

(2004) 07 CAL CK 0003
In the Calcutta High Court
Case No : C.R.R. No. 253 of 2003

Sk. Noor Box and Another

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 16-07-2004

Acts Referred:

Constitution of India, 1950 — Article 215, 227
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(3), 401, 482
Penal Code, 1860 (IPC) — Section 379, 447, 448, 506
West Bengal Restoration of Alienated Land Act, 1973 — Section 4

Citation : (2005) 3 CHN 668

Hon'ble Judges : Joytosh Banerjee, J

Bench : Single Bench

Advocate : K.J. Tuwari, Dilip Banerjee and Ashoke Chowdhury, for the Appellant;
S.S. Ray, for the Respondent

Final Decision : Dismissed

Judgement

Joytosh Banerjee, J.—The present hearing arises out of an application u/s 401 read with section 482 of the Code of Criminal Procedure, 1973 for quashing the chargesheet being chargesheet No. 31/2002 dated 15.6.2002 submitted under Sections 447/379/506 of the Indian Penal Code filed in connection with Daspur P.S. Case No. 22/2002 corresponding to G. R. Case No. 96/2002 pending before the Sub-Divisional Judicial Magistrate, Ghatal in the District of Midnapore.

2. In short the case of the petitioners is that the petitioner No. 1 purchased 16 decimals of land from the defacto-complainant, O.P. No. 2 after paying consideration amount of Rs. 999/- and the said transfer was made by a registered deed of sale. O.P. No. 2 purchased the land described in the schedule of the petition by a registered sale deed dated 22.3.1971 from Sk. Hessamuddin and sold the same to the petitioners No. 1 as stated above on 26.3.1971. It is alleged that O.P. No. 2 filed an application u/s 4 of the West Bengal Restoration of Alienated Land Act, 1973 (hereinafter referred to as the said Act) and after hearing the parties, the learned Special Officer appointed under the said Act

allowed the said application filed by O. P. No. 2. Against such order, dated 6.12.83, the petitioner No. 1 preferred an appeal before the appellate authority that is to say Sub-Divisional Land and Land Reforms Officer, Ghatal. The said appeal was ultimately allowed by the appellate authority who set aside the order passed by the Special Officer and the order was passed on 8.10.88. It is further alleged that challenging the order dated 8.10.88 passed by the appellate authority, the O. P. No. 2 filed an application under Article 227 of the Constitution of India before this Court, which was registered as C. O. No. 1043/ 99. By an order dated 3rd May, 1999, a learned Single Judge of this Court directed the petitioner No. 1 not to change the nature and character of the suit property. It is further alleged that the O. P. No 2 filed a purported complaint dated 7.3.2002 before the SDJM., Ghatal wherein the said O. P. alleged that on 4.3.2002 accused persons along with 8 to 10 persons violated the order passed by the Hon'ble High Court at Calcutta. With the help of stick and other dangerous weapons illegally entered into the land located in abovementioned Dag No. 2 (mentioned in the schedule), caught fish from the pond, under occupation of O. P. No. 2, and fled away. On the basis of the said complaint learned SDJM, Ghatal directed the police to investigate the matter u/s 156(3) Criminal Procedure Code treating the complaint as FIR and the police on the basis of such direction started the abovementioned case and on completion of the investigation, submitted the chargesheet.

3. Through the instant application, the petitioners have alleged that the G. R. case in question which is pending before the learned SDJM, Ghatal is an outcome of personal rivalry between the petitioners and the O. P. No. 2 and the chargesheet submitted on the basis of the investigation done by the police should be quashed, on the grounds that the learned Court below acted illegally with material irregularities while taking cognizance by an order dated 17.12.2002 on the basis of the chargesheet filed on 15.6.2002 without appreciating the fact that on the self-same cause of action a civil case was pending before this Court, which is required to be heard by the West Bengal Land Reforms and Tenancy Tribunal, on the further allegation that the learned Court below failed to appreciate that if there was any violation of the order dated 3.5.1999 passed by the High Court, the O. P. No. 2 could have easily filed an application under Article 215 of the Constitution of India. But in order to put pressure upon the petitioners, the O.P. No. 2 had taken shelter of the criminal law and on a further allegation that even if the allegations made in the petition of complaint filed by O.P. No. 2 on 7.3.2002 have been taken at their face value and accepted in their entirety, these do not prima facie constitute any offence and make out any case against the petitioners. The allegation has also been raised that the chargesheet submitted by the police is vague one and the same does not disclose any prima facie offence against the petitioners.

