

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

C.R.R. 968 of 2024

Asish Kumar Sen @ Bapi
v/s.
The State of West Bengal & Anr.

For the Petitioner: Mr. Sudipto Moitra, Sr. Adv.
Mr. Achin Jana, Adv.
Ms. Gargi Dhang, Adv.
Mr. Prosenjit Ghosh, Adv.
Ms. Chetna Rustagi, Adv.
Mr. Bhaskar Dohri, Adv.

For the State: Ms. Faria Hossain, Adv.
Ms. Mamata Jana, Adv.

For the Opposite Party No. 2: Mr. Kumar Jyoti Tewari, Sr. Adv.
Mr. Amrit Sinha, Adv.
Mr. Aniruddha Tewari, Adv.
Ms. Samriddhi Nayak, Adv.

Judgment delivered on: 02-05-2025

SUVRA GHOSH, J. :-

1. The petitioner is aggrieved by the order impugned dated 9th January, 2024 passed by the learned Chief Judicial Magistrate, 7th Court, Howrah in G.R. Case No. 249 of 1999 turning down his prayer for discharge under section 239 of the Code of Criminal Procedure. The petitioner has sought quashing of the proceedings.

2. Learned counsel for the petitioner has submitted that out of five accused persons, three have expired. The petitioner is the Secretary of the “Gangnanchal Shop And Office Owners Welfare Association” of Gangnanchal Commercial Complex and owns four shop rooms therein. The incident occurred on 20th June, 1998 and the FIR was lodged on 3rd February, 1999, the delay remaining unexplained. In the statement of witnesses recorded under section 161 of the Code of Criminal Procedure, the only allegation against the petitioner is that he was present at the spot at the time of occurrence and the furniture and articles removed from the possession of the defacto complainant were kept in his school.
3. The defacto complainant/opposite party no. 2 claims to be a tenant in respect of the property in question. Kishore Kumar Khaitan, one of the partners of M/s. Khaitan Estate and owner/landlord of the property entrusted the defacto complainant with some renovation work in the schedule property. The defacto complainant manufactured a forged document and used it as a tenancy/lease agreement in respect of the property. The defacto complainant filed a title suit being T.S. 119/1998 against Kishore Khaitan and Rekha Khaitan praying, inter alia, for declaration of his tenancy right in the property and an order of injunction restraining the defendants therein from disturbing his peaceful possession in respect of the property. The learned trial Court refused the prayer for interim injunction against which the private opposite party/plaintiff approached the learned appellate Court vide Misc. Appeal No. 145 of 1998. By an order passed on 19th June, 1998, the learned Appellate Court directed the parties to maintain status quo as on date.

Alleging dispossession on 20th June, 1998 in violation of the said order, the present complaint was lodged. The defacto complainant/plaintiff also filed an application under section 151 of the Code of Civil Procedure seeking interim mandatory injunction directing the defendants to restore his possession and upon such prayer being rejected by the District Court, it was challenged before the High Court under section 115 of the Code. Upon direction of the High Court, the application was reconsidered by the District Court and allowed by observing that the defacto complainant/plaintiff was dispossessed after the interim order of status quo was passed.

4. On the other hand, the defendants (Kishore Kumar Khaitan and another) also filed a title suit being T.S. 153 of 1998 seeking declaration that the document relied upon by the plaintiff as a rent agreement was void. The defendants approached the High Court under Article 227 of the Constitution of India against the order of the District Court which being turned down by the High Court, an Appeal by Special Leave was filed before the Hon'ble Supreme Court. By judgment delivered on 13th February, 2006 in Civil Appeal No. 1101 of 2006, the Hon'ble Supreme Court held that the plaintiff/defacto complainant was not able to establish the foundation for the possession claimed by him and the disturbance of the status quo by the defendants was not established. Noting that the plaintiff was put in possession through the process of Court, the defendants were held to be entitled to re-delivery of possession by way of restitution and possession was directed to be restored to them through Court with a caveat that they could not create any third party

interest in respect of the property pending disposal of the suit. The title suit was finally decreed by a judgment delivered on 31st August, 2022 declaring the tenancy of the defacto complainant in respect of the property and directing the defendants therein to hand over peaceful and vacant possession of the same in favour of the plaintiff.

