

(2023) 12 CAL CK 0030
In the Calcutta High Court
Case No : Criminal Revision No. 3697 Of 2019

Nazmin Yeasmin & Ors.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 08-12-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 325, 341, 354, 354B, 379, 427, 447
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2023) 12 CAL CK 0030

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

Bench : Single Bench

Advocate : Gobinda Chandra Baidya, Rita Dutta

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing of Raidighi Police Station Case No. 148 of 2018 dated 19.04.2018 under Sections 447/323/325/354B/427/379/34 of the Indian Penal Code (G.R. Case No. 1060/2018) pending before the Learned Additional Chief Judicial Magistrate at Diamond Harbour.
2. The petitioner's case is that the Opposite Party No. 2 is the brother-in-law (Bhasur) of the Petitioner No. 1 and cousin brother of the Petitioner No. 2 and nephew and neighbor of the other petitioners respectively.
3. That the husband of the Petitioner No 1 is an Assistant Professor of RCCIIT College, Unit of Higher Education Society Govt. of West Bengal, Kolkata and he namely Nijam Uddin Molla was the accused no. 2 in the FIR and subsequently his name was not included in the Charge Sheet being No. 151/18 dated 28.04.2017.
4. It is submitted by the petitioner that from the very beginning of his student life, the Petitioner No. 1's husband, used to reside in Kolkata for travelling

convenience, and sometimes along with his family used to visit his native village under Police Station Raidighi for the purpose of taking care of his landed properties which he got by dint of inheritance and purchase from the father of the Opposite Party No. 2 and also gifted by the Opposite Party No. 2 vide Gift Deed No. 246/08 and other Deeds. The total area of land measuring 3.16 Acres in general measurement about 9.5 bighas owned by the husband of the petitioner No. 1 is recorded in Mouza – Chaplar Khop Dag No. 2569, 2571 and 2542 total land area 3.16 Acres, under Police Station – Raidighi, District – South 24 Parganas in the office of the B.L. & L.R.O. Raidighi. The record of rights have been duly published and the petitioner no.1's husband is paying the rents regularly to the respective authority in his name.

5. After being the absolute owner of the above referred land the husband of the Petitioner No. 1 has been cultivating the same with the help of one of his cousin brother namely Mahiruddin Molla, the Petitioner No. 2 herein and by labours of the village and there was no dispute in any manner whatsoever till the year 2015 between the petitioners and the Opposite Party No. 2.

6. When the son of the Opposite Party No. 2 namely Mehebab Hossain Molla became the local committee member of the ruling party, the Opposite Party No. 2 along with his son and other local anti-social tried to grab the property forcefully by cutting the paddy from the field, catching the fish from pond and taking the fruits and vegetables. As the husband of the Petitioner No. 1 and Petitioner No.1 used to reside in Kolkata, the husband of the Petitioner No. 1 engaged his cousin brother namely Mohiruddin Molla, the Petitioner no. 2 herein to take care of the whole property.

7. On 16.04.2018 when the Petitioner No.1 reached the property along with her mother-in-law and sisters-in-law and the Petitioner No. 3, who are also the mother and sisters of the Opposite Party No. 2 (of whom the Opposite Party No.2 never takes care) for the purpose of repairing the mud house like previous years with help of labours, all on a sudden, the Opposite Party No. 2 along with his wife and son rushed towards the petitioner No. 1 and not only physically assaulted the Petitioner No. 1, but also her mother-in-law and sisters-in-law and also the Petitioner No. 3. The Petitioner No. 1 then lodged a written complaint with Raidighi P.S. which was registered as Raidighi P.S. Case No. 144/18 dated 16.04.2018 under Sections 341/323/325/354/34 of the Indian Penal Code being GR Case no. 1042/18 pending before the learned ACJM, Diamond Harbour for trial.

8. The allegations against the petitioners in the present Case filed by the Opposite Party No. 2 is that on 16.04.2018 at about 1.00 P.M. all the petitioners together tried to enter into the house of the Opposite Party No. 2 and when the Opposite Party No. 2 protested, the petitioners assaulted the Opposite Party No. 2 and his wife by disrobing her and also snatched Rs. 20,000/-, and all the brass articles from the house of the Opposite Party No. 2. They also blasted bombs and assaulted with a pistol. As a result the Opposite Party No. 2 and his wife fainted

and they were rescued by the village people and were taken to Raidighi Police Station and then admitted to hospital. The Opposite Party No.2 then on 19.04.2018 lodged a written complaint with Raidighi Police Station being Raidighi Police Station Case No. 148 of 2018 dated 19.04.2018 under Sections 447/323/325/354B/427/379/34 of Indian Penal Code against the petitioners.

9. It is further stated that the Opposite Party has filed a Title Suit being No. 362/18 for declaration, partition and injunction against the husband of the Petitioner No.1 in respect of the property as stated therein, though he had already gifted the property to his brother Nijam Uddin Molla (husband of petitioner no. 1) vide Deed No. 246/08. The said suit was dismissed on 16.01.2019 on the ground of non prosecution. The husband of the Petitioner No. 1 has also filed a Title Suit being T.S. No. 169/19 against the Opposite Party No. 2 and obtained an order of injunction vide order dated 28.06.2019.

10. The petitioners state and submit that the entire alleged incident took place on 16.04.2018 at about 1p.m., when the husband of Petitioner No.1 was fully engaged in his college, and so all the allegations levelled against petitioners are not only false but the same are baseless and concocted and nothing but outcome of the complaint lodged by the Petitioner No. 1.

11. In spite of due service, the Opposite Party No. 2 is not represented.

12. Admittedly the Petitioner No.1 filed a Complaint against the Opposite Party No.2 and others, which was registered as Raidighi Police Station Case No. 144/18 dated 16.04.2018 under Sections 34/323/325/354/34 of the Indian Penal Code which is three days prior to the case filed by the Opposite Party No. 2 being Raidighi Police Station Case No. 148/18 dated 19.04.2018 Sections 447/323/325/354B/427/379/34 of the Indian Penal Code (the present case), relating to the same incident.

13. Title Suit 362/2018 filed by the Opposite Party No. 2 has been dismissed for non prosecution.

14. Title Suit 169/2019 filed by the Petitioner No. 1's husband against the opposite Party No. 2 in respect of the same property is pending.

15. Learned counsel for the State has placed the Case Diary along with a memo of Evidence.

16. Page 13 and 14 are the Injury Reports.

17. There is no Statement under Section 164 Cr.P.C. nor any other materials on record to prima facie substantiate the charge under Section 354B of IPC. But Charge Sheet has been filed for offence punishable under Sections 447/323/325/354B/427/379/34 IPC. As such the said fact is to be considered by the Trial Court.

18. Admittedly, there is a Case and a counter Case between the parties relating to the same incident, though the present case has been filed almost three days

after the petitioner filed a case.

19. But as the materials in the case diary include injury reports, there is a prima facie case against the petitioners to proceed towards trial.

20. Though the principal dispute between the parties relate to landed property, the incident in the present case and the counter case are to be adjudicated by the trial court there being a prima facie case against the petitioners for the offences alleged and the case should be permitted to proceed towards trial.

21. CRR 3697 of 2019 is thus dismissed.

22. Considering the fact that the parties are related to each other and the dispute relates to their family property, the Learned Magistrate shall refer the parties for mediation to the District Legal Services Authority before proceeding with the trial.

23. All connected applications, if any, stand disposed of.

24. Interim order, if any, stands vacated.

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

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