



IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1387 of 2015

Ratna Roychowdhury @ Ratna Raichaudhuri and Anr.

Versus

The State of West Bengal and Another

For the Petitioners : Mr. Pinak Kumar Mitra, Adv.
Ms. Subhamita Ghosh, Adv.
Mr. Kaustav Talukdar, Adv.

For the State : Ms. Faria Hossain, Adv.
Ms. Reta Dutta, Adv.

Heard on : 16.06.2025

Judgment on : 06.08.2025



Ajay Kumar Gupta, J:

1. Petitioners being the accused filed this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') seeking quashing of the proceeding being Case No. C/1156 of 2001, pending before the Learned Judicial Magistrate, 2nd Court, Alipore, South 24 Parganas under Section 430 of the Indian Penal Code, 1860 and all orders passed therein. It is relevant to note that during pendency of this revisional application, Petitioner No.1 expired on 12.01.2021 as such, her case got abated.

2. The background facts of the case are essential for the purpose of proper and effective disposal of this case as under:

2a. The father of the petitioner no. 2 herein, namely, Dr. Amiya Kumar Roychowdhury was a medical practitioner and the owner of premises No. 169A, Shyama Prosad Mukherjee Road, 2nd Floor, Kolkata – 26 (hereinafter referred to as the 'said property'). During his lifetime, he instituted a suit for eviction against a tenant, namely, Jyoti Prakash Bagaria (represented by opposite party no. 2 as his constituted attorney). The eviction suit was originally numbered as Title Suit No. 400 of 1993 and was subsequently renumbered as Title Suit No. 101 of 2004. The father of the petitioner no. 2 passed away



around 1998. By virtue of the probated will, all the rights, title and interest in the said property devolved upon his wife, namely, Smt. Anjali Roychowdhury, the mother of petitioner no. 2.

2b. At the time of induction as a tenant, the father of the petitioner no. 2 had made it clear that such tenancy was for the exclusively for the use of Jyoti Prakash Bagaria and his family members with a condition that as soon as the said Dr. Amiya Kumar Roychowdhury would require the tenanted portion, the said Jyoti Prakash Bagaria would be obliged to vacate the said premises. However, he did not comply with the same, as such, an eviction suit was initiated against him and the same is pending for disposal. This has resulted in longstanding dispute between the landlord and tenant.

2c. The opposite party no. 2 filed a complaint case with an allegation, *inter alia*, that the said property consists of a three storied building and Jyoti Prakash Bagaria was a tenant of the said property in respect of the entire first floor and one garage on the ground floor paying a monthly rent of Rs. 1100/- for the first floor and Rs. 100/- for the garage. It was claimed that he had been regularly paying rent. The property is said to have only one main entrance gate and only one common staircase which is being used by the accused persons as



well as Jyoti Prakash Bagaria along with his men, agents and associates.

2d. The complainant further alleged that on 05.06.2001 at about 7.00 am, the water supply to the first floor flat occupied by Mr. Bagaria suddenly discontinued and thereby at about 9 am, Mr. Bagaria along with his men attempted to access the floor of the said property where the main water reservoir is located, the accused persons intentionally obstructed them from reaching there and accused persons confessed that they have stopped the water supply to the first floor by operating the stop cock. Not only that, the accused persons also used abusive and obscene languages and threatened Mr. Bagaria with dire consequences by saying that until and unless Mr. Bagaria would not vacate the flat, they shall continue with their unlawful acts. Due to the aforesaid forceful and illegal activities on the part of the accused persons, Mr. Bagaria and his family has been suffering tremendously inasmuch as they do not have any other alternate source of water.

2e. Though the case of the petitioners is entirely different version, according to the Petitioners, allegation is baseless as the eviction suit is pending since 1993 against the tenant. So, question of forceful or illegal activities upon the tenant does not and cannot arise



to evict. Since 1993 till 2001, there was no single allegation levelled against the landlords with regard to forceful illegal activities. However, the Learned Judicial Magistrate, Alipore, South 24 Parganas took cognizance and made over the case to the Court of the Learned Judicial Magistrate, 2nd Court, Alipore, South 24 Parganas for disposal. On 11.07.2001, the Learned Magistrate issued process against the petitioners under Section 430 of the Indian Penal Code.

