(2016) 01 CAL CK 0029

In the Calcutta High Court

Case No : CRR 218 of 2012 and 2378 of 2013

Bani Saha	APPELLANT
Vs	
The State of West Bengal and Others	RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), Section 173, Section 173 (8), Section 173(2), Section 173(8), Section 202, Section 227, Section 239, Section 319, Section 362, Section 401, Se

Citation : (2016) 01 CAL CK 0029

Hon'ble Judges : R.K. Bag, J.

Bench : Single Bench

Advocate : D.K. Sengupta, Joy Sengupta, Aniruddha Chatterjee, Ayan Bhattacharjee, Mrinal Sinha and Sanjay Sarkar, for the Appellant; Manjit Singh, Ld. P.P., Rituparna Ghosh and Pawan Kumar Gupta, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Bag, J.—1. The petitioner Bani Saha has preferred revision under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated December 29, 2012 passed by Learned Chief Judicial Magistrate, Alipore, South 24-Parganas in C.G.R. Case No. 1085 of 2010 arising out of Alipore Police Station Case No. 73 dated March 30, 2010 under Sections 406, 409, 418, 384, 420, 109, 120B, 34 of the Indian Penal Code, by which Learned Magistrate accepted the final report submitted by the Investigating Officer and rejected the prayer of the petitioner for further investigation. This revision is registered as C.R.R. 218 of 2012. The petitioner Kalpana Majumder has preferred revision under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated June 11, 2013 passed by Learned Judicial Magistrate, 2nd Court, Siliguri in G.R. Case No. 1086 of 2011 under Sections 406, 420, 468, 471, 120B of the Indian Penal Code, by which Learned Magistrate discharged the accused persons. This revision is registered as C.R.R.

2378 of 2013. Both the revisions arise out of the criminal cases which relate to the same offence or offences arising out of the same transaction and as such I am inclined to dispose of both the revisions by this common judgement with consent of learned counsel representing the parties.

2. The backdrop of the criminal case filed by the petitioner Bani Saha is as follows: The petitioner Bani Saha along with her husband Uttam Kumar Saha, and one Kalpana Majumder and her husband Mrinal Kanti Majumder approached the opposite party No. 2 Arun Kumar Sarkar for carrying out legal formalities for purchase of land measuring about 15 cottahs 8 chatak at premises No. 104, Dr. Meghnath Saha Sarani, Ward No. 90 of Kolkata Municipal Corporation in the year 2002 (hereinafter referred to as "the said disputed property"). The opposite party Arun Kumar Sarkar assured the petitioner and her associates that "the said disputed property" is free from all encumbrances and suggested for entering into a contract for purchase of "the said disputed property" at a total consideration of Rs. 1,20,00,000/-. The opposite party No. 2 also suggested to the petitioner and his associates that the name of his wife Ranju Sarkar may be incorporated in the said contract as intending purchaser and that he would make payment of 1/5th share of advance consideration money at the time of registration of the agreement, in default Ranju Sarkar would assign her interest in the contract in favour of the petitioner and her associates. The amount of advance consideration money was fixed at Rs. 20,00,000/-. Thus, the petitioner and four others including Ranju Sarkar entered into an agreement for sale with one Mangobinda Shaw and seven others for purchase of "the said disputed property" and the said deed was registered in the office of the District Sub-Registrar at Alipore on November 15, 2002. The petitioner and his three associates paid the advance consideration of Rs. 20,00,000/- in favour of the intending vendors. The opposite party Ranju Sarkar or her husband Arun Kumar Sarkar did not make payment of any advance consideration money at the time of execution or registration of the said deed of agreement for sale. The details of payment made by cheques to the tune of Rs. 17,00,000/- and by cash to the tune of Rs. 3,00,000/- are described under memo of consideration annexed to the said deed of agreement for sale.

3. In the year 2005, the opposite party Ranju Sarkar and her husband approached the petitioner and her husband and expressed their inability to proceed with the purchase of "the said disputed property" and wanted to opt out of the agreement for sale. Accordingly, the opposite party Arun Kumar Sarkar prepared one deed of assignment of 1/5th share of Ranju Sarkar in the agreement for sale and the same was executed by the opposite party Ranju Sarkar in favour of the petitioner and her husband on July 28, 2005. The said deed of assignment was notarised on August 19, 2010. The opposite party Ranju Sarkar has specifically mentioned in the said deed of assignment that she did not make any financial contribution in connection with the agreement for sale by which she acquired her right to purchase 1/5th undivided share in "the said disputed property" along with the petitioner and her associates. The other two intending purchasers namely Kalpana Majumder and her husband -Mrinal Kanti

Majumder also signed on the said deed of assignment as witnesses. The opposite party - Arun Kumar Sarkar avoided on various pretexts to register the said deed of assignment. The opposite party Arun Kumar Sarkar ultimately disclosed to the petitioner that his wife Ranju Sarkar had executed one general power of attorney in favour of Mrinal Kanti Majumder, one of the intending purchasers and authorised him to represent Ranju Sarkar for protection of her 1/5th share in the agreement for sale and as such the deed of assignment dated July 28, 2005 need not be registered.

