

(2025) 12 CAL CK 0039

Calcutta HC

Case No: CRR 1799 Of 2023

Susmita Bhowal & Ors

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision: Dec. 9, 2025

Acts Referred:

- Code of Criminal Procedure, 1973- Section 156(3), 202, 203, 204, 482
- Indian Penal Code, 1860- Section 34, 120(B), 406, 458, 504
- Code of Civil Procedure, 1908- Section 151, Order 39 Rule 1, Order 39 Rule 2

Hon'ble Judges: Chaitali Chatterjee Das, J

Bench: Single Bench

Advocate: Krishnendu Bhattacharya, Santanu Talukdar, Rajib Mullick, Shubham Chatterjee, Sonia Mullick, Sarbesh Pal, Suman Chatterjee, Pratush Rau, Shreosi Saha

Final Decision: Disposed Of

Judgement

Chaitali Chatterjee Das, J

1. This criminal revisional application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioners for quashing the proceedings pending before the Court of Learned Metropolitan magistrate, 19th Court, Calcutta under Sections 406/120 B/458/504(II) read with Section 34 Indian Penal Code.

Brief fact

2. One Paresh Chandra Bhawal was the absolute owner in respect of a disputed premises who was the father of the complainant and the father-in-law of the petitioner no.1 and grandfather of the petitioner no.2 & 3 and during his lifetime, he executed one will dated August 16, 1994, whereby bequeathed his properties, including the above disputed property to his legal heirs. Paresh Chandra Bhawal appointed his two sons, namely Chanchal Bhawal and Biplob Bhawal as the executors to the said will. He died on February 2, 1997, leaving behind his wife and

three sons. The said will was duly probated and one of the executives Chanchal Bhawal was holding possession in respect of the half portion of the ground floor of the disputed premises, presently occupied by the present petitioners.

3. A complaint was lodged by the Opposite Party no. 2, under Section 156 (3) of Cr.Pc against the present petitioners alleging commission of offences under the aforesaid provisions. It was alleged in the said complaint that he requested the executor Chanchal Bhawal to handover possession of the half portion of the ground floor of the disputed premises and he assured the complainant to vacate the portion within a year, but he failed to keep his promise, and presently the petitioners are not willing to vacate and carrying on business without any valid trade license. A civil suit is pending for recovery of possession against the present petitioners and they by taking law in their hands, criminally trespassed into the other half portion of the ground floor of the house of the disputed premises, dismantled the meter which were kept in the portion of the complainant possession and ransacked everything and several important documents have been lost.

4. The learned Magistrate on perusal of the report filed by the Amherst Street Police Station treated the petition of complaint as Court complaint and then the case was transferred to the Learned Court of Metropolitan Magistrate 19th Court for enquiry and disposal. On February 2, 2021, the said Court issued process to the present petitioners against which a revisional application was filed and vide an order dated December 12, 2022, while setting aside the said order directed the court to conduct an enquiry in accordance with the provisions of Section 202 of the code of criminal procedure and to decide thereafter under Section 203 of the Code of Criminal Procedure or Section 204 of the said Code.

5. Accordingly, a report was called for from the Rabindra Sarovar Police Station on December 22, 2022 and a report was submitted stating that the subject property is paternal property and the present petitioners are running business having occupied the ground floor as go down of Calcutta book house since long. That apart a dispute exists in between the complainant and the present petitioners over which a title suit is still pending, and the dispute is regarding ownership which is absolutely civil in nature. The Learned Court on perusal of such report observed that the complaint case cannot be dismissed on the ground only because the order of taking cognizance by the learned Chief Metropolitan Magistrate II Calcutta has been filed by the Honble High Court held that the order clearly indicates that the instant case is a criminal case for which cognizance taken by the ACMM Calcutta to register the instant case as complaint case and therefore the court directed to issue process on the present petitioners.

6. Being aggrieved, thereby this revisional application has been filed. The learned Advocate representing the petitioner argued that the complainant filed an application under Order 39 Rule 1 and 2 read with Section 151 of Code of Civil Procedure dated April 27, 2016 with a prayer to petitioner no. 1 from selling,

transferring incoming leasing and letting out or party with possession of any part or portion of the suit premises and the learned Court directed to maintain status quo.

7. It is submitted that the complainant with an extreme malicious intent, purposely suppressed such order before the Court of learned ACMM in his application, under Section 156(3) of Cr.Pc and banking upon the report of July 16,, 2020 filed by the Amherst Street Police Station opined that the dispute is civil in nature and considering such report, the prayer for sending the matter to be investigated in terms of Section 156(3) CRPC was rejected.

8. It is further submitted that absence of any date of criminal Trial and absence of any definite date of ransack make the entire case a charade affair with travesty of Justice. It is further submitted that the petition of complaint read with the solemn affirmation unambiguously, and evidently nullify and annal the prayer made in the said petition of complaint. The petition of complaint is absolutely silent of specific role alleged to be perpetrated by the petitioners. Vicarious liability is a misnomer in Indian penal code and thus issuance of process is a sheer illegality and abuse per se in the eye of law. It is further submitted that therefore premises unscathedly enunciate that the present criminal proceeding constitutes and abuse of process, and therefore, the court is empowered to refuse to allow the indictment to proceed to trial. The learned advocate relied upon the decision of Ritu Tomar versus State of UP 2023 18 SCC 491 and prayed for quashing of the entire proceeding.

