

(2022) 08 CAL CK 0024

In the Calcutta High Court

Case No : Criminal Revision No. 189 Of 2019, CRAN 5 Of 2022

Dwaraka Nath Chowdhury & Anr.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 12-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Criminal Procedure, 1973 — Section 144(2), 161, 401, 482
Indian Penal Code, 1860 — Section 34, 120B, 380, 427, 448, 451, 506
West Bengal Land Reforms And Tenancy Tribunal Act, 1997 — Section 6, 10

Citation : (2022) 08 CAL CK 0024

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Amarta Ghosh, P.G. Das, S.K. Das, S. Chatterjee, Kallol Mondal, Sandip Ghosh, Bitasok Banerjee

Final Decision : Allowed

Judgement

Ajoy Kumar Mukherjee, J

1. The present application under Section 401 read with the Section 482 of the Code of Criminal Procedure has been preferred to quash the proceeding being GR case no. 169 of 2017 arising out of Serampore Police Station case no. 28 of 2017 dated 19.1.2017 under Section 448/451/380/461/427/506/34 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Serampore, Hooghly.

2. The petitioner contended that Gorachand Goswami, the opposite party no. 2 herein, claimed himself to be a co-sharer of Municipal holding no. 2, William Carry Road, Serampore, Hooghly took out an application before the learned Additional Chief Judicial Magistrate, Serampore praying for an investigation and pursuant to a direction passed by the learned Additional Chief Judicial Magistrate, Serampore, the aforesaid proceeding was initiated against the petitioner.

3. The allegations levelled against the petitioner in the said petition, may be summarized as follows:-

a) the complainant is a co-sharer of the property situated at R.S. dag no. 3800 under R.S. khatian no. 3299 corresponding L.R. no. 4630 under Serampore Municipality measuring more or less 12 katha along with his son and daughter.

b) The complainant inherited the said property from his deceased wife under the provision of Hindu Succession Act.

c) The complainant on 03.01.2017, came to know that the accused person/petitioners herein with the help of the other miscreants jointly and willfully trespassed into the existing house property of the complainant taking advantage of his temporary absence and also demolished the building existed over the aforesaid land and looted all valuables amounting to Rs. 50 lakhs.

d) The accused person/petitioners are very dangerous in nature and on protest by the opposite party No. 2 against their illegal activities, they threatened complainant with dire consequences.

4. The investigating agency after conclusion of the investigation submitted charge-sheet being no. 146 of 2018 dated 31.3.2018 against the petitioners under Section 448/451/427/120B of the Indian Penal Code.

5. Mr. Ghosh, Learned advocate for the petitioners submits that the instant case is a total outcome of falsity and the petitioners being the innocent employees of the company are being harassed with ulterior motive. The opposite party has instituted the instant proceeding in order to prove his innocence of claiming himself as one of the owners of the said property and as such, the instant proceeding is nothing but eyewash and he along with others have recorded their names in connection with said plots illegally in connivance with the local administrators.

6. Mr. Ghosh further submits that at all material times, the company namely, India Jute and Industries Ltd. has been owned and occupied of a huge area of land measuring 23 acres in different plots of land and said area of land has been utilized by the said company for running its jute mills, factory-shed, residential units for the employees of the said jute mills company and also other allied units and also dwelling house and/or other buildings necessary for the purpose of running the said jute mill. The name of the company is being duly recorded in the record of rights, in the Serampore Municipality. The said company, is therefore the owner and/or occupier in respect of the said entire 23 acres in different plots of land and said company regularly paying all statutory dues from time to time in connection with the property taxes, before the Serampore Municipality.

7. Mr. Ghosh further submits that at the end of April, 2017 said company and its officials came to know from various sources that the ownership of certain plots of land under the ownership and/or occupation of the said company including the

property at 2&3 William Carry Road, had been transferred to certain individuals whimsically and without any notice of the said company from the concerned authorities. It has been noticed by the company that names of certain persons have been recorded against the properties of the said company without any justification and without giving any notice to the said company.

8. On May 23, 2017, a notice was sent from the office of the Municipal councilors, Serampore, Hooghly directing the petitioners to attend hearing on May 26, 2017 at 3 P.M. in the chamber of the Chairman of the office of the Municipal Commissioner. The said company through their representatives appeared on the date of hearing on 26th May, 2017 and in the course of hearing, the representative of the said company also produced all the relevant documents with regard to the said plots of land as called for and clarified and issue raised by the Municipal councilors to their satisfaction. However, the said company was never aware as to the outcome of the aforesaid hearing. By a letter dated 29th May, 2017 the company requested the Municipal councilors to furnish names with a copy of the application made by the opposite party no. 2 and also a copy of the written submission made the opposite party no. 2. The said company issued several letters to the Municipal authorities to furnish the documents/information with regard to the aforesaid properties and company also filed an application under Article 227 of the Constitution of India before the High Court, Calcutta being W.P. no. 21717 (W) of 2018 and the opposite party no. 2 appeared and prayed for adding him as a party. After hearing, said application was allowed by High Court and the Municipal authorities served certified copies of the assessment register of the aforesaid premises which were occupied by the said company.