4. The intending vendors sold out "the said disputed property" to a third party for which another criminal case and civil suits for specific performance of contract were filed being Title Suit No. 140 of 2004 and Title Suit No. 50 of 2005 before the appropriate court of law. The petitioner and all the intending purchasers including the opposite party Ranju Sarkar jointly filed Title Suit No. 50 of 2005 against the intending vendors and others for specific performance of contract for sale of "the said disputed property". In the year 2006, the opposite party Ranju Sarkar and her husband demanded a sum of Rs. 7,50,000/- with interest from the petitioner and her husband and threatened to withdraw from the suit for specific performance of contract if the payment is not done. The petitioner and other intending purchasers paid a sum of Rs. 1,35,500/- in favour of the opposite party Ranju Sarkar and her husband under threat and coercion. The opposite party Arun Kumar Sarkar got another deed executed by and between the opposite party Ranju Sarkar and the petitioner and her associates on September 14, 2006, wherein the opposite party Arun Kumar Sarkar has cleverly described the fact of payment of 1/5th share of advance consideration money by the opposite party Ranju Sarkar at the time of execution of agreement for sale in respect of "the said disputed property." However, the said deed of assignment dated September 14, 2006 and the previous deed of assignment dated July 28, 2005 were not registered by the opposite party Ranju Sarkar and her husband on various pretexts.

5. The intending vendors i.e. the defendants of Title Suit No. 50 of 2005 produced one registered deed of cancellation dated August 7, 2009 executed by the opposite party Ranju Sarkar represented by her constituted attorney Abhijit Sarkar in respect of "the said disputed property." The petitioner was shocked to know from the said registered deed of cancellation that the opposite party Ranju Sarkar had relinquished her interest under agreement for sale dated November 15, 2002 in favour of the landlords and accepted Rs. 3,00,000/- from the landlords for relinquishing her interest to purchase 1/5th share of "the said disputed property" in favour of the landlords. It is alleged by the petitioner that the opposite party Ranju Sarkar and her husband intentionally deceived the petitioner and her associates by incorporating the name of the opposite party Ranju Sarkar in the agreement for sale on November 15, 2002 without making any financial contribution towards advance consideration money and by assigning her interest under agreement for sale in favour of the landlords by receiving Rs. 3,00,000/- by registered deed dated August 7, 2009 after assigning her interest

under agreement for sale in favour of the petitioner and her husband on July 28, 2005 and by dishonestly inducing all the intending purchasers including the petitioner to execute the deed dated September 14, 2006 by taking Rs. 1,35,500/- and thereby the opposite party Ranju Sarkar and her husband has caused damage to the property and reputation of the petitioner and thereby the opposite party Ranju Sarkar and her husband committed offence under Sections 420,120B, 34, 406, 409 of the Indian Penal Code.

6. The petitioner Bani Saha disclosed the above facts by filing a petition of complaint before the Court of learned Additional Chief Judicial Magistrate, Alipore who forwarded the same under Section 156(3) of the Code of Criminal Procedure to the officer-in-charge of Alipore Police Station and on the basis of which Alipore Police Station Case No. 73 dated March 30, 2010 under Sections 406/409/418/384/420/109/120B/34 of the Indian Penal Code came into force. The police investigated the said criminal case and submitted final report under Section 173 of the Code of Criminal Procedure. The petitioner being the de facto complainant filed a protest petition before the Court of Learned Magistrate praying for rejection of the final report and for further investigation of the criminal case by the Deputy Commissioner, Detective Department, Kolkata. The opposite party Ranju Sarkar and her husband filed objection against the petition filed by the petitioner Bani Saha before the Court of Learned Magistrate. Learned Magistrate accepted the final report by refusing to direct the police for further investigation by the impugned order dated December 29, 2011 which is under challenge in C.R.R. 218 of 2012.