9. The learned Advocate representing the opposite party no 2 on the other hand raises vehement objection. It is submitted that the father of the petitioner no.1 was in possession of half portion of the ground floor, but he trespassed into the other half portion of the said premises, which is the germane of all the dispute. It is further submitted that this is a complaint case, and the learned court is not bound to accept the police report and considering the material directed the process to be issued, which is absolutely a right approach. At this stage the proceeding should not be quashed and the complainant must be allowed to adduce evidence.

Analysis

10. Heard the submissions. On perusal of the petition of complaint, primarily, it can be found that the subject matter of the dispute pertains to a rivalry between the siblings and admittedly, a part of the portion of the premises in question was occupied by the present petitioners and the other part was occupied by the Opposite Parties. Initially on the basis of a complaint process was issued which was challenged before this Court and Co-ordinate bench after hearing the parties found that the main grievance was about criminal trespass into his premises and considering the observation of Honble Supreme Court in National Bank of Oman vs Barakara Abdul Aziz and another in (2013) 2 SCC 488 that prior to issuance of process, it was incumbent upon the court to check both the authenticity of the allegation and the complicity of the accused in relation to the alleged offence, set

aside the order issuing process, but the order taking cognizance by the learned ACMM(II) was affirmed.

11. The direction was given to the learned Magistrate to conduct an enquiry in accordance with the provision of Section 202 of the Code of Criminal Procedure Code 1973. On the basis of such observation, a report was called under Section 202 Cr.Pc from Rabindra Sarovar Police Station and on March 20, 2023, the report initially manifest about pendency of a Title suit and the dispute was regarding ownership of the disputed property and is civil nature, but Learned Court held the complaint case cannot be dismissed only because the order of taking cognizance by learned ACMM.(II) was affirmed by the High Court but the High Court also considered the nature of the case as of criminal in nature and accordingly affirmed such order of taking cognizance.

12. Prima Facie the contents of the complaint, manifest the dispute of title in respect of the property in question. Even if someone of argument is considered as a trespasser they cant be circled without following due process of law. The rightful owner should approach a Civil Court to recover possession. In this case a Title suit is pending between the parties. Admittedly the parties are otherwise co-sharer and pursuant to the will executed. There occurs an imbalance to the extent of the ownership over the properties over which a civil dispute is pending and hence this stage the allegation of trespass into the portion of the de-facto complainant becomes otiose. In the case of Ritu Tomar (supra), almost identical situation arose as a report was called for by the magistrate where it was clearly observed that after investigation, if it was found that the incident apparently in the teeth of the factual matrix that there has been a dispute between the families, the proceeding was quashed. In the case of Naresh Kumar and another versus State of Karnataka and another 2024 SCC Online SC 268, it was observed that the High Court must see whether a dispute essentially a civil in nature is given a cloak of criminal offence. The Honble Court took note of Paramjeet Batra versus state of Uttarakhand (2013) 11 SCC 673 and held that the inherent power of High Court under Section 482 of Cr.Pc should be used sparingly yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of civil nature. Further held that criminal proceedings cannot be taken recourse as a weapon of harassment.

13. In Usha Chakraborty and another versus state of West Bengal and another 2023 15 SCC 135, relying on Paramjit Batra. (Supra) held that where a dispute is essentially of civil in nature is given cloak of criminal offence, then such disputes can be quashed. In that case dispute was regarding breach of contract and held no criminal elements were found.

14. On perusal of a decision in R.R.CHARI versus State of UP 1951 SCC 250 it was held that it can be said that any magistrate has taken cognizance of any offence under Section 190 he must have applied his mind to the offence for the purpose of proceeding in a particular way as indicated in a subsequent provision of chapter.

Proceeding under Section 200 and thereof, sending it for enquiry and report under Section 202 when a magistrate applies his mind, not for the purpose of proceeding under the subsequence section, but for taking action of some other kind ordering investigation under Section 156(3) or issuing search warrant for the purpose of the investigation. He cannot be said to be taken cognizance of the offence. The power to order police investigation under Section 156(3) is different from the power to direct investigation under Section 202(1) Cr.pc. The first is exercisable at the precognitive stage and second at the post cognizance when the Magistrate is in seisin of the case.

15. In the instant case after the report was called for by the concerned Magistrate and on perusal the Learned Magistrate preliminary satisfied that a matter pertains to the dispute civil in nature but held that the order taking cognizance by ACMM (ii) was affirmed by the High Court which initially support the case was criminal in nature. Fact remains in the order of the Co-ordinate bench it was found that Section 202 Cr.Pc was not complied as no inquiry was carried out hence further direction was given to comply the same. After compliance when the report was placed it revealed that the dispute is civil in nature therefore primarily the previous observation lost its force. In view of the increasing numbers of false complaint it has been mandated that the learned Magistrate must enquire the case and it is to be ascertained that whether sufficient ground exists to proceed against the accused persons .

16. In Hazi Iqbal @ Bala through S.P.O.A versus State of UP 7 it was held that while exercising jurisdiction under Section 482 Cr.Pc the Court is not restricted itself. Only to the state of a case but is empowered to take into account the overall circumstances leading to initiation/registration of the case as well as material collected in the course of investigation.

Conclusion

17. Hence in view of the aforesaid facts and circumstance there remains no doubt to conclude that this complaint is devoid of any sufficient materials to attract and hence cannot be proceeded with.

18. Hence this CRR stands allowed. This proceeding pending before the Learned Magistrate being compliant case no. CNS 502/20 is hereby quashed. In view of the above all other connected application is hereby disposed of.

19. No order as to costs.

20. Let a copy of this order along with the TCR if any be returned to the concerned Court at an earliest.

21. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.