

(2013) 04 CAL CK 0061

Calcutta High Court

Case No: C.R.R. No. 572 of 2011

Amar Chand Kundu

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: April 5, 2013**Citation:** (2013) 3 CHN 154**Hon'ble Judges:** Joymalya Bagchi, J**Bench:** Single Bench**Advocate:** D.N. Batabyal and Priyabrata Batabyal, for the Appellant; Binoy Kumar Panda, for the Respondent

Judgement

Joymalya Bagchi, J.

Proceeding being Complaint Case No. 283 of 2010, pending before the learned Judicial Magistrate, 2nd Court, Katwa, Burdwan under sections 148/149/323/379 of the Indian Penal Code has been assailed. The case of the petitioners is that they are the absolute owners of the land in question and, at all material points of time, they were in possession thereof and cultivating the same.

2. The opposite party No. 2/complainant had sought for a declaration against the petitioners on the ground that he was the owner of the land and the same was subject to a mortgage in respect of a loan of Rs. 23,000/-. The opposite party further claimed that sale deed, executed by and between the parties on 15.09.1998, was, in fact, a mortgage-cum-conditional sale agreement. On such premise, the opposite party No. 2 instituted a civil suit, being Title Suit No. 20 of 2010, before the Court of the learned Civil Judge, Junior Division, 2nd Court, Katwa and prayed for a declaration that he was the owner of the said plot of land. In the said suit, the opposite party No. 2 had prayed for an injunction restraining the petitioners from disturbing his possession and for a direction of maintenance of status quo in respect of the said property.

3. After hearing the parties, the learned Civil Judge by Order dated 14.09.2010 dismissed the said injunction application. After having failed to obtain an Order of injunction, the opposite party No. 2 instituted this criminal proceedings against the petitioners alleging, inter alia, that on 13.11.2010 and 15.11.2010 the petitioners along with other persons had come armed with lathi, tangi etc. into the land in question and cut away paddy which had been cultivated therein and also had assaulted the opposite party No. 2 herein. On the basis of such allegation, the learned Magistrate took cognizance of the alleged offence and, subsequently, upon examination of the complainant, issued process against the petitioners under sections 148/149/323/379 of the Indian Penal Code.

4. Rule has been duly served upon the opposite party. In spite of service nobody appears on his behalf.

5. Mr. Batabyal, learned counsel appearing for the petitioners submits that allegations in the impugned petition of complaint in the light of the attending facts and circumstances did not disclose the essential ingredients of the offence of theft or assault. He submits that the claim of possession of the opposite party No. 2/complainant in respect of the land in question was disbelieved in the civil proceeding instituted by and between the parties. Such Order had become final and binding. Having failed to obtain any Order in his favour, the opposite party No. 2 had instituted the impugned criminal proceeding as a weapon of harassment and humiliation. He points out that the malicious nature of the criminal proceedings is patently evident from the fact that the opposite party No. 2 even implicated petitioner No. 4 in the criminal proceeding when from uncontrovertible documents in the nature of Passport and VISA, it is evident that he was working at USA at the material points of time. He, therefore, prays for quashing of the impugned proceedings.

6. I have considered the materials on record as well as the submission of the learned counsel appearing for the petitioners. Ordinarily, a Court in exercise of its inherent jurisdiction would restrict itself to the uncontroverted allegations in the petition of complaint and initial deposition to ascertain whether there is sufficient ground to proceed against the accused persons or not. However, in the event there are collateral proceedings pending by and between the parties and admitted facts emanate therefrom which are beyond controversy, the same may be taken into consideration to determine whether the initiation of the said proceedings is an abuse of the process of Court or not.

7. In [All Cargo Movers \(I\) Pvt. Ltd. and Others Vs. Dhanesh Badarmal Jain and Another](#), the Apex Court held as follows:

Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondences exchanged by the

parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice.

8. There is no dispute that in the instant case, the opposite party No. 2 had unsuccessfully sought to canvas his case of possession of the land in question. By an elaborate decision, the learned Civil Court, declined an Order of injunction by observing, as follows:

Also there is no document to show that the plaintiff is in possession of suit property as pleaded by him; on the other, the L.R. Settlement Record and Govt. Rent Receipt prima facie establishes contiguous possession of the defendant.

9. There is nothing on record that such finding has been set aside by any superior Court. Having failed in his attempt to secure a favourable Order in the aforesaid suit, the opposite party No. 2 has instituted the impugned criminal proceeding on the self-same allegation that he is in possession of the land in question and the petitioners came therein and committed theft by cutting paddy standing thereon. When the incontrovertible materials on record do not establish that the opposite party No. 2 is not in possession of the land, the institution of the impugned criminal proceeding of theft of paddy standing thereon by the petitioners, who prima facie appear to be in possession of such land, is clearly an abuse of process of Court. That apart, no material has been placed on record to show that the opposite party No. 2 suffered any assault, as alleged.

10. The absurdity of the allegations is rendered most patent by the desperate effort of the opposite party No. 2 to implicate the petitioner No. 4, one of the family member of the petitioners who was admitted was working at U.S.A. at the material point of time. Absence of the petitioner No. 4 from the country and his stay at U.S.A. is evident from his Passport and Visa documents, which are unimpeachable documents of sterling quality.

11. In [State of Orissa Vs. Debendra Nath Padhi](#), the Apex Court held that this Court in exercise of powers u/s 482 of Cr.PC and Article 226 of the Constitution is entitled to consider materials impeachable character of sterling quality to ascertain as to whether the continuation of a proceeding is an abuse of a process of any Court or the same is likely to be quashed to secure the ends of justice.

12. In view of the aforesaid facts and circumstances, continuation of the impugned criminal proceeding is clearly an abuse of the process of Court and the same is liable to be quashed.

13. Accordingly, the revisional application is allowed. The impugned criminal proceedings, being Complaint Case No. 283 of 2010, stands quashed.

14. There shall be no Order as to costs. Let photostat certified copy of this Order, if applied for, be given to the learned advocates for the parties upon compliance of necessary formalities.