7. The backdrop of the criminal case filed by the petitioner Kalpana Majumder is as follows: The petitioner Kalpana Majumder submitted written complaint before the officer-in-charge of Siliguri Police Station disclosing the fact that she engaged the opposite party Arun Kumar Sarkar as her Advocate to conduct some cases. It is alleged that the opposite party Arun Kumar Sarkar obtained signature of the petitioner Kalpana Majumder on some blank sheet of papers for the purpose of filing application before the appropriate court of law. The opposite party Santosh Saha who happens to be the chamber junior of the opposite party Arun Kumar Sarkar dishonestly prepared a notice dated August 3, 2009 and sent the same to the opposite party Ranju Sarkar, wife of Arun Kumar Sarkar stating that the petitioner Kalpana Majumder and her associates were no longer interested in obtaining deed of assignment dated September 14, 2006 in their favour. The said notice also disclosed that the petitioners of "the said disputed property" requested for return of advance of Rs. 1,35,500/- which was paid to the said Ranju Sarkar as per terms of deed of assignment dated September 14, 2006. The opposite party Santosh Saha prepared the said notice without any instruction from the petitioner Kalpana Majumder. The petitioner Kalpana Majumder came to know about this fact on June 13, 2011 when the opposite party Arun Kumar Sarkar filed a petition disclosing the fact of the said notice dated August 3, 2009 purportedly sent by the opposite party Santosh Saha on behalf of the petitioner Kalpana Majumder. The letter forged by the opposite

party Santosh Saha without any instruction from the petitioner Kalpana Majumder has caused damage to the valuable property of the petitioner Kalpana Majumder and her associates. The opposite party Arun Kumar Sarkar and his wife Ranju Sarkar and his son Abhijit Sarkar are in collusion with the opposite party Santosh Sash for preparing the notice dated August 3, 2009 on behalf of the petitioner Kalpana Majumder in dishonest way and thereby they have committed fraud upon the petitioner Kalpana Majumder for depriving Kalpana Majumder and her associates of the valuable property mentioned above. The above written complaint submitted by the petitioner Kalpana Majumder was registered as Siliguri Police Station case No. 345 of 2011 dated June 20, 2011 under Sections 406/420/468/471/120B of the Indian Penal Code. The police submitted charge-sheet after investigation against the opposite party Nos. 2 to 4 before the Court of Learned Magistrate. The said opposite parties filed an application before the Court of Learned Magistrate for discharge under Section 239 of the Code of Criminal Procedure. On June 11, 2013 Learned Magistrate passed an order discharging all the opposite parties 2 to 5 from the said criminal case on the ground that no offence is made out under Section 406/420/120B/34 of the Indian Penal Code. The petitioner Kalpana Majumder has challenged the said order dated June 11, 2013 passed by Learned Magistrate in G.R. No. 1086 of 2011 by filing C.R.R. 2378 of 2013 before this court.

8. On perusal of the written complaint treated as Alipore Police Station Case No. 73 dated March 30, 2010 and the written complaint treated as Siliguri Police Station Case No. 345 of 2011 dated June 20, 2011, I find that both the FIRs relate to the offences committed in the same transaction and the incidents in both the cases cannot be identified as distinct and independent of each other and as such Siliguri Police Station Case No. 345 of 2011 dated June 20, 2011 started at the instance of the petitioner Kalpana Majumder can be treated as second FIR in connection with the offences committed in the same transaction in respect of which the petitioner Bani Saha started Alipore Police Station Case No. 73 dated March 30, 2010. It is relevant to point out that the accused persons in both the criminal cases are the same, except Abhijit Sarkar, son of both Ranju Sarkar and Arun Kumar Sarkar and Santosh Saha junior to Mr. Arun Kumar Sarkar. What will be the fate of the case arising out of Siliguri Police Station Case No. 345 of 2011 dated June 20, 2011 will be decided at a latter stage of this judgement.

9. Mr. D.K. Sengupta, Learned Senior Counsel appearing on behalf of the petitioner Bani Saha contends that the observation made by Learned Chief Judicial Magistrate in the impugned order that the dispute between the petitioner and the opposite parties is civil in nature is not legally valid and sustainable in law. The written complaint of the petitioner Bani Saha treated as Alipore Police Station Case No. 73 dated March 30, 2010 indicates that the opposite party Arun Kumar Sarkar intentionally induced the petitioner Bani Saha and her associates to make his wife the opposite party Ranju Sarkar as intending purchaser of "the said disputed property" without making any financial contribution and caused harm to the petitioner Bani Saha and her associates by relinquishing her interest