2f. The petitioners voluntarily appeared before the Learned Magistrate on 19.10.2001 and were enlarged on bail on the self-same date. By an order dated 05.02.2002, the Learned Magistrate allowed the prayer for dispensing with the personal appearance of the petitioner no. 1. By the self-same order, the Learned Magistrate was pleased to reject the prayer in terms of Section 205 of the CrPC made by the petitioner no. 2, vide order dated 05.02.2002, the Learned Magistrate fixed 15.05.2002 as the next date for recording of evidence before charge. Ultimately, after conclusion of evidence before charge, the Learned Magistrate framed charge under Section 430 of the IPC on 10.12.2014 and fixed 04.02.2015 as the next date for recording of evidence after charge.

2g. During the interregnum, in connection with the aforesaid suit for eviction, the mother of the petitioner no. 2, namely, Smt.



Anjali Roychowdhury filed an application before Ld. Trial Court seeking for the local inspection of the said property. The Learned Trial Court appointed an advocate as Commissioner for local inspection and order for local inspection passed by Learned Trial Court was assailed before this Hon'ble High Court by Jyoti Prakash Bagaria under Article 227 of the Constitution of India, being C.O. No. 2289 of 2005. By an order dated 12.09.2005, this Hon'ble Court declined to interfere with the said impugned order and directed the Learned Trial Court to see that the Learned Commissioner submits a complete report as expeditiously as possible and also directed the Learned Trial Court to see that the suit for eviction is disposed of as expeditiously as possible.

2h. There is no question of committing mischief from the side of petitioners. Hence, this revisional application.

3. Learned counsel appearing on behalf of the petitioners submitted that the entire case is based on false, fabricated and concocted stories. No such incident ever occurred in the tenanted premises. False criminal case, on the guise of non-supply of water in the premises, was initiated only to harass the landlords so that the eviction suit may be withdrawn. The eviction suit is pending since 1993. So, question of any type of forceful or illegal activities against



the tenant does not arise as the accused are the senior citizens. Now, one of the accused expired during pendency of this case and Petitioner No. 2 is more than 70 years.

3a. It was further submitted that the impugned proceeding was initiated in the early part of 2001 and charge under Section 430 of IPC was framed on 10.12.2014. Almost 13 years have been taken by the Learned Trial Court to frame the charge without any sufficient grounds. The right to speedy trial guaranteed under Article 21 of the Constitution of India is violated. Therefore, only on such score, the proceeding may be quashed otherwise, the petitioner no. 2 being the senior citizen now aged about more than 70 years will grossly suffer.

3b. Finally, it was also submitted that the opposite party no. 2 is claiming himself as a constitute power of attorney holder but complaint was lodged on his personal/individual name which is not permissible in law.

4. On the other hand, opposite party no. 2 did not contest the case despite service, he did not turn up on the date hearing. No accommodation was prayed for. Accordingly, the matter has been heard in his absence.



DISCUSSION AND CONCLUSION OF THIS COURT:

5. Heard the submissions of the learned counsels appearing on behalf of the petitioner and upon careful perusal of the entire records, this Court finds it is admitted fact that Mr. Jyoti Prakash Bagaria was a tenant under the erstwhile owner, Dr. Amiya Kumar Roychowdhury. Pursuant to a grant of probate, mother of the petitioner no. 2 became the owner of the suit property. A civil suit was/is pending.

6. Suddenly in the year 2001, complainant, claiming to be Constituted Attorney of Jyoti Prakash Bagaria filed a complaint with an allegation of stoppage of water supply in the tenanted premises on 05.06.2001 at about 7.00 am, the water supply to the first floor flat of Mr. Bagaria suddenly stopped and thereby at about 9 am, Mr. Bagaria along with his men attempted to go to the top floor of the said property where the water reservoir was lying, the accused persons intentionally did not allow them to go there and accused persons confessed that they have stopped the water supply to the first floor by using the stop cock. Not only that, the accused persons also abused with abusive and obscene languages and threatened Mr. Bagaria with dire consequences by saying that until and unless Mr.



Bagaria would not vacate the flat, they shall continue such illegal acts.

