

(2014) 11 CAL CK 0019

Calcutta High Court

Case No: C.R.R. 1328 of 2012

Surojit Bose

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: Nov. 7, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 4, Order 7 Rule 11
- Criminal Procedure Code, 1973 (CrPC) - Section 144, 144(2), 2(d), 482
- Penal Code, 1860 (IPC) - Section 319, 323, 34, 447, 452

Hon'ble Judges: Subrata Talukdar, J

Bench: Single Bench

Advocate: Deep Chaim Kabir, Learned Counsel, Advocate for the Appellant; Sanjay Banerjee, Learned Counsel, Advocate for the Respondent

Judgement

Subrata Talukdar, J.

In this application challenge is thrown to the proceedings in G.R. Case No. 6093 of 2010 presently pending before the Learned Additional Chief Judicial Magistrate (ACJM), Barrackpore in connection with Baranagar Police Station Case No. 167 of 2010 dated 28/04/2010 under Sections 323/ 447/ 452/ 506/ 34 of the Indian Penal Code including the order dated 13th February, 2012 issuing warrant of arrest against the petitioner.

2. The brief facts of the case are as follows:-

a) That the petitioner, who is engaged in the field of education, runs a kindergarten school for children under the name and style of "Blossoms" in the city;

b) The school is run by the petitioner on rent in the premises being P-34, Bidhan Park, P.S. - Baranagar. The land lady of the said premises is the OP 2 and the petitioner is therefore a tenant under OP 2;

c) That between the parties, i.e. petitioner and the OP 2 an Agreement of Tenancy was signed dated 15th January 2007. Under the said agreement the entire ground floor of the said premises was let out to the petitioner for running the school at a monthly rental of Rs. 4,500.

The initial Tenancy Agreement was to continue for a period of three years, i.e. until 15th December, 2010.

d) The petitioner complains of harassment by the OP 2 and her husband in the enjoyment of his tenancy. According to the petitioner, the OP 2 is now interested in handing over the vacant land of the said premises for developing and/or promoting purposes. The petitioner complains of further pressure from the OP 2 and her men and agents to vacate the said premises compelling the petitioner to send a legal notice to the OP 2 dated 25th March, 2008. The said legal notice was followed up by a general diary lodged at Baranagar P.S. being G.D. entry No. 849/2010 dated 11th April, 2010.

e) The petitioner has further pleaded that soon after lodging a general diary he was denied access to the school. The materials and other articles kept for the purpose of running the school were put under lock and key and the petitioner was repeatedly insulted by the OP 2, her son and their men and agents. The petitioner did not get any assistance when he went to complain of the harassment faced by him at the local police station.

The petitioner was then compelled to file an application under Section 144 Cr.P.C. before the Learned Executive Magistrate, Barrackpore being Misc. Case No. 1273 of 2010. By order dated 12th April, 2010 the Learned Executive Magistrate was pleased to direct the Inspector, Baranagar P.S. to cause an enquiry and submit a report as well as to keep a strict vigil over the said premises to prevent untoward incidents.

f) However, since the troubles of the petitioner did not abate even after taking all the steps by him as outlined above, he filed a Civil Suit being Title Suit No. 156 of 2010 before the Learned 3rd Civil Court (Junior Division), Sealdah. On the 22nd of April, 2010 the Learned Civil Court was pleased to restrain the defendant (OP 2) and her men and agents from ousting the petitioner (Plaintiff) from the said property without due process of law and further restrained the defendant from obstructing the access of the petitioner to and from the suit property. The interim order granted by the Learned 3rd Civil Court was extended from time to time.

g) According to the petitioner, immediately following the grant of injunction on 22nd April, 2010 as aforesaid, the OP2 filed a complaint alleging untoward incidents committed by the petitioner on the 25th of April, 2010 i.e. three days after the order of injunction. The petitioner pleads that he was shocked to be implicated in a vexatious criminal case being G.R. Case No. 6093 of 2010 pending before the Learned A.C.J.M., Barrackpore in connection with Baranagar P.S. Case No. 167 of 2010 dated 20th April, 2010 under Sections 323/ 447/ 452/ 506/ 34 of the Indian

Penal Code (for short the IPC). The complaint, inter alia, alleges that the petitioner had completed three years of his tenancy in the said premises commencing 15th January, 2007. It further complains of the fact that although the Tenancy Agreement had expired, the petitioner was creating pressure on the complainant to allow him an extension of time to continue in the said premises and, although the complainant called upon the petitioner to sign a fresh Tenancy Agreement, he refused to do so. The complainant also alleges that the petitioner slapped her and threatened her when he alongwith his associates forcibly tried to enter the premises.

h) The above mentioned facts and circumstances compelled the petitioner to file an application for Anticipatory Bail before this Hon"ble Court which was however, rejected vide order dated 11th June, 2010. On the platform of the said criminal complaint filed at the behest of the OP 2 dated 26th July, 2010 under Sections 323/ 447/ 452/ 506/ 34, the Learned A.C.J.M. was pleased to take cognizance of the charge sheet vide order dated 13th August, 2010 and issued warrant of arrest against the petitioner.