under the agreement for sale dated November 15, 2002 in favour of the land owners by receiving Rs. 3,00,000/- on August 7, 2009 after assigning her said interest under the agreement for sale dated November 15, 2002 in favour of the petitioner Bani Saha by executing unregistered deed of assignment dated July 28, 2005 and thereafter by making contrary statement in another unregistered deed dated September 14, 2006 by receiving Rs. 1,35,000/-. According to Mr. Sengupta, the contents of the written complaint treated as FIR of Alipore Police Station Case No. 73 dated March 30, 2010 disclose offences under Section 420/120B/34 of the Indian Penal Code. Mr. Sengupta further submits that the opposite party Ranju Sarkar, her husband Arun Kumar Sarkar, her son Abhijit Sarkar and junior to her husband Santosh Saha made conspiracy with each other for preparation of a false notice without instruction from Kalpana Majumder and the said notice was shown to have been served on the opposite party Ranju Sarkar in order to substantiate the ground for preparation of deed of relinquishment of interest of the opposite party Ranju Sarkar under contract for sale dated November 15, 2002 in favour of the land owners by registered deed dated August 7, 2009 (which was executed by Abhijit Sarkar as power of attorney holder of Ranju Sarkar) by receiving Rs. 3,00,000/- and as such the opposite party - Ranju Sarkar, Arun Kumar Sarkar, Abhijit Sarkar and Santosh Saha committed offence under Section 465/468/120B of the Indian Penal Code for which written complaint was filed by the petitioner Kalpana Majumder and Siliguri Police Station Case No. 345 of 2011 dated June 20, 2011 was started.

10. Mr. Sengupta has urged that the action and omission on the part of the opposite parties can give rise to both civil proceeding and criminal proceeding, and as such the petitioner Bani Saha cannot be debarred from prosecuting the opposite parties under the criminal law only because the petitioner Bani Saha and her associates have instituted Title Suit No. 50 of 2005 before Learned Civil Judge (Senior Division), 9th Court, Alipore for specific performance of contract in respect of "the said disputed property." Mr. Sengupta has relied on the case of "Kamaladevi Agarwal V. State of West Bengal" reported in , (2002) 1 SCC 555 in support of his above contention. In the said report the Supreme Court has held in paragraph 17 that the criminal proceeding cannot be thwarted at the initial stage only because civil proceeding on the self-same issues are pending before the civil court. I fully agree with the above proposition of law laid down by the Supreme Court.

11. Mr. Sengupta categorically submits that the investigation carried out by the Investigating Officer is tainted and biased. He has pointed out the following reasons for levelling the investigation as biased and tainted: (i) the petitioner Bani Saha being the de facto complainant was never examined by the Investigating Officer. Nor did the Investigating Officer asked the de facto complainant to produce relevant documents in support of the allegations made by her in the FIR; (ii) Investigation Officer relied on the facts submitted by the accused Ranju Sarkar without cross-verification of the statement of the accused Ranju Sarkar and without making any seizure of the relevant deeds in connection

with "the said disputed property"; (iii) Investigation Officer did not consider the unregistered deed of assignment executed by the opposite party Ranju Sarkar in favour of the petitioner on July 28, 2005 by which the opposite party Ranju Sarkar not only assigned her 1/5th interest in the contract for sale dated November 15, 2002 in respect of "the said disputed property" in favour of the petitioner Bani Saha, but also admitted the fact that she did not make any financial contribution at the time of payment of advance consideration of Rs. 20,00,000/- under the contract for sale dated November 15, 2002; (iv) the Investigating Officer did not collect information about the mode of alleged payment of advance consideration money by the opposite party Ranju Sarkar at the time of execution of agreement for sale dated November 15, 2002 in respect of "the said disputed property" and did not collect statement of accounts from the concerned Allahabad Bank to ascertain the genuineness of the claim made by the opposite party Ranju Sarkar in connection with payment of advance consideration money; (v) Investigating Officer did not record the statement of Kalpana Majumder and her associates for cross-verification of preparation of alleged notice issued by Santosh Saha, junior to the opposite party Arun Kumar Sarkar on August 7, 2009 by disclosing the fact that the petitioner Bani Saha, Kalpana Majumder and two others were not interested to obtain the assignment under contract for sale dated November 15, 2002 in respect of "the said disputed property"; (vi) Investigating Officer came to the conclusion on the basis of opinion furnished by Learned Public Prosecutor, South 24-Parganas that the dispute between the parties is civil in nature and as civil suit is pending between the parties, no offence under the Indian Penal Code is made out against the opposite parties.

