

(2012) 01 CAL CK 0065

In the Calcutta High Court

Case No : C.R.R. No. 2086 of 2009 and C.R.A. No. 2254 of 2011

Radha Dutta and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 192(2), 200, 202
Penal Code, 1860 (IPC) — Section 120B, 425, 430
Premises Tenancy Act, 1956 — Section 21

Citation : (2012) 01 CAL CK 0065

Hon'ble Judges : Kanchan Chakraborty, J

Bench : Single Bench

Advocate : Sudipto Moitra, Mr. Sanjoy Kumar Nag and Mr. P.S. Mallick, for the Appellant; Manjit Singh, Ayan Bhattacharyya, Pawan Kumar Gupta, Anand Keshari and Mr. Anjan Dutta, for the Respondent

Final Decision : Allowed

Judgement

Kanchan Chakraborty, J:

1). This application u/s 482 of the Code of Criminal Procedure praying for quashing of the proceeding in Criminal Case no. 1132 of 2006 pending in the Court of learned Judicial Magistrate, 6th Court, Alipore, has been taken out by Radha Dutta and Subhashis dutta, the persons made accused in the case, on the following grounds :

- a) that no case u/s 430 of I.P.C. is made out against them;
- b) that the dispute between the parties is of civil in nature and while the parties to the case are litigating over the issue in competent Civil Court, the learned Magistrate, ought not have taken cognizance of the offence against the petitioners;
- c) that the learned Magistrate erred in directing the police official of the local

police station to enquire further into the matter for the 2nd time after getting first report u/s 202 of the Code;

d) that the Criminal proceeding initiated by the opposite party is manifestly attended with mala fide or maliciously with a ulterior motive for wreaking vengeance of the petitioners with a view to spite them owing to personal grudge; and

e) that continuation of the proceeding against the petitioners will be amounting to abuse of the process Court and gross mis-carriage of justice;

2. On 18.3.2006, Shankar Chakraborty, Assistant Manager of S.T.P Ltd., lodged one petition of complaint against the petitioners Smt. Radha Dutta and Subhasish Dutta in the Court of learned Chief Judicial Magistrate, Alipore praying for prosecuting the petitioners herein u/s 430/120B of the IPC. The said petition of complainant was registered as complainant case no. 1132 of 2006. It was alleged therein that Sankar Chakraborty, the complainant was the lawful tenant in respect of the Flat situated at the First Floor of premises no. 26/3, Ballygunge Circular Road, Kolkata - 19 and was paying rent regularly in the office of District Judge, Alipore in connection with Ejectment Suit no. 105 of 2003, pending in the 1st Court of learned Civil Judge, Junior Division at Alipore. The petitioners herein were the Joint owners of the premises and landlord of the complainant. During pendency of the Civil Suits, the petitioners indulged themselves in various illegal and unlawful activities in an around the tenanted Flat and thereby caused disturbance, annoyance, interference or obstruction with the peaceful occupation of the complainant company. They also diminished the supply of municipal corporation filter water to the tenanted flat of the complainant with a view to evict the complainant therefrom. It was also alleged that on and from 27.1.2006 the petitioners (accused) with mala fide intention diminished supply of filter water to tenanted portion of the complainant and thereby put the complainant in gross sufferance of acute crisis of water. Despite request from the complainant, the petitioners did not restore the water supply. The matter was reported to local police station on 27.1.2006 and thereafter on 13.2.2006. The petitioners (accused) in collusion with each other, committed mischief by way of maneuvering some fittings attached or fitted to the delivery pipe line to the complainant tenanted flat knowing fully well that by doing such act, they caused diminution of supply of filter water used for cooking, Drinking, cleaning etc.

