

## Calcutta High Court

HON'BLE JUDGE(S): **SUBHENDU SAMANTA , J**

**ELLORA SADHUKHAN V. SUBHAS KUMAR DAS**

C.R.R No. - 303 of 2018, decided on 13/12/2022

**Criminal P.C. (2 of 1974) , S.482— Quashing of proceedings - Allegations that accused tried to evict complainant from premises without due process of law and cause of several disturbance - Said proceeding does not fall under any category on which High Court can interfere by virtue of its inherent power u/S.482 - Proceedings not quashed.**

(Para 11, 12)

**Case Referred :**

**Chronological Paras**

AIR 1990 SC 494 : 1990 Cri LJ 320 (SC)

Para No.( 9 )

**Name of Advocates**

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Avijit Chakraborty, Sankha Subhra Dutta for Petitioner; Gunjan Shah, Shreya Agarwal, Narayan Prasad Agarwal, Pratick Bose for Respondent.

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**1.ORDER:-**This is an application U/s 482 of the Code of Criminal Procedure for quashing a criminal proceeding being complaint case No. 31 of 2016 U/s 430/506/34 of IPC pending before the Learned Additional Chief Judicial Magistrate Bidhan Nagar 24 Parganas (North).

2. The brief fact of the case is that the opposite Party No. 1 filed a petition of complaint before the Learned Magistrate U/s 430/506/34 of the IPC against the present petitioners and one Smt. Bharati Saha alias Anubharati Sanyal contending inter alia that he is the occupier of the premises in question and the present petitioners tried to evict him from the said premises without due process of law and cause of several disturbance.

3. In the said purpose the present petitioner has disconnected the water supply and the Electric connection at the portion of the building where the OP No. 1 residing. The OP No. 1 has approached different authority for redress but the petitioner did not connect water connection or electricity for which he has filed the complaint case against the present petitioners.

4. Learned Advocate for the petitioner submitted before this court that Smt.

Bharati Saha alias Anubharati Sanyal is the mother of petitioner No. 1 and Smt. Bharati Saha alias Anubharati Sanyal was the legal owner over the disputed buildings in question but the present opposite party No. 1 has no valid document to reside in the said premises instead of which OP No. 1 residing there forcefully without any valid document. The OP. No 1 has filed the complaint case with false and frivolous ground. Bharati Saha was died at the time of examination of the complainant but he falsely stated before the Magistrate that Smt. Bharati Saha was alive. He further pointed out that the petition of complaint does not constitute any offence so it is liable to be quashed. It is the further argument of the present petitioner that no specific date and time was given in the petition of complaint regarding the allegation of disconnection of water supply and electricity connection. He further argued that no such disconnection was took place. Bharati Saha was admitted to hospital and the switch of the motor for lifting water to the over head tank is inside the room of Bharati Saha; as the room was under lock and key due to hospitalization of Bharati Saha, the water was not lifted to the over head tank. He further pointed out that a civil litigation is pending between the parties. The OP No. 1 only to harass the present petitioner has filed the instant criminal proceeding before the Learned Magistrate.

5. Learned Advocate appearing on behalf of the opposite party submitted before this court that the present petitioner has created several disturbances in the peaceful living of the OP. No. 1 in the premises in question. OP No. 1 is lawfully occupying the premises but the petitioner has no valid document or title for the premises in question. The petitioner has every knowledge that they cannot evict the opposite party No. 1 according to the due process of law so, they had adopted illegal means for which OP No. 1 may bound to left the premises without the supply of water and electricity. He further pointed out that the Learned Magistrate has taken cognizance of the offence and process has been issued upon the present petitioner. The oral examination of the complainant was also recovered by the Learned Magistrate. So at this juncture the criminal proceeding cannot be dropped.

6. Heard, the Learned Advocate perused the materials on record.

7. I have also perused the petition of complaint and order-sheets of the Learned Magistrate.

**8.** It appears that the complaint case was filed before the Learned Magistrate by the O.P. No. 1.. Some discrepancies were pointed out by the present petition before this court regarding some portion of the complaint.

Let me consider whether this court can interfere with the criminal proceeding at the stage.

**9.** Hon'ble Supreme Court in *Dhanalakshmi v. Prasanna Kumar* AIR1990 Supreme Court 494 has formulated the scope on which the High Court can exercise its inherent power to quash a complaint case. Hon'ble Supreme Court in *Dhanalakshmi* AIR1990 Supreme Court 494 (supra) has held that:

"Any proceeding instituted on complaint, exercise of inherent power to quash the proceeding is called for only in cases where the complainant does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate, it is open to the High Court to quash the same U/s 482. It is not, however, necessary that this should be a meticulous analysis of the case before the trial to find out whether the case would warrant any conviction or not. The complaint has to be read as held. If it appears on the consideration of the allegations, in the light of the statement on oath of the complainant, that ingredients of the alleged offence are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious, in which event there would be no justification for interference by the High Court."

**10.** By virtue of different authorities of Hon'ble Supreme Court and Hon'ble High Court in my view the High Court has limited scope to interfere in a criminal proceeding initiated upon a private complaint. The grounds on which the High Court can interfere are as follows:

- (i) When the complaint does not disclose the commission of any prima facie offence.
- (ii) When the complaint is frivolous, vexatious or oppressive.
- (iii) When the complaint is filed in oblique motive only to exercise personal grudge.
- (iv) When the facts in the complaint may have a redress in the civil jurisdiction i.e. allegation made in the complaint is civil in nature.
- (v) When the continuation of the criminal proceeding would be of abuse of process.

of court.

(vi) When the complaint is barred by any law for the time being in force.

**11.** In considering the entire case record and also considering the petition of complaint, it appears to me that the petitioners appear before the Learned Magistrate and had taken part in the proceeding. They have also filed one application before the Learned Magistrate U/s 245(2) of the Cr.P.C. which was turned down by the Learned Magistrate.

**12.** The entire facts and circumstances goes to show that the instant criminal proceeding does not fall under any of the category on which the High Court can interfere by virtue of its inherent power U/s 482 of the Code of Criminal Procedure.

**13.** Thus I find no justification to entertain the criminal revision as it is devoid on merit.

**14.** The criminal revision is thus dismissed.

**15.** Pending CRAN application, if any, is also disposed of.

**16.** Any order of stay passed by this court during the pendency of this revisional application is also vacated. CRR is disposed of.

**Petition Dismissed**