9. He further submits that the said company also filed an application under Section 10 read with Section 6 of the West Bengal land Reforms Tenancy Tribunal Act before the West Bengal land Reforms Tenancy Tribunal being OA no. 2138 of 2018 in connection with said L.R. Plot No. 4630 and the same has been disposed of by the bench on 8.1.2019.

10. He further submits that in the middle of 2016 men and agents of the opposite party no. 2 started threatening the security personnel of the said company and tried to take forcibly possession of land and building which is lying and situated at 2, William Carry Road. Having been unsuccessful, the opposite party no. 2 and his men and agents made several complaints before the local police station and also moved an application under Section 144 (2) of the Code of Criminal Procedure before the learned Sub-divisional Executive Magistrate at Serampore being Misc. Case no. 1840 of 2016 on false and concocted allegations against the said company and the company appeared in the said proceeding and denied all allegations mentioned in the said application. In terms of direction of the learned Sub-divisional Executive Magistrate at Serampore, the police authorities filed a report that a tension is prevailing over the issue of the suit land and there is every chance of breach of peace.

11. Learned advocate for the State submits that after completion of investigation, charge-sheet has been submitted by the police, though the statements recorded under Section 161 of the Code of Criminal procedure, during investigation does not support complainants case that the present petitioners/accused persons had demolished the complainant's house after committing trespass or looted or committed theft in respect of the property of the complainant.

12. Considered submissions made by both the parties. It is apparent that serious civil dispute regarding possession and ownership of land and/or building exists in between the opposite party no. 2 and the said company and/or its employees. However, in the present context, the subject matter is confined to the written complain filed by defacto complainant before the learned Additional Chief Judicial Magistrate, Serampore. In the said complaint, the complainant claimed that he is a co-sharer and inherited the said property from his deceased wife but complainant being an old aged person left India for visiting with his daughter and stayed their for a long period and on returning therefrom on 3.1.2017 he came to know that the accused persons with the help of other miscreants jointly and intentionally, taking advantage of his absence illegally and forcibly trespassed in the existing house property owned by complainant and after breaking padlock, demolished the entire building situated over the said land and looted all valuable articles therefrom amounting to Rs. 50 lakhs. He further alleged that the accused persons committed such trespass in order to cause mischief and theft for which complainants sustained huge loss.

13. On perusal of the materials in the case diary collected during investigation, wherein statement of opposite party no. 2 as well as four other witnesses have been recorded by the investigating officer, It appears that all the four witnesses except opposite party no. 2 have stated that the building got dilapidated for want of maintenance about 10 years back, the Mill authority decided to demolish the said building and accordingly about 8 to 9 years back, Mill authority had demolished the entire building. The opposite party no. 2 in his statement recorded under Section 161, only stated that on 3.1.2017 he came to learn from his reliable source, that the present petitioners had demolished his house after removing the furniture and they took possession of the said property which he wants to get back. Beside this, I do not find any other incriminating material in the case dairy against petitioners during investigation.

14. If it is the contention of the prosecution witnesses that the land upon which the opposite party's building situated got badly damaged and became unfit for human habitation and for which Mill authority has demolished the said building about 8/9 years back and they have the personal knowledge, being inhabitants of that locality, then the allegation of demolition of the said building by the present petitioners or the allegation of illegal trespass by the petitioner or looting Rs. 50 lakhs from the house of the petitioner, does not find any leg to stand. On the basis of said materials collected during investigation, the conviction of the

present petitioners is bleak and no useful purpose is likely to be served by allowing the present criminal prosecution to continue.

15. In *Madhavraro Jiwajirao scindia & others Vs. Sambhajirao Chandrojirao Angre & others* reported in (1988) 1 SCC 692, Apex Court pleased to observe as follows:-

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

16. Having considered the facts and circumstances of the case and the materials available in the record and case dairy, I find that continuance of the present proceeding will be a mere abuse of the process of the court.

17. In view of the above, CRR 189 of 2019 is allowed.

18. Pending application, if any, is hereby disposed of.

19. Let all further proceedings being GR case no. 169 of 2017 arising out of Serampore Police Station case no. 28 of 2017 dated 19.01.2017 initiated under Section 448/451/380/461/427/506/34 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Serampore, Hooghly, is hereby quashed.

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