3. Upon receiving the said petition of complainant, learned Chief Judicial Magistrate at Alipore have taken cognizance of the same and transfer the case to the 6th Court of learned Judicial Magistrate, Alipore u/s 192 (2) of Cr.P.C. for disposal. The learned Magistrate, upon receiving of the case from the learned Chief Judicial Magistrate, recorded initial statements of the complainant and one witness. However, the learned Magistrate, thought it proper and wise to postpone issuance of process and directed enquiry u/s 202 of the code by the local police station. After receiving the said report u/s 202 of Cr.P.C. from the local police station, the learned Magistrate found himself not satisfied about the way in which

the matter was enquired into and directed the officer-in-charge of the police station to enquire into the matter properly and submit a report afresh. After having the fresh report and upon consideration of the averments in the petition of complainant and initial deposition of the complainant and one witness, the learned Magistrate found that there existed sufficient materials to proceed against the present petitioners u/s 430 of I.P.C. Accordingly, the learned Magistrate directed issuing of process invoking the provisions of Section 204 of Cr.P.C. The accused persons have come up with this application praying for quashing of the proceeding on the grounds already mentioned.

4. Mr. Sudipta Moitra, learned Counsel appearing on behalf of the petitioners (accused) persons contended that a bare perusal of the petition of complainant reflects that no culpability or criminality has been attributed to the petitioners/accused/landlord. There was no overt act on their part which constituted any Criminal offence, namely, offence u/s 430 of the IPC. He submitted that there is not only invasion of Civil right but the very lis is pending in Civil Court and parties are litigating over all issues full fledgedly since 2003 in an Ejectment suit where order of temporary injunction was passed and order of restoration of supply of water was also passed. He contended that the tenant(complainant) had taken the same stand in the civil suit i.e. the Ejectment suit and order of restoration of water supply was passed, the redress sought for by the tenant/complainant has already made available by a competent Court. Even in the Ejectment suit, Section 21 of the West Bengal Premises Tenancy Act was invoked before initiation of the Criminal case. It was sheer vengeance that had driven the tenant to prosecute the landlords in a Criminal action in order to harass them.

5. Mr. Moitra contended further that the complainant/tenant did not mention about the various orders passed in the civil action/suit pending between the parties. This is a case of *suppresso facto* which is to be considered by Court in order to ascertain the mala fide on the part of the tenant in initiating the Criminal prosecution against the landlord. Mr. Moitra contended, while the Civil Court is in seisin of the issue of water supply in the tenanted portion of the disputed premises, and while there was a delay of two months in lodging the complainant, the learned Magistrate should not have taken cognizance of the offence. Mr. Moitra contended further that the learned Magistrate also erred in directing further enquiry u/s 202 once again despite receiving report that an order of status quo in respect of the suit property was inforce. The allegations and aspersions put forth in the petition of complainant were not reflected in the petition of temporary injunction or written objection filed in the Civil Court where the Ejectment suit was pending. The incident had taken place on 27.1.2006. The order of status quo was passed on 1.3.2006. Mandatory injunction was prayed for on 6.2.2006. These facts have not been mentioned in the petition of complainant. These facts were suppressed in the petition of complainant.

6. Mr. Manjit Singh, the learned Advocate on behalf of the respondent no. 2 contended that the alleged incident had taken on 27.1.2006 and on that

particular date police was informed and an entry in the general diary was recorded over the issue. On 6.2.2006 restoration petition was filed by the tenant in the Civil Court which was fixed for hearing on 16.3.2006 but ultimately heard on 11.5.2007. On 13.2.2006 one general diary was recorded by the police station. On 2.3.2006, the Executive Engineer of the K.M.C. was informed about the diminution of the water supply by the landlords. The petition of complaint was filed on 18.3.2006. On that date neither the complainant was defeated in the civil suit nor any occasion had arisen for him to initiate a false proceeding out of vengeance due to personal grudge on the landlord. Mr. Singh contended that the facts which have not been mentioned in the petition of complainant were not material before the Criminal Court for consideration. The petition of complainant clearly indicates that there was an Ejectment suit pending in the Civil Court between the parties. That fact has never been suppressed. Mr. Singh contended further that the fact of diminution of water has been specifically mentioned in the petition of complainant and the manner in which water supply has been diminished has also sufficiently been mentioned. The learned Magistrate made no wrong or error in asking for fresh report of proper enquiry and issue process by invoking Section 204 of the Cr.P.C. upon consideration of the facts averred in the petition of complainant, stated in the initial deposition and the report received by it u/s 202 of the Cr.P.C. Mr. Singh contended further that while exercising extraordinary power u/s 482 of the Code of Criminal Procedure, High Court is not supposed to take a decision in final form and write the fate of the case upon consideration of the evidence. Mr. Singh argued, since the learned Magistrate has scope to reconsider entire case, it can, in a proper case, dismiss the case by invoking the provision of Section 245 of the Code of Criminal Procedure after recording evidence of the complainant and his witnesses before charge. But, not at this stage.