5. In the appeal preferred against the said decree the landlords/Khaitans were favoured with an order of status quo. The petitioner being the Secretary had no involvement in the alleged occurrence and was only found to be present at the spot along with the police. No specific overt act has been attributed to the petitioner in the alleged offence. The petitioner has no nexus with the dispute between the Khaitans and the defacto complainant and has been implicated only by virtue of his post as the Secretary of the Welfare Association. No prima facie case being made out against the petitioner, the proceeding against him ought to be quashed. The case is pending since 1999 and ought to be quashed on the ground of delay.
6. The list of witnesses submitted by the State demonstrates that whereabouts of many of the witnesses are not known, some of the witnesses have retired, some are seriously ill and others have expired. Therefore chances of completion of trial in near future is bleak.
7. Learned counsel has placed reliance on the authorities in *Moti Lal Saraf v/s. State of Jammu and Kashmir & Anr.* reported in (2007) 1 Supreme Court Cases (Cri) 180, *Vakil Prasad Singh v/s. State of Bihar* reported in JT 2009 (2) SC 113, *Santosh De v/s. Archana Guha & Ors.* reported in 1995 Supreme Court Cases (Cri) 194, *Inder Mohan Goswami & Anr. v/s.*

State of Uttaranchal & Ors. reported in (2007) 12 Supreme Court Cases 1, Ramanand Choudhary v/s. State of Bihar & Ors. reported in AIR 1994 SC 948, Ravindranath Bajpe v/s. Mangalore Special Economic Zone Ltd. reported in AIR 2021 SC 4587, Vishnu Kumar Shukla & Anr. v/s. State of Uttar Pradesh & Anr. reported in AIR 2024 SC 90, Murari Lal Chhari & Ors. v/s. Munishwar Singh Tomar & Anr. reported in AIR 2024 SC 1437, N.S. Madhanagopal v/s. K. Lalitha reported in 2023 (1) AICLR 140 (S.C.), Usha Chakraborty & Anr. v/s. State of West Bengal & Anr. reported in (2023) 15 Supreme Court Cases 135 and State of Karnataka v.s Muniswamy and others reported in (1977) 2 Supreme Court Cases 699 in support of his contention.

8. Per contra, learned counsel for the State has submitted that involvement of the petitioner in the alleged offence has transpired in course of investigation. Even if it is held that the defacto complainant is not a tenant in respect of the premises, he cannot be dispossessed therefrom without due process of law. Also, the proceeding cannot be quashed only on the ground of delay without considering the allegations as well as the cause of delay.
9. Learned counsel for the private opposite party has submitted that delay in disposal of the case cannot be attributed to the private opposite party. Despite interim order granted by the learned Trial Court in his favour on 19th June, 1998, he was dispossessed on 20th June, 1998 in violation of the order. The defacto complainant has stated in his statement under section 161 of the Code of Criminal Procedure that he saw the petitioner standing with the others at the relevant time. Statement of other

witnesses also demonstrates presence of the petitioner at the place of occurrence. The call record of the mobile phone of Kishore Kumar Khaitan discloses several calls between the petitioner and Kishore Kumar Khaitan during the alleged occurrence. The charge sheet names the petitioner as one of the alleged miscreants. Therefore involvement of the petitioner in the alleged offence has prima facie been proved. In the order impugned, the learned Trial Court has recorded a detailed observation with regard to the involvement of the petitioner in the alleged offence before choosing to turn down his prayer. The present case is independent of the several cases between the defacto complainant and the Khaitans and the petitioner was not a necessary party therein. The petitioner having aided Kishore Kumar Khaitan in dispossessing the defacto complainant has been arraigned as an accused in the present complaint.

10. Learned counsel has relied upon the authorities in Sajjan Kumar v/s. Central Bureau of Investigation reported in (2010) 9 Supreme Court Cases 368, Captain Manjit Singh Viridi v/s. Hussain Mohammed Shattaf and Others reported in (2023) 7 Supreme Court Cases 633, State of Tamil Nadu v/s. R. Soundirarasu and Others reported in (2023) 6 Supreme Court Cases 768 and P. Swaroopa Rani v/s. M. Hari Narayana Alias Hari Babu reported in (2008) 5 Supreme Court Cases 765 in support of his contention.
11. I have considered the rival submission of the parties and material on record.
12. It appears that several litigations are pending between the defacto complainant who claims to be the tenant in respect of the property in

question and Kishore Kumar Khaitan who is the owner/landlord thereof. The defacto complainant has alleged that he has been illegally dispossessed from the property by the landlord with the aid of the petitioner and others. On the contrary, Kishore Kumar Khaitan has claimed that the deed on the anvil of which the defacto complainant claims tenancy rights is forged and manufactured. The petitioner has no role to play in the civil litigations and was therefore not made a party therein.