12. Relying on two decisions of the Supreme Court reported in , AIR 2000 SC 1731 and , AIR 2007 SC 1087 Mr. Sengupta urges that the Investigating Officer cannot obtain the opinion of the Public Prosecutor for coming to the conclusion that the dispute between the parties is civil in nature and as such criminal prosecution cannot lie against the opposite parties. In "R. Sarala V. T.S. Velu" reported in , AIR 2000 SC 1731 the Supreme Court has held in paragraph 18 that the Investigating Officer cannot be influenced by the opinion of the Public Prosecutor. Relying on the decision of "R. Sarala V. T.S. Velu" (supra) it is held by the Supreme Court in paragraph 42 of "M.C. Mehta V. Union of India" reported in , AIR 2007 SC 1087 that the opinion of the Public Prosecutor cannot be obtained by the Investigating Officer to decide whether a particular person will be arraigned as an accused for commission of the offence under Section 304B/498A of the Indian Penal Code. In the instant case, the formation of opinion of the Investigating Officer that the dispute between the parties is civil in nature on the basis of the opinion of the Public Prosecutor is in violation of the law laid down by the Supreme Court in "R. Sarala V. T.S. Velu" (supra) and "M.C. Mehta V. Union of India" (supra)."

13. Mr. Sengupta also contends that the opposite parties have no right to raise objection against prayer for further investigation before the Court of Learned

Magistrate as laid down by our High Court in "Pawan Kumar Santhalia V. State of West Bengal" reported in , (2005) 2 Cal L.T. 427 (HC). In the said report our High Court has held in paragraph 21 that the Magistrate is not obliged to hear the accused person before giving direction for further investigation. In the instant case, the opposite parties were not only allowed by Learned Magistrate to file a written objection against the protest petition filed by the petitioner Bani Saha, but Learned Magistrate also gave the opposite parties/accused persons an opportunity of hearing before acceptance of the final report in violation of the principle of law laid down in "Pawan Kumar Santhalia V. State of West Bengal."

14. Mr. Sengupta has vehemently agitated before this Court that the assignment of 1/5th interest of the opposite party Ranju Sarkar under contract for sale dated November 15, 2002 in respect of "the said disputed property" is unlawful and unjustified, because mere right to sue under Section 6(e) of the Transfer of Property Act cannot be transferred. It is also submitted on behalf of the petitioner Bani Saha that the civil suit instituted by the petitioner Bani Saha and her associates against the intending vendors and subsequent transferees for specific performance of contract was dismissed only for assignment of interest under the contract of sale dated November 15, 2002 by the opposite party Ranju Sarkar in favour of the vendor/land owner in a clandestine manner during the pendency of the suit.

15. Mr. Sengupta has relied on some other decisions of the Supreme Court in order to urge other points which, in my view, are not relevant. However, I would like to discuss those reports seriatim. In "R.K. Dalmia V. Delhi Administration" reported in , AIR 1962 SC 1821 the appellants were convicted for criminal breach of trust and by upholding the conviction and sentence, the Supreme Court held in paragraph 60 that the funds referred to in the charge amounted to property within the meaning of Section 405 of the Indian Penal Code. This authority has no relevance to decide the issues involved in this revision. In "Chandra Deo Singh V. Prokash Chandra Bose" reported in , AIR 1963 SC 1430 the Supreme Court has held in paragraph 8 that the object of enquiry under Section 202 of the Code of Criminal Procedure is to ascertain whether there is evidence in support of the allegations of the complainant and not whether the said evidence is sufficient to warrant a conviction. This decision is not relevant for the purpose of this revision, where the need of further investigation is to be decided by this Court. In "Arun Bhaduri V. State of Uttar Pradesh" reported in , (2013) 2 SCC 801 the Supreme Court has held in paragraph 29 that the criminal proceeding cannot be quashed at the initial stage when there was dishonest intention to induce the complainant to part with the money and the offence is made out by taking into consideration the allegations in its entirety. This authority is also not relevant to decide the present case where the issue is whether further investigation is needed for full discovery of facts. In "Hardeep Singh V. State of Punjab" reported in , (2009) 16 SCC 785 the Supreme Court deals with the power of the trial Judge under Section 319 of the Code of Criminal Procedure and lays down in paragraph 67 that the Investigating Officer is not expected to give

clean-chit to the accused by exercising the authority of the court or the judiciary. This report is also not relevant for the present case where the Investigating Officer has merely submitted the final report praying for discharge of the accused persons/the opposite parties on the ground that no offence is made out against the opposite parties as the dispute between the parties is civil in nature.