7. The following decisions have been referred to at the bar :

- 1) Inder Mohan Goswami and Another Vs. State of Uttaranchal and others reported in (2007) 12 SCC 1
- 2) Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others,
- 3) Sailen Sardar and Others Vs. The State,
- 4) Byomkesh Bhattacharya and Others Vs. Lakshmi Narayan Datta,
- 5) Harishchandra Prasad Mani & Ors. Vs. State of Jharkhand & Anr. reported in (2010) 3 SCC (Cri) 580, (2007) 15 SCC 494.
- 6) Kishan Singh (D) Through Lrs. Vs. Gurpal Singh & Ors. Reported in (2010) 3 SCC.
- 7) Bihar State Electricity Board and Another Vs. Nand Kishore Tamakhuwala,
- 8) S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others,

- 9) Zandu Pharmaceutical Works Ltd. & Ors. Vs. Mohd. Sharaful Haque and Anr. reported 2005 SCC (Cri) 283.
- 10) Eicher Tractor Ltd. and Others Vs. Harihar Singh and Another,
- 11) Sankar Chandra Ghose Vs. Roopraj S. Bhansally reported in CPC. 1860 S. 202.
- 12) Ramdas Pandey and Another Vs. Nagendra Nath,
- 13) Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi & Ors. Reported in 1976 SCC (Cri) 507.
- 14) Zandu Pharmaceutical Works Ltd. & Ors. Vs. Mohd. Sharaful Haque and Anr. reported in 2005 SCC (Cri) 283.
- 15) Shanti Devi Atal and Another Vs. Jain Enterprises and Another,
- 16) Monica Kumar (Dr.) and Anr. Vs. State of Uttar Pradesh & Ors. Reproted in (2008) 3 SCC (Cri) 649.
- 17 Madan Lal Sharma Vs. Punjab and Haryana High Court Thr. Its Registrar,
- 18) M.N. Damani Vs. S.K. Sinha and Others,
- 19) Ram Prasad Singh Vs. Uday Shankar Prasad,
- 20) Mohinder Singh Vs. Gulwant Singh and others,
- 21) Kanti Bhadra Shah and Another Vs. The State of West Bengal,
- 22) Marati Rubber Ltd. Vs. J. K. Marattukalam reported in 2001 SCC (Cri) 646.
- 23) Kishan Singh Vs. Gural Singh reported in AIR 2011 SC (Cri) 952.
- 24) Kamaladevi Agarwal Vs. State of West Bengal reported in 2002 C Cr. LR (SC) 237.

8. The proposition of law in the matter of quashing a criminal acation by exercising power u/s 482 Cr.P.C. is trite law and it has been laid down by the Hon"ble Apex Court in State of Hariyana Vs. Bajanlal reported in AIR 1992 (SC) 608, that :-

In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers u/s 482 of the code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and in flexible guidelines or rigid formulae and to give and exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report of the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
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.
6. Where there is an express legal bar engrafted in any of the provisions of the Code of the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.
9. The above stated proposition of law set out by the Hon''ble Apex Court has been consistently followed by all the High Courts and Supreme Court till this date, reference of which is not required to be given. The Hon''ble Apex Court, however, in strings of decisions cautioned High Court that the inherent power u/s 482 of the Code is to be exercised sparingly and only in exceptional cases. Reference can well be drawn from the decision in Indar Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors. (Supra) wherein the Hon''ble Court was pleased to take into consideration its earlier decisions in R.P. Kapur Vs. The State of Punjab, Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., Chandrapal Singh and Others Vs. Maharaj Singh and Another, , Madhav Ray, Jijo Ray Scindia Vs. Sanbhoji Ray Chandroji Rao Angre reported in (1986) 1 SCC 692, Janata Dal Vs. H.S. Chowdhary and Others, , G. Sagar Suri and Another Vs. State of U.P. and Others, , Indian Oil Corporation Vs. NEPC India Ltd. and Others,
10. In M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, , the Hon''ble Court observed,

Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgment of First Information Report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the Court on perusal of the complaint comes to a conclusion that the allegations leveled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount.

Factual matrix, therefore, would thus be relevant in the matter of assessment of the situation as to whether "civic profile" would outweigh the criminal outfit.

11. Mr. Moitra contended that no prima facie case is made out u/s 430 IPC against the petitioner in the petition of complaint. Even if it is accepted, Mr. Moitra contended, that water supply was diminished, the dispute, in fact and in substance, is a civil in nature. This apart, parties to the case have already taken the dispute in Civil Courts and obtained various orders. When the very lis is pending in competent civil Court and order of restoration of water connection was passed, this Criminal action should not be allowed to be continued because continuance of this Criminal action itself would be amounting to abuse of the process of Court. Mr. Moitra referred to the decision of Hon'ble Apex Court in Indarmohan Goshmi's case (Supra) and submitted that in order to do real and substantive justice, this power u/s 482 is to be exercised. He also referred to the decision of this Court in Sailen Sardar's case (Supra) and contended that the act complained of amounts to an invasion of the civil right and, thus, no offence of mischief can be said to have been committed. He also referred to the decision of this Court in Byomkesh Bhattacharjee's case (Supra) and contended that change in property so as to destroy or diminish its value or utility does not necessarily mean a change in character, composition or form of the property. Mr. Moitra also referred to an old decision of this Court in Ram Das Panda's case (Supra) and contended that change contemplated by Section 425 IPC is some physical change in the property.

12. Whether or not any prima facie case u/s 430 IPC is made out, the factual matrix, therefore, is to be assessed. This is necessary also to see whether "Civic Profile" would outweigh the Criminal outfit.

13. The petition of complaint was lodged by the Opposite party/tenant in the Court of Chief Judicial Magistrate Alipore On 18.3.2006. It is admitted position that one Ejectment Suit was instituted by the petitioners/landlords against the opposite party/tenant in respect of the premises in dispute in the year 2003 on the ground of sub-letting, wast and damages. An application under order 39 Rule 1 of the C.P. Code was filed by the petitioner's/landlord praying for temporary injunction. An order in form of status quo was passed by the learned Civil Judge on 1.3.2006. On 6.2.2006, the opposite party tenant filed an application in the Ejectment suit praying for temporary mandatory injunction. In paragraph 10 of that application, disconnection of water supply was mentioned. The opposite party/tenant also preferred an appeal against the order of status quo passed on 1.3.2006. The said miscellaneous appeal being no. 117 of 2006 was disposed of on 6.7.2006. The learned Appellate Court allowed the appeal in part and modified the order of status quo to the extent that tenant should not chage the nature and character of the suit property by doing any work without consent of the landlord. The application for temporary mandatory injunction filed by the opposite party/tenant was disposed of by the learned Civil Judge on 11.5.2007 directing the petitioners/landlords to restore water connection and supply of adequate water. The petitioners/landlords preferred an appeal against that order. The Misc. Appeal 278 of 2007 was allowed in part and the order of the learned Civil Judge was modified to the extent that the opposite party/tenant may get water connection at their own cost.

