

CRIMINAL REVISION
Judgement On: June 14, 2010.
C.R. R. No. 600 of 2009
With
CRAN No.608 of 2010
Present : Hon'ble Mr. Justice **Prasenjit Mandal**
Smt. Anjana Indra & Ors.
Versus
State of West Bengal & Anr.

POINTS

Cause of action – Whether same fact may act as a cause of action for lodging civil suit/proceedings and the criminal case too. – Code of Criminal Procedure, 1973, S 401 and 482 .

FACTS

The complainant on 21.04.2005 went outside his house to attend a marriage ceremony at Bongaon and then he returned therefrom on 24.04.2005. Taking opportunity of his absence from his house, the accused no.1 and his associates broke down the pucca wall situated on the western side of the house on 22.04.2005 and they installed an iron gate thereat. So, if there was any dispute it was nothing but a civil dispute. The petitioner prayed for quashing of the proceeding.

HELD

If the facts as alleged were a fact, it may not only give cause of action to file a civil suit for compensation and removal of the gates, at the same time, the said fact, prima facie, may become a criminal offence for causing damage to the property of the petitioner. So the same fact may act as a cause of action for lodging civil suit/proceedings and the criminal case too.
Para 3

For the petitioners: Mr. Debasis Sur.

For the opposite parties: None appears.

Prasenjit Mandal, J.:

The COURT.1)This application under Sections 401 and 482 of the Code of Criminal Procedure, 1973 is filed praying for quashing the complaint being C.R. No.119 of 2005 dated 29.04.2005 under Sections 147/323/427/379/506/34 of the I.P.C. pending before the learned Judicial Magistrate, Third Court, Sadar Hooghly. The petitioners have come up with the said case stating, inter alia, that the petition of complaint does not lay down any cause of action but the learned Magistrate took cognizance of the offence under above Sections though the allegations laid down in the petition of complaint are clearly of civil dispute, if any, at all and the alleged act does not become a criminal offence at all. He has also contended that the learned Magistrate committed illegality in taking cognizance of an offence and so the cognizance is bad in law.

2)Having considered the submission of the learned Advocate for the petitioners and on perusal of the materials placed in support of the case, I find that the allegation of the complainant is that on 21.04.2005 he went outside his house to attend a marriage ceremony at Bongaon and then he returned therefrom on 24.04.2005. Taking opportunity of his absence from his house, the accused no.1 and his associates broke down the pucca wall situated on the western side of the house on 22.04.2005 and they installed an iron gate thereat. So, if there was any dispute it was nothing but a civil dispute. So, the prayer for quashing the proceeding.

3)Upon due consideration of the materials placed before this Court, I find that at least the petitioner has been able to prove that the private opposite party broke down the wall situated on the western side of the house of the plaintiff and installed an iron gate. If it were a fact, it may not only give cause of action to file a civil suit for compensation and removal of the gates, at the same time, the said fact, prima facie, may become a criminal offence for causing damage to the property of the petitioner. So the same fact may act as a cause of action for lodging civil suit/proceedings and the criminal case too. So, I do not find any illegality in taking cognizance of the offence

by the concerned Magistrate. Accordingly, this revisional application is without any substance. There is nothing to interfere.

4)The revisional application, therefore, is dismissed.

5)Interim order, if any, is hereby vacated. Considering the circumstances, there will be no order as to costs.

6)The CRAN No.608 of 2010 has become infructuous and the same is dismissed.

7)Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)