16. Mr. Sengupta has relied on two decisions of learned Single Judge of our High Court in support of his contention that Learned Magistrate has the authority to direct further investigation under Section 173(8) of the Code of Criminal Procedure. In "Moqbul Hossain V. State" reported in , 2015 (1) E. Cr. N. (Cal) 286, Learned Single Judge has held that the acceptance of final report without giving the de facto complainant an opportunity of hearing is not justified under the law. This report is not relevant for the purpose of this revision. In "Sumanta Sinha V. State of West Bengal" reported in 2015 (2) E. Cr. N. (Cal) 569, Learned Single Judge has held that Learned Judicial Magistrate has the authority to direct for further investigation under Section 173 (8) of the Code of Criminal Procedure. In "State of Bihar V. Ramesh Singh" reported in , (1977) 4 SCC 39 the Supreme Court has laid down the criteria for discharge of the accused under Section 227 of the Code of Criminal Procedure. Since I have already observed that the offences disclosed in the FIR of Siliguri Police Station Case No. 345 of 2011 dated June 20, 2011 from which the opposite parties were discharged by Learned Magistrate arise out of the same transaction for which Alipore Police Station Case No. 73 dated March 30, 2010 was started, the said FIR being Siliguri Police Station Case No. 345 of 2011 dated June 20, 2011 started at the instance of the petitioner Kalpana Majumder is to be treated as the second FIR in respect of the same offence or the offences committed in the same transaction. In view of my above observation, there is no need to decide whether Learned Magistrate was justified in discharging the opposite parties under Section 239 of the Code of Criminal Procedure in connection with G.R. No. 1086 of 2011 arising out of Siliguri Police Station Case No. 345 of 2011 dated June 20, 2011 under Section 406/420/468/120B of the Indian Penal Code.

17. Mr. Sudipta Maitra, Learned Counsel appearing on behalf of the opposite parties No. 2 to 4 argues that the contents of the written complaint treated as FIR of Alipore Police Station Case No. 73 dated March 30, 2010 do not disclose any offence and the dispute between the parties is completely civil in nature for which the petitioner Bani Saha and her associates have instituted Title Suit No. 50 of 2005 before the Court of Learned Civil Judge (Senior Division), 9th Court, Alipore for specific performance of contract in respect of "the said disputed property." He submits that the benefit under contract for sale dated November 15, 2002 in respect of "the said disputed property" is an assignable interest and as such the opposite party Ranju Sarkar assigned her 1/5th interest under the said contract for sale in favour of the land owner, when the petitioner Bani Saha failed to make payment of balance amount of Rs. 6,14,500/- to the opposite party Ranju Sarkar for assigning of her 1/5th interest under the said contract for sale as agreed by and between them under deed of agreement dated September

14, 2006. Mr. Maitra categorically submits that the opposite party Ranju Sarkar had the right under the law to bargain for assignment of her 1/5th interest under contract for sale in respect of "the said disputed property" and assignment of the said interest in favour of the land owner by receiving higher amount of money cannot be construed as an offence, when the petitioner Bani Saha and her associates failed to fulfil their part of the contract as per terms of agreement dated September 14, 2006. He has relied on some authorities in support of his above contention, which I would like to deal with serially.

18. In "Punjab National Bank V. Sanchaita investment" reported in , 1985(1) CHN 95 the Division Bench of our High Court held that the benefit of a contract for sale of immovable property is transferable, but such a contract by itself does not create any right, title or interest in the property to be sold. Thus, the assignment of a benefit under a contract for sale simplicitor may not come within the mischief of Section 17(1) of the Indian Registration Act. However, in this report the contract for sale acknowledged payment of consideration money and thereby charge was created on the property to be sold. Accordingly, a deed of assignment of such a charge on the immovable property needs to be registered under Section 17 of the Indian Registration Act. The case at hand deals with disputed question of payment of 1/5th share of advance consideration money by the opposite party Ranju Sarkar for which the petitioner Bani Saha has prayed for further investigation for full discovery of facts. Accordingly, I would like to hold that the issues whether the deeds of assignment in connection with 1/5th share of the opposite party Ranju Sarkar need to be registered under Section 17 (1) of the Indian Registration Act and whether charge was created on "the said disputed property" under contract for sale dated November 15, 2002 with regard to 1/5th share of the opposite party Ranju Sarkar will remain open to be decided in appropriate judicial proceedings between the parties.

19. In "Bhabhootmal V. Moolchand" reported in , AIR (30) 1943 Nagpur 266 it is decided that an agreement for sale or purchase of immovable property is a contract and the benefit under such a contract can be assigned, as it is not a mere right to sue. The full bench of Allahabad High Court has also held in "Bhairon Prasad Chaurasia V. Smt. Tara Devi" reported in AIR 1980 Allahabad 36 that an agreement to sell or purchase immovable property is assignable and such a right is, therefore, liable to attachment and sale under Section 60 of the Code of Civil Procedure. In view of the proposition of law laid down by the Full Bench of Allahabad High Court and the Division Bench of our High Court I would like to hold that the benefit under a contract for sale of immovable property is assignable interest, as the same is not mere right to sue under Section 6 (e) of the Transfer of Property Act.