3. Sri Deep Chaim Kabir, Learned Counsel appearing for the petitioner has submitted that while filing the complaint the OP 2 has suppressed all details of the proceedings initiated by the petitioner under Section 144 Cr.P.C. and the Civil Suit pending between the parties as well as the order of injunction in favour of the petitioner. Sri Kabir points out that the petitioner could not be considered to be a trespasser in the premises when he has a right to continue there under a valid Agreement of Tenancy. According to him, the ingredients of the offences complained of are absent and the tenancy of the petitioner is recognized by the competent Civil Court.

4. According to the petitioner during the subsistence of the Civil Proceedings between the parties and the order of injunction recognizing the right of the petitioner as a tenant to continue in the said premises, the institution of vexatious criminal proceedings is an abuse of the due process of law. Sri Kabir submits that the Learned A.C.J.M. was wrong in taking cognizance of the criminal complaint and issuing a warrant of arrest against the petitioner. He asserts that it is law settled by the Hon"ble Apex Court that recourse to vexatious criminal proceedings in matters which are essentially civil in nature and during pendency of the civil disputes between the parties, this Court has the jurisdiction to quash the criminal proceedings.

5. Per contra. Sri Sanjay Banerjee, Learned Counsel appearing for the State-OP1 has submitted as follows:-

i) That the arguments advanced by the petitioner as noted above are based on disputed questions of facts. Sri Banerjee points out that the appropriate forum for testing such arguments is only the Ld. Trial Court. Drawing the attention of this Court to the First Information Report as well as the statements of the witnesses

which appear in the Case Diary, Sri Banerjee submits that assuming but not admitting that there are contradictions in the said First Information Report and also in the statements of the witnesses, such contradictions cannot be resolved by this Court sitting in jurisdiction under Section 482 Cr.P.C. He reiterates that the only arena where such disputed question of facts can be resolved is during trial.

ii) Relying on the judgment of the Hon'ble Apex Court in [State of Haryana and others Vs. Ch. Bhajan Lal and others,](#) , Sri Banerjee submits that the contours of intervention by the revisional/supervisory Court have been clearly delineated. He points out that from the guidelines emerging from the ratio laid down in Bhajanlal's case (supra), the facts of this case involving allegations and counter allegations do not warrant exercise of inherent jurisdiction under Section 482 Cr.P.C.

iii) Sri Banerjee further submits that assuming but not admitting that a case of criminal trespass could not be made out against the petitioner in the backdrop of a subsisting order of injunction in his favour, the charge that the petitioner voluntarily caused hurt is made out from the statement of witnesses. Relying on the statutory provisions he submits that Section 323 IPC is classified as a non-cognizable offence.

6. Therefore, it is the submission of Sri Banerjee that also assuming but not admitting that offences punishable under Sections 447/ 452 IPC have not been made out in the present case, the entire proceedings could not be quashed in view of the incriminating statements of the eye witnesses. He submits at the highest the Learned Magistrate may be directed to take cognizance in terms of the explanation to Section 2(d) of the Cr.P.C.

7. Heard the parties. Considered the materials on record.

8. This Court has given its anxious consideration to the argument advanced by Sri Banerjee, Ld. Counsel on the point that the jurisdiction under Section 482 Cr.P.C. must be exercised with the greatest of circumspection. The parameters for exercising jurisdiction as laid down in Bhajanlal's Case (supra) are too well recognized to need reiteration.

9. However, this Court cannot lose sight of the fact that it has the duty to examine whether the ingredients of the offences alleged in the complaint are at all satisfied in the facts of the case. In this regard this Court notices that the offences of criminal trespass alleged under Sections 447 and 452 IPC in the complaint have been found to be unacceptable by the Ld. Magistrate. In this connection the order dated 12th May, 2010 passed by the Ld. ACJM, Barrackpore while granting bail to the co-accused needs to be reproduced and the same shall speak for itself. The order dated 12th May, 2004 inter alia, reads as follows:-

"The accused person be taken into custody. Hd. Bail prayer. Perused. Considered. I perused the FIR and I find that there is no ingredient of offence under Section 452 of IPC against this accused. Considering above, I release the accd. on bail for a bond of

Rs. 1,000 with one surety of like amount, i.d. j.c. To date".

10. Sri Banerjee, in his usual fairness, has drawn the attention of this Court to the fact whether criminal trespass can be made out in view of the order of injunction passed in favour of the petitioner injunctioning the present OP 2 from ousting the petitioner/plaintiff from the suit property without adopting recognized legal procedure and further restraining the OP 2 from obstructing the free access of the petitioner/plaintiff to the suit property. This Court finds that the present petitioner/plaintiff for protection of his rights as a tenant at the earliest opportunity moved the competent Civil Court and was favoured with an order of injunction as noted above.

11. From the order sheets of the competent Civil Court it is found that the order of injunction was passed on 22nd April, 2010 in connection with Title Suit 156 of 2010. The subsequent orders of the Ld. Civil Court show that the petitioner/plaintiff complied with all legal formalities required to be done by the plaintiff. The petitioner/plaintiff also applied from time to time for extending the interim order of injunction.

