

(2023) 07 CAL CK 0018
In the Calcutta High Court
Case No : Criminal Revision No. 293 Of 2020

Chaitali Biswas

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 05-07-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 426, 427, 447

Citation : (2023) 07 CAL CK 0018

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Satadru Lahiri, Saswata Gopal Mukherjee, Md. Anwar Hossain, M.F.A. Begg, Ajay Datta, Krishna Deo Das

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing of the proceeding being GR Case No. 4674 of 2017 arising out of Bally Police Station Case No. 66/17 dated 05.08.2017 under Sections 447/426/427/34 of the Indian Penal Code, 1860 as well as all orders passed in connection with the said proceeding presently pending before the Learned Chief Judicial Magistrate, Howrah.

2. The petitioner's case is that the accused/petitioner is one of the elected peoples' representative of Howrah Municipal Corporation and councilor of ward no. 17 under the said Municipal Corporation, and she has been holding the said portfolio since 2015 and is a peace loving and law-abiding citizen of India, having no tint of blemish and no record of past conviction.

3. On the basis of Letter of Complaint lodged by one Shipra Ghosh, daughter of Late Gopinath Ghosh of 17, Ghoshesh Lane, Police Station-Bally, District-Howrah, PIN Code- 711 202 (hereinafter referred to as 'the Complainant/ Opposite Party No. 2') with the Officer-in-Charge of Bally Police Station, the

instant case being Bally Police Station Case No. 66/17 dated 05.08.2017 was registered for investigation under Sections 447/426/427/34 of the Indian Penal Code, 1860 against one Manuvai Ghosal and the petitioner.

4. The allegations made in the letter of complaint against the petitioner in brief are as follows:-

"That the Complainant/Opposite Party No. 2 is alleged to be owner of a undivided portion of land situated at the address mentioned in the cause title. It is further alleged that the accused no. 1 namely Manubhai Ghoshal of Adi Loknath Math, Satyasraee Mandir forcefully acquired a portion of such land and on or about 09th June, 2017, in presence of the accused/petitioner, allegedly constructed a brick wall over the said premises. The Complainant/Opposite Party No. 2 also alleges that in the civil suit instituted by the said Math being T.S. No. 02/2001, the Learned Civil Court dismissed the said suit and declared the alleged purchase of portion of such undivided land by the said religious organization as illegal. The accused No. 1 allegedly caused disturbance in leading Complainant's life in peaceful manner and the concerned authorities attached to Howrah Municipality in spite of knowing everything illegally mutated the name of the said religious organization in respect of the land in question".

5. It is submitted that there was a long pending civil dispute by and between the Complainant/Opposite Party No. 2 and the accused no. 1 (not before this Court) and the religious organization with which the accused no. 1 is associated. The objection of the Complainant/Opposite Party no. 2 is restricted to the recovery of her possession over the subject property, which allegedly was forcibly occupied by the accused no. 1 and/or the religious organization with whom he is associated, even after losing in the partition suit initiated at their instance.

6. The accused/petitioner further states that it is explicit from the Letter of Complaint itself that the very genesis of the impugned criminal proceeding is alleged construction of boundary wall at the instance of the accused no. 1 over a disputed property, which is the subject matter of several civil litigations pending between the parties therein and the accused/petitioner has got nothing to do with the same.

7. Mr. Satadru Lahiri, learned counsel for the petitioner has submitted that the Complainant/Opposite Party No. 2 maliciously set the criminal law into motion against the petitioner with an intention to wreck vengeance against her out of private and personal grudge for the reasons best known to her and/or her associates.

8. The continuation of the aforesaid proceedings is a glaring example of the abuse of the process of Court which if allowed to continue for a single day beyond the stage it has already reached, will degenerate itself into a weapon of harassment and as such is liable to be quashed.

9. Mr. Saswata Gopal Mukherjee, learned Public Prosecutor has placed the case

diary and submitted that there is sufficient materials on record against the petitioner to proceed towards trial and thus the revision is liable to be dismissed.

10. Mr. Ajay Datta, learned counsel for the opposite party no. 2 has adopted the submission made by the State.

11. Mr. Lahiri has relied upon the following judgments in support of his contention that civil dispute cannot be the basis to file a criminal case against a person:-

"i. Anand Kumar Mohatta & Anr. vs. State (NCT of Delhi), Department of Home & Anr. reported in (2019) 11 SCC 706;

ii. Rajeshbhai Muljibhai Patel & Ors. vs. State of Gujarat & Anr. reported in (2020) 3 SCC 794;

iii. Devendra & Ors. vs. State of Uttar Pradesh & Anr. reported in (2009) 7 SCC 495;

iv. Joseph Salvaraja vs. State of Gujarat & Ors. reported in (2011) 7 SCC 59;

v. Namita Tudu & Ors. vs. State of West Bengal & Anr. in CRR 190 of 2020".

12. In the present case, from the materials on record, it is on record that there is a property dispute between the complainant and accused No. 1 (not before this Court). The accused No. 1 has a religious trust, to which the sister in law of the complainant allegedly gave some land. The complainant is a co-sharer of the said land.

13. The accused No. 1 has taken forcible possession of a portion of the land, even though the civil court and the High Court have decided the dispute against the accused No. 1.

14. The accused No. 1 has now constructed a boundary wall forcibly, allegedly with the support and in the presence of the petitioner, who is a municipal councilor.

15. The petitioner's position gave the accused No. 1, the courage and strength to carry out the unlawful act in spite of the Courts deciding against him.

16. The present case has been filed under Sections 447/426/34 of the Indian Penal Code.

17. Section 447 of the Indian Penal Code, lays down:-

"447. Punishment for criminal trespass.— Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

18. Section 426 of the Indian Penal Code, lays down:-

"426. Punishment for mischief.—Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Ingredients of offence. — The essential ingredients of the offence under Sec. 426 are as follows:-

(1) Accused caused the destruction of some property or some change in it or its situation;

(2) Such change must have destroyed or diminished the value or utility of the property or affected it injuriously.

(3) Such destruction or change in the property or situation thereof must have been done with the intention of causing or with the knowledge that it is likely to cause wrongful loss or damage to any person or to the public."

19. The ingredients required to constitute the said offences is prima facie present against the petitioner for the case to proceed towards trial.

20. The revisional application being CRR 293 of 2020 is accordingly dismissed.

21. No order as to costs.

22. All connected applications, if any, stands disposed of.

23. Interim order, if any, stands vacated.

24. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

25. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.