4. It transpires from Annexure P-2 that the petition of complaint was filed by O.P. No. 2 alleging, inter alia, that on 4.3.2002 at about 7-7.30 a.m., the accused persons in violation of an order passed by this Court trespassed on the case land

and took away two quintals of fish worth Rs. 8000/- from the pond at plot No. 4, Khatian No. 123, village-Chakprasad. It has been further alleged in such petition of complaint that at the time of incident, the accused persons threatened that they would kill the complainant and members of his family by putting their house on fire. On the basis of such petition of complaint, police started investigation as per direction of the Magistrate and on completion of the same submitted chargesheet under Sections 447/379/506 IPC against the petitioners.

5. Now, at the time of his submission, the learned Advocate for the petitioners has submitted that the background of the case is more or less admitted. It is admitted that petitioner No. 1 purchased the case land described in the schedule of the petition from O.P. No. 2 by a registered sale deed on 26.3.71. The learned Counsel has submitted that the said sale was never challenged before any Court of competent jurisdiction. On the other hand, admittedly O.P. No. 2 filed an application of the said Act and in that proceeding, the Special Officer appointed under the said Act passed an order in favour of the original owner O. P. No. 2. The said order was challenged before the appellate authority that is to say Sub-Divisional Land and Land Reforms Officer, Ghatal who allowed the appeal filed by the petitioner No. 1 and set aside the order passed by the Special Officer. It is the submission of the learned Counsel for the petitioners that offence of theft and criminal trespass being offences essentially against a possessor, the petitioners cannot be prosecuted in the facts and circumstances of the case as admittedly O.P. No. 2 sold away the disputed property to petitioner No. 1 and the said sale was never challenged through any proceeding. On the other hand, by making an application under the provisions of the said Act, the O.P. No. 2 in a way admitted that there was a sale effected by him in respect of the case land but such sale was distressed for need of money. In this connection, the learned Counsel has also referred me the provisions of the said Act to show that the said Act deals with restoration of rights of land of persons who had alienated their rights over lands due to economic distress. It is his further submission that since the land was sold to petitioner No. 1, the possession was delivered to the purchaser and till now there is no order for restoration of case lands thus transferred u/s 4 of the said Act. The learned Counsel for the O. P. No. 2 on the other hand has pointed out that when a competent Court has taken cognizance of the offences on the basis of a chargesheet submitted by the police, this Court should not interfere in the matter and should not quash the proceeding on the grounds taken by the petitioner in the petition. It has been further pointed out that the property in question being an undivided property to possession was delivered at the time of the sale and therefore, it is not true that the tank in question or the case land was in possession of the petitioner No. 1. In this connection, the learned Counsel has also drawn my attention to the chargesheet submitted by the police which is with the record. In the chargesheet, the investigating authority noted that as per petition of complaint which was treated as FIR., the complainant alleged that possession of the case land, in spite of the sale, was never delivered to the purchaser and the police at the time of

investigation, examined the witnesses, and on being satisfied, submitted the C. S. under the aforesaid provisions. Therefore, it is submitted by the learned Counsel that in the facts and circumstances of the case, the chargesheet should not be quashed on the grounds noted in the application. Learned Counsel for the State has supported the contention of the learned Counsel appearing for O.P. No., 2 and submitted that the instant case is not the rarest of the rare case and therefore the Court should not exercise the power conferred on it u/s 482 Cr. PC for the purpose of quashing the prosecution.

6. It is well-settled now that the inherent power should be exercised to quash proceedings in the following categories of cases :--

- (i) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted, do not prima facie constitute any offence or make out a case against the accused ;
- (ii) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of Magistrate within the purview of Section 155(2) of the Code ;
- (iii) 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 ;
- (iv) Where the allegation in the FIR 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 ;
- (v) 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 ;
- (vi) Where there is an express legal bar engrafted in any of the provisions of the Code or 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;
- (vii) 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.

7. In the instant case, the only ground which has been taken within the aforesaid categories is that even if the allegations raised in the petition of complaint which has been treated as FIR are taken at their face value and accepted these do not prima facie constitute any offence or make out a case against the accused. In this respect, the sole contention of the learned Counsel for the petitioners is that

the offences alleged being an offence against the person in possession, the petitioners cannot be prosecuted as petitioner No. 1 purchased the property in question from O. P. No. 2 and the said purchase has not yet been set aside. But on consideration of materials on record, I find that nowhere the petitioners have claimed that after the purchase, the petitioner No. 1 got possession of the property. On the other hand, the petition of complaint filed by O.P. No. 2 clearly alleged that possession was never delivered to the purchaser, petitioner No. 1 and the investigating authority, after investigation in course of which witnesses were also examined was satisfied that prima facie charge levelled against the accused persons were established and there is also no dispute that the petition of complaint on the basis of which the investigation started clearly disclosed allegations which were punishable under Sections 379/ 448 and 506 IPC.

8. In the facts and circumstances I do not find any reason to quash the proceeding, exercising inherent jurisdiction conferred upon this Court. Thus, the application fails and it is dismissed.