20. Mr. Maitra has relied on three other decisions which are not found to be relevant for the purpose of this case. In "Nirmala Bala Dasi V. Sudarsan Jana" reported in , AIR 1980 Cal 258 Learned Single Judge of our High Court has laid down the law with regard to non-joinder of parties in a suit for specific

performance of contract. This report is not relevant for deciding the issue of further investigation of a criminal case. In "Monghibai V. Cooverji Umersey" reported in , AIR 1939 Privy Council 170, it is held that the parties who have assigned the whole of their interest pendente lite cannot ask for judgement in respect of interest which is no longer theirs. This report is also not relevant for the purpose of this revision. In "Shyam Singh V. Daryao Singh" reported in , AIR 2004 SC 348, the Supreme Court has dealt with the law relating to specific performance of contract and as such the said decision is also not relevant for deciding the issue of further investigation of a criminal case.

21. Relying on bunch of decisions of the Apex Court laying down criteria for quashing the criminal proceeding under Section 482 of the Code of Criminal Procedure, Mr. Maitra submits that the question of further investigation of Alipore Police Station Case No. 73 dated March 30, 2010 does not arise when contents of the written complaint treated as FIR do not disclose any offence under the Indian Penal Code. I would like to discuss the reports cited by Mr. Maitra. In "Inder Mohan Goswami V. State of Uttaranchal" reported in , (2007) 12 SCC 1 and "Alpic Finance Ltd. V.P. Sadasivan" reported in , 2001 SCC (Cri) 565 the Supreme Court has laid down the principle for quashing the criminal proceeding by the High Court under Section 482 of the Code of Criminal Procedure which is not relevant for the purpose of this revision. In "V.Y. Jose V. State of Gujarat" reported in , (2009) 3 SCC 78 the Supreme Court has laid down the principle for quashing criminal proceeding where matter involves dispute of civil nature. In this report the dispute arose out of breach of contract which is purely civil in nature and as such criminal proceeding was quashed. This report does not lay down the law with regard to further investigation and as such the same is not relevant for the purpose of this revision. The Apex Court has laid down the law for quashing the criminal proceeding under Sections 406 and 420 of the Indian Penal Code in "Binod Kumar V. State of Bihar" reported in , 2014(8) Supreme 112. This report is not relevant for the purpose of deciding the issue of further investigation of the criminal case. In "Md. Ibrahim V. State of Bihar" reported in , J.T. 2009(11) SC 533 the Supreme Court has laid down the proposition of law for quashing the criminal proceeding where offence under Section 420 of the Indian Penal Code is not made out. This report is not relevant as it does not lay down any law with regard to further investigation of the criminal case. In "Vesa Holdings Pvt. Ltd. V. State of Kerala" reported in 2015(2) ALCLR 694 the Supreme Court has dealt with quashing of criminal proceeding of cheating. This report is not relevant as the issue of further investigation of the criminal case is not addressed. Similarly, in "M/s. Thermax Ltd. V. K.M. Johny" reported in , 2012 CRI L.J. 438 the Supreme Court dealt with quashing of the criminal proceeding when Learned Magistrate directed for investigation after long delay and after closure of their earlier complaint to the police after investigation. The facts of this report are clearly distinguishable from the facts of the present case and as such this report is not relevant for deciding the issue of further investigation of criminal case.

22. The Supreme Court dealt with quashing of criminal proceeding of cheating in "Surya Lakshmi Cotton Mills Ltd. V. Rajvir Industries Ltd." reported in , (2008) 13 SCC 678, and as such this report is not relevant for deciding the issue of further investigation of the criminal case. In "Hridaya Ranjan Prasad Verma V. State of Bihar" reported in 2000 SCC (Cri) 786 and in "Veer Prakash Sharma V. Anil Kumar Agarwal" reported in , J.T. 2007(10) SC 57 the Supreme Court dealt with quashing of criminal proceeding of cheating and as such these reports are not relevant to decide the issue of further investigation of the criminal case. In "Murari Lal Gupta V. Gopi Singh" reported in , (2006) 2 SCC (Cri) 430 the Supreme Court dealt with quashing of criminal proceeding in connection with an offence under Section 406 and 420 of the Indian Penal Code when the said offences are not made out. Similarly, in "Uma Shankar Gopalika V. State of Bihar" reported in , (2005) 10 SCC 336 the Supreme Court dealt with quashing of criminal proceeding of cheating under Section 420 of the Indian Penal Code. Both these reports are not relevant with regard to further investigation of the criminal case which is the issue involved in this revision.