13. Learned counsel for the petitioner has submitted that a civil dispute between the landlord and tenant has been given the cloak of a criminal offence and the petitioner has been unnecessarily dragged into it. The dispute is essentially civil in nature [Usha Chakraborty and Another (supra)].
14. In the case in hand, the petitioner does not appear to be a party to the landlord-tenant dispute. Allegation against the petitioner is that he being the Secretary of the Association was present at the place of occurrence when Kishore Kumar Khaitan alongwith his men was breaking the padlocks of the property occupied by the defacto complainant. Though the FIR speaks of the property in respect of which civil dispute is pending, an independent criminal proceedings has been initiated against the petitioner and others wherein charge sheet has been submitted under sections 448/379/461/417/120B of the Indian Penal Code. The proceeding cannot be said to be barred by law merely on the ground of pendency of civil dispute between the landlord and the tenant. The said principle has been enumerated in the authority in P. Swarooparani (supra).

15. The prosecution proposes to frame charge against the petitioner under sections 448/379/461/120B of the Indian Penal Code. Section 448 of the Code prescribes punishment for house trespass. House trespass has been defined in section 442 of the Code as hereunder:-

“Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house-trespass”.

16. In the present case, the evidence on record suggests that the petitioner was standing at the place of occurrence and was not found to have entered the property or in any portion thereof. Therefore allegation under section 442 of the Code is not attracted against him.

17. Section 379 of the Code deals with punishment for theft. Section 378 defines “theft” as follows:-

“Whoever, intending to take dishonestly any movable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft.”

18. None of the witnesses examined by the prosecution has stated that the petitioner has committed theft.

19. Section 461 deals with offence of dishonestly breaking open receptacle containing property. No such allegation has surfaced against the petitioner in course of investigation.

20. It is alleged that the petitioner was present at the spot when the alleged incident occurred and several phone calls were made between the petitioner and Kishore Kumar Khaitan at the relevant time. Such presence of the petitioner and phone calls between him and Kishore Khaitan do not by themselves implicate the petitioner in the alleged offence in absence of any other evidence on record. Under no circumstances can the petitioner be termed as a party to the criminal conspiracy to commit the offence alleged. The petitioner being the Secretary of the Association may have been present at the spot at the relevant time but his participation/involvement in the alleged offence is not found.
21. In turning down the prayer of the petitioner under section 239 of the Code, the learned Trial Court has placed the petitioner and Kishore Khaitan on the same footing and has held that since the defacto complainant was in possession of the premises as a tenant on consent of the landlord, any attempt to deprive him of enjoyment of the property shall be punishable.
22. Such observation may be relevant in so far as Kishore Khaitan is concerned. But the petitioner is not similarly circumstanced with the landlord and cannot be held liable for the allegation thrust upon Kishore Khaitan.
23. The authorities referred to by the parties deal with the parameters to be taken into consideration while dealing with a discharge application as well as while issuing process against the accused. There is no quarrel with the proposition of law laid down in the said judgments. In State of Haryana

and Others v/s. CH. Bhajan Lal and Others reported in 1992 Supreme Court Cases (Cri) 426, the Hon'ble Supreme Court has laid down parameters for exercising inherent powers under section 482 of the Code in quashing criminal proceedings. One of such parameters is 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.

24. In the present case, the written complaint or the evidence on record does not disclose any specific allegation against the petitioner save and except that he was present at the place of occurrence at the relevant time. Even if the case made out by the prosecution is taken on its face value, no offence is disclosed against the petitioner.
25. Last but not the least, the petitioner has drawn the attention of the Court to the delay in the proceedings. Placing reliance on the authorities in Motilal Saraf (supra), Santosh De (supra), Vakil Prasad Singh (supra) and Ramanand Chaudhury (supra), learned counsel for the petitioner has submitted that the alleged incident occurred on 20th June, 1998 and FIR was lodged on 3rd February, 1999, the delay not being explained. Charge sheet was submitted on 13th July, 2001. Charges are yet to be framed. The proceeding is required to be quashed only on such ground.
26. It is a fact that delay is a relevant factor and every accused is entitled to speedy justice in view of Article 21 of the Constitution of India. But attending facts and circumstances leading to the delay should also be taken into consideration in deciding the issue. If prima facie material is found against the accused in a particular case, the proceedings cannot be

quashed merely on the ground of delay. [Sajjan Kumar Singh (supra)]. Herein, no offence as alleged having been made out against the petitioner either in the FIR or in course of investigation, allowing the proceeding to continue against the petitioner shall be an abuse of the process of the Court. The petitioner having suffered the ordeal of trial for considerable period of time should not be made to suffer further due to continuation of the proceeding against him.

27. Accordingly, CRR 968 of 2024 is allowed.

28. The proceeding being G.R. Case no. 249 of 1999 pending before the Learned Judicial Magistrate, 7th Court, Howrah be quashed qua the petitioner.

29. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

30. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)