14. It is already stated that the petition of complaint was filed against the petitioners/landlords on 18.3.2006 u/s 430 of IPC on the ground of diminution of water supply. The dates mentioned earlier indicate clearly that when the petition of complaint was lodged, an order of status quo was in force and no other order was passed in the civil suit prior to filing of the petition of complaint. The alleged incident have taken place on 27.1.2006, i.e., prior to passing of status quo order. In the paragraph 2 of the petition of complaint filed on 18.3.2006, the opposite party/tenant mentioned about the Ejectment Suit but did not mention the status quo order. In the paragraph 4 of the complaint, the complainant/O.P./tenant mentioned that the landlord caused disturbance/obstruction with his peaceful possession in the tenanted portion in various manners including diminution of supply of KMC filter water. In Paragraph 6 it has been mentioned also the petitioner landlord with mala fide intention diminished the supply of water.

15. The complainant and one witness were examined by the learned C.J.M u/s 200 Cr.P.C. Both of them stated that from 27.1.2006 the water supply has been stopped. The learned Court was not satisfied with the initial evidence of the complainant and his witness and asked the local police station to enquire into the matter and file a report u/s 202 of the Code. The first report dated 3.7.2007 shows that the local police station did not find any incriminating material against the petitioner/landlord/accused in the matter of diminution of water supply. The learned Court had taken up the report on 4.8.2007 for consideration. On that date, the opposite party/complainant filed a copy of order dated 11.5.2007

passed by the learned Civil Judge directing the petitioner/accused/landlord to restore supply of water. The learned Court directed the Officer-in-Charge, Baligangue police station to enquire into the matter properly and submit a report afresh. The second report dated 23.9.2007 was considered by the learned Court on 20.5.2009. The learned Court, on that date, upon consideration of the averments of the petition of complainant, initial deposition and enquiry report submitted by the police station found that there was sufficient ground for proceeding against the petitioner/accused/landlord u/s 430 IPC. Order to issue summons was passed. The second report u/s 202 of the code dated 23.9.2007 shows unequivocally that in view of the officer-in-charge of the Baligangue police station there was inadequacy in the water supply but that can not be said to have been caused by the landlords intentionally.

16. The facts above, undisputably indicates that initially there was no prima facie case at all before the learned Trial Court to proceed u/s 204 of the Cr.P.C. against the petitioners/landlords. It is clear from the orders passed by the learned Court that there was not also sufficient materials before the Court to proceed u/s 204 Cr.P.C. even after recording of initial statements of the complainant and his witness and the 1st report u/s 202. The 2nd reports u/s 202 of the Code have not added any substantive piece of evidence or material to what the petition of complaint contained and what the complainant and his witness deposed.

17. It is pertinent to take note the fact that no application under order 39 Rule 2 A of the Code was filed by the O.P./tenants against the landlords/petitioners for violation of status quo order dated 1.3.2006. The opposite party/tenant challenged the status quo order but no application for violation of order of status quo was filed. The reports of the police station u/s 202 of the code undisputably show that landlords/petitioners had not caused anything in the matter of diminution water intentionally. The petition of complaint as well the initial deposition recorded by the Court are conspicuously silent about the manner in which alleged diminution of water was caused. The order of issuing summons against the petitioners passed by the learned Magistrate after being informed about the order dated 11.5.2007 passed of the learned Civil Judge directing the landlord/petitioner to restore adequate water supply. Perhaps that order prompted the Magistrate to ask for further enquiry and to report u/s 202 of the Code. This fact shows that learned court was well aware of the fact that the dispute agitated before him was not only considered by a competent civil Court but a necessary order was passed. Therefore, in such a situation specially when the petition of complaint, initial deposition and report u/s 202 of the Code altogether made out no case of mischief, learned Magistrate should not have proceeded u/s 204 of the code and direct issuance of summons.

18. This is one part of the case. The reverse side of it is really more important. Herein, allegation against the petitioners is that they during pendency of a civil suit, despite order of status quo, committed mischief by diminishing water supply to the tenant/opposite party for which, ultimately, an order of restoration of

water supply was passed by the Civil Court which was and still is in force. The allegation of stoppage of water by the petitioners, their subsequent action, various orders passed by the Civil Court were the entire gamut before the learned Magistrate when he took up the complaint for the purpose of issuing summons on 20.5.2009, i.e., about 3 years after filing of the complaint. The following four factors were made available to the learned Magistrate at that time:-

- a) There was a long standing dispute between landlord and tenant.
- b) No sufficient material could be placed before him by the complainant and his witness at the time of filling of the complaint and recording initial deposition.
- c) That first enquiry u/s 202 of the Code was not in support of complainant's case.
- d) That the second enquiry report only says about insufficiency of water but there was no mala fide on the part of landlord/petitioners.