7. The Learned Trial Court examined witnesses, namely, Prabir Ghosh, complainant as P.W. 1, Bapi Dhar, employee as P.W. 2 and Tenant, Jyoti Prakash Bagaria as P.W. 3 and took evidence before charge. This Court does not get confidence with the evidence of the witnesses because none of witnesses stated, who stop the water supply. Most of the witnesses narrated stop cock was under control of landlord and they stopped the supply of water in the tenanted premises. One of witnesses (P.W. 3) admitted that the water supply to the whole premises is made from the overhead reservoir and pipeline and a stop cock installed just beneath the reservoir. P.W. 1, complainant stated that water reservoir at the 4th floor roof and stop cock is situated at the roof. The stop cock is under the total control and supervision of the landlords. Another witness (P.W. 2) specifically deposed that he knew Bhariwala (water supplier in bucket) Habul Mahapatra, who used to supply water earlier and now. Tenants have failed to lead normal lifestyle as earlier due to non-supply of water. None of the witnesses stated whether the water supply was available in the tenanted premises from date of inducting tenant or not. Moreover, complainant admitted that there is only one main entrance gate and only one stair case of the building which is being used by



the accused as well as the tenant and his men, agents etc. so there is no dispute about the access right up to the overhead reservoir. These facts are not considered by the Learned Trial Court before issuing summons against the accused. The Learned Trial Court must be cautious and careful while issuing summons. As a matter of fact, the eviction suit instituted by the erstwhile landowner against the tenant is still pending, therefore, there is every chance to disturb owner by filing false and frivolous allegations, which requires careful scrutiny.

8. Upon further perusal of evidence of witnesses, this Court finds there are vital contradictions amongst the witnesses. There are inconsistencies and vital dichotomies in written complaint and evidence led before the Learned Trial Court are as follows:-

a) P.W. 1, in his deposition, stated that he went to the second floor along with P.W. 3 and others, where the accused persons were allegedly present. However, in his earlier statement dated 13.05.2004, he claimed that the water reservoir is situated at the fourth floor and the stop cock at the roof, whereas in the same statement, he also referred to a water connection through the third-floor reservoir. Given that the building is three-storied structure, these shifting and



factually inconsistent versions materially impair the credibility of the prosecution's case.

b) P.W. 2 stated that he, along with P.W. 1, P.W. 3, and one Mr. P. Mukherjee went to the accused persons' premises and was directly confronted by them. However, P.W. 3, in his deposition, dated 10.02.2010 gave a different version, stating that he went along with his wife and initially met two servants of the landlords, who allegedly admitted to stopping the water supply. The written complaint again narrates a different story.

c) While P.W. 3 attributes the act of stopping the water supply to the landlords' servants, those servants were neither made accused. Whereas earlier versions suggest direct involvement and admission by the accused themselves, P.W. 3's later version states that the accused persons were not initially present and were only approached later where the accused allegedly admitted to and justified the disconnection directly.



9. Apart from the aforesaid vital dichotomies, it took almost 13 years for framing of charge under Section 430 of the Indian Penal Code against the petitioner. It indeed right of speedy trial guarantees under Article 21 of the Constitution of India is violated. Present petitioner is more than 70 years. The opposite party no. 2 did not prefer to contest the case despite good service. It clearly indicates he is not interested in pursuing the case any further. This Court fully satisfies that this case falls in the Category mentioned in Serial No. 3 of Paragraph No. 102 of the judgment passed by the Hon'ble Supreme Court in the case of **State of Haryana & Ors. vs. Bhajanlal & Ors.**¹. The Hon'ble Supreme Court has laid down the basic points for consideration pursuant to which a complaint may be entertained in accordance with law before a Court of law. The Hon'ble Court has laid down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure, 1973 may be espoused. Relevant portion thereof may beneficially be quoted herein below: -

"102. This Court in the backdrop of interpretation of various relevant provisions of CrPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under

¹ AIR 1992 SUPREME COURT 604; 1992 Supp. (1) Supreme Court Cases 335



Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) 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 under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) 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.



(4) Where the allegations 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 under Section 155(2) of the Code.

(5) 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.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) 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.”



10. In addition, complainant filed complaint in his own name though he claims he is constitute attorney of Mr. Bagaria, is not permissible in law.

11. In the light of aforesaid facts and circumstances, this Court is of the considered view that there is a sufficient reason and merit to quash the proceeding to prevent abuse of process of law and secure the ends of justice.

12. Consequently, **CRR No. 1387 of 2015** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

13. Proceeding being Case No. C/1156 of 2001, pending before the Learned Judicial Magistrate, 2nd Court, Alipore, South 24 Parganas under Section 430 of the Indian Penal Code, 1860 is hereby quashed and all orders passed therein are hereby set aside.

14. Let a copy of this Judgment be sent to the Learned Trial Court for information.

15. Interim order, if any, stands vacated.



16. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

(P.A.)