12. It is further noticed by this Court from the order sheets of the Ld. Civil Court that the petitioner/plaintiff filed a petition for implementation of the order of injunction through the local Baranagar Police Station. It is also noticed that the present OP 2/defendant appeared before the Ld. Civil Court and prayed for time to file written statement to the plaint and written objection to the injunction application. The OP 2/defendant also filed applications under Order 7 Rule 11 CPC for rejection of plaint and an application under Order 39 Rule 4 CPC for vacating the order of injunction. Against the above noted applications filed by the OP 2/defendant, the petitioner/plaintiff filed his affidavit-in-opposition.

13. By order dated 16th June, 2010 the Ld. Civil Court was pleased to direct the OC Baranagar P.S. to visit the suit property and to see and report whether the order of the Court has been violated.

14. It is noticed by this Court that during the pendency of the Civil proceedings instituted by the petitioner/plaintiff and, close on the heels of the order of injunction dated 22nd April, 2010, the OP 2/complainant has filed the complaint pertaining to events between 22nd April, 2010 and 25th April, 2010, i.e. within a space of 3 days. It strikes the mind of this Court that throughout the period of tenancy which commenced on the basis of an agreement between the parties with effect from 15 January, 2010 initially for a period of 3 years up to 15th December, 2010, there is no whisper on the part of the OP 2/complainant of any criminal acts committed by the petitioner/plaintiff qua his tenancy. Therefore, what further strikes the mind of this Court is that soon after the petitioner/plaintiff obtained an order of injunction on 22nd April, 2010 qua his tenancy, the OP 2/complainant stepped in by filing the criminal complaint in respect of three (3) days immediately following the

intervention of the Ld. Civil Court, i.e. between 22nd April, 2010 and 25th April, 2010.

15. This Court is persuaded to take judicial notice of the fact that in the face of an order of injunction covering the property-in-suit, the offences of criminal trespass as embodied in Sections 447 and 452 IPC can hardly be said to be made out. A bare reading of the complaint fails to throw light on the allegation of criminal trespass against the petitioner/plaintiff who has been admittedly running a school for children in the suit property from the inception of his tenancy in the year 2007. In this connection this Court finds substance in the order of the Ld. Magistrate dated 12th May, 2010 which found no ingredient of an offence under Section 452 IPC against the co-accused, one Moli Banerjee (supra). This Court also finds that the allegations of trespass in the complaint compressed within a span of three (3) days between 22nd April, 2010 and 25th April, 2010 covering the period when the petitioner was already protected by an order of injunction, to be of a nature not adequate to attract the provisions of Sections 447 and 452 IPC.

16. Similarly, this Court is persuaded to take notice of the fact that the petitioner/plaintiff has moved from pillar to post to protect his tenancy and its beneficiaries, viz. the children studying in the school located within the property-in-suit. It is on record that not only the petitioner filed Title Suit No. 156 of 2010 alongwith a prayer for injunction but also applied under Section 144(2) Cr.P.C. before the competent Magistrate for protection of his tenancy.

17. Furthermore, this Court finds that the Petitioner/plaintiff applied before the Ld. Civil Court seeking appropriate orders to ensure that the injunction order is not violated. It is also noticed by this Court that both the petitioner/plaintiff and the OP 2/defendant took steps from time to time before the Ld. Civil Court by filing applications.

18. In the above noted factual matrix the vague and omnibus allegations of voluntarily causing hurt falling within the mischief of Section 323 IPC are woefully found to be absent. It also does not appear to the mind of this Court that hurt contemplated of a nature provided under Section 319 IPC warranting trial has been made out in the complaint which, it is reiterated, is vague and general in content.

19. On a parity of reasoning and, on the substratum of the fact that the complaint is devoid of essential particulars and replete with vague allegations such as "some (emphasised supplied) articles inside the petitioner's house and thereafter both the accused persons left the spot quickly", this Court is persuaded to hold that the ingredients of the other offences in the complaint are also not satisfied qua the petitioner.

20. This Court notices that the dispute between the parties was of a civil nature. In respect of the said disputes civil proceedings were pending before the competent Court. It requires extreme imagination to conclude that any individual in a civil contractual relationship who has run from pillar to post following due process for

protection of his rights and, in such endeavour has been blessed with an order of the competent Court should attempt to muddy the waters within a short span of three (3) days following the grant of injunction by indulging in criminal acts of hurt, trespass and intimidation.

21. This Court respectfully notices the observations of the Hon"ble Apex Court in [Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others](#), that in a Civil dispute where veracity of the facts can be ascertained by a civil Court of competent jurisdiction which is already in seisin of the matter, initiation of criminal proceedings on the self-same issue is clearly an abuse of the legal process.

22. For the foregoing reasons CRR 1328 of 2012 is allowed and the proceedings in GR Case No. 6093 of 2010 arising out of Baranagar PS Case No. 167 of 2010 dated 28th April, 2010 pending before the court of the Ld. ACJM, Barrackpore including all orders passed therein qua the petitioner are quashed.

23. There will be, however, no order as to costs.

24. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.