19. On that date the learned Magistrate obviously had knowledge that an order of restoration of water connection was passed by civil Court and that would be put in effect. In a case of mischief, there must be an intent, express or implied, (from knowledge) in law to cause.

1) wrongful loss, or

2) damage. This is mental element (mense rea) in the offence. The first is a dishonest intention and this does not exist where the loss is caused under a bona fide claim of right to do the act in question.

20. Turning to the petition of complaint it is found that the opposite party/ complaint nowhere within the four corners of the petition of complaint mentioned clearly how the water diminution took place. It is simply stated that diminution of water was caused in order to evict the tenant. The complainant and his witness, examined on S/A did not say how it was diminished. The report no. 1 u/s 202 found nothing incriminating. The report no. 2 u/s 202 found no mala fide intention on the part of petitioner's landlord. There is no case of change of water line, breaking of stop cork, breaking of connecting water line or diverting the water passage in any manner causing diminution of water. All this factors together with the fact that an order of restoration of water supply passed by the civil Court were placed before the learned Magistrate at the time when the alleged order of taking cognizance of offence and issuing of summons u/s 204 was passed. The learned Magistrate had to take everything into consideration at that time because the point before it was when the civil Court remedy was available, in fact made available, can a criminal prosecution be allowed to be continued in the same issue ?

21). In M/s Medchl Chemical and Pharma (Supra), there was no civil suit pending between the parties and it was held that in the investigation level, profile is not important, if criminality or culpability is attributed to the accused, criminal

prosecution can be proceeded with. There is no dispute over the principle laid down by the Hon"ble Court. It is settled principle of law that the criminal prosecution is not to be stifled simply because there is a civil dispute between the parties or there is alternative effective civil remedy. When criminal act is initiated and there is no order of any competent Court on that particular issue, normally, Court should assess the materials placed before it in order to find out whether or not a prima facie case is made out or any criminality and culpability attributed to the accused. If it is there, criminal prosecution cannot be quashed. In this context the decision of Apex Court in Krishan Singh (D) through LRS Vs. Gurpal Singh & Ors. (Supra) can well be referred to.

22). The factual matrix of this case altogether indicates clearly that the parties are disputing over the issue for quite a long period and the alleged incident of diminution of water had taken place on 27.1.2006. The matter was taken by the competent civil Courts and various order was passed. Even order of restoration of water supply was passed. There is no report as to whether violation of such order has been made or not. Again, no application under Order 39 Rule 2A of the Code of Criminal Procedure has been filed as yet. The very question is purely and simply a civil in nature and is pending in the civil Court., In such a situation, initiation of Criminal proceeding by the tenant against the landlord is clearly an abuse of the process of Court. The alleged incident had taken place on 27.1.2006 while the petition of complaint was filed two months thereafter. There was no reason for the complainant/tenant to wait for said period of two months knowing very well that the matter was pending in Civil Court and that before initiation of criminal proceeding application for temporary mandatory injunction was filed by the tenants which was ultimately allowed in their favour.

23). In such a situation, when the complainant/tenant, failed to make out a specific case u/s 430 of the I.P.C. against the landlord/petitioners and where the very issue of the matter is pending in the civil court wherein the parties are litigating fully and an effective order has been passed, it will be sheer abuse of process of Court to continue such a Criminal prosecution.

24). In view of the discussion above, this Court thinks that this is a proper case where extraordinary power u/s 482 of the Code of Criminal Procedure can well be exercised in order to quash the proceeding and stop abuse of the process of the Court.

25). Therefore, I allow the application. The Criminal Proceeding being 1132 of 2006 pending in the Court of learned Judicial Magistrate, 6th Court at Alipore stands quashed. No order as to costs is passed. The petition is disposed of accordingly.