of dismissal passed by district consumer commission in CC/5/2021.

Learned court below while disposing of the bail application of the petitioners, has noted the submissions made by the learned Public Prosecutor, who candidly submitted that the dispute between the parties are civil in nature.

Having considered the overall facts and circumstances of the case, and that dispute pertains to the monetary transactions which are purely civil in nature and also considering the uncontroverted documents in support of the petitioners' alibi, I find that the presence of the petitioners at the spot at the time of alleged occurrence is absurd and inherently improbable. Therefore, further continuance of the instant proceeding against the present petitioners will be mere abuse of the process of the court, especially in view of the fact that there is hardly any chance of conviction of the petitioner at the end of trial and therefore

clause (5) of para 102 of the case of State of Haryana Vs. Bhajanlal & other, (1992) Supp (1) SCC 335, clearly attracts in the present case which states:-

para 102 (5) "Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."

In such view of the matter, CRR 4790 of 2024 is allowed.

The impugned proceeding being GR Case No. 576 of 2024 presently pending before the Chief Judicial Magistrate, Jhargram is hereby quashed.

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.)