23. By referring to the plaint of Title Suit No. 50 of 2005 instituted by the petitioner Bani Saha and her associates against the intending vendors and subsequent transferees for specific performance of contract for sale of "the said disputed property", Mr. Maitra submits that the petitioner has not made any allegation against opposite party Ranju Sarkar in the pleading even after amendment of the plaint when the opposite party Ranju Sarkar was impleaded as the proforma defendant of the suit after assignment of her 1/5th interest in the contract for sale dated November 15, 2002 in favour of the land owners and as such the allegation made by the petitioner Bani Saha against the opposite parties in the FIR of Alipore Police Station Case No. 73 dated March 30, 2010 should not be considered as genuine for any direction for further investigation of the said criminal case. He has relied on the decisions of the Supreme Court reported in , J.T. 2007(12) SC 345 and , 2008 Cri L.J. 431 in support of his above contention. In "All Cargo Movers (I) Pvt. Ltd. V. Dhanesh Badarmal Jain" reported in , J.T. 2007(12) SC 345 the criminal proceeding was quashed as the ingredients of the offences are not disclosed in the petition of complaint treated as FIR. In this report the Supreme Court has held that the court can consider the pleadings and correspondences between the parties for ascertaining prima facie allegations when the complainant has instituted civil suit before starting the criminal proceeding against the opposite parties. The proposition laid down in "B. Suresh Yadav V. Sharifa Bee" reported in , 2008 Cri L.J. 431 is that when the stand taken by the de facto complainant in a civil suit is contrary to or inconsistent with the stand taken in the petition of complaint in the criminal case, the same must be taken into consideration to decide whether the offence under Section 420 of the Indian Penal Code is made out for continuation of the criminal proceeding. In both the above reports the de facto complainant started the civil suit against the opposite party/accused persons before commencement of the criminal proceeding. In the case at hand the petitioner/de facto complainant Bani Saha

did not institute Title Suit No. 50 of 2005 against the opposite party Ranju Sarkar. Admittedly Title Suit No. 50 of 2005 was instituted both by the petitioner Bani Saha, her associates including the opposite party Ranju Sarkar against the intending vendors and land owners and subsequent transferees for specific performance of contract in respect of "the said disputed property", as the opposite party Ranju Sarkar had interest to the tune of 1/5th share of an intending purchaser under contract of sale dated 15, 2002 and as such petitioner Bani Saha and her associates have had no opportunity to make any allegation against the opposite party Ranju Sarkar in the plaint of Title Suit No. 50 of 2005. Even when the opposite party Ranju Sarkar was transposed as the proforma defendant of the said Title Suit No. 50 of 2005 by way of amendment of the plaint, there was no scope on the part of the petitioner Bani Saha and her associates to make any allegation against the proforma defendant/the opposite party Ranju Sarkar in the said suit where the main relief was for specific performance of contract against the intending vendors/owners of "the said disputed property" and the subsequent transferees to whom the property was transferred by the land owners. In view of my above findings, non-disclosure of any allegation against the opposite party Ranju Sarkar by the petitioner Bani Saha and her associates in the plaint of Title Suit No. 50 of 2005 cannot have any bearing in the criminal case which was instituted for various offences under the Indian Penal Code. The facts of the present case are clearly distinguishable from the facts of "All Cargo Movers (1) Pvt. Ltd. V. Dhanesh Badarmal Jain" (supra) and "B. Suresh Yadav V. Sharifa Bee" (supra) and as such the ratio of the said reports will not be applicable in the facts of the present case.

24. Mr. Maitra further contends that the petitioner Bani Saha did not make any indication for further investigation in the protest petition filed before the Court of Learned Chief Judicial Magistrate, Alipore. It is also submitted on behalf of the opposite parties No. 2 to 4 that the petitioner Bani Saha did not disclose the reasons for further investigation of the criminal case. On scrutiny of the application filed by the petitioner Bani Saha before the Court of Learned Chief Judicial Magistrate, I find that the petitioner Bani Saha has specifically stated that the witnesses connected with the offence in question were not interrogated by the Investigating Officer and the documents which were required to be seized in connection with the said offence have not been seized. The petitioner Bani Saha has prayed for further investigation after rejecting the final report submitted by the Investigation Officer and as such I do not find any merit in the submission made on behalf of the opposite parties No. 2 to 4.

25. I do not find any relevance of some authorities cited on behalf of the opposite parties No. 2 to 4, but I would like to deal with those authorities. In "Reeta Nag V. State of West Bengal" reported in , (2009) 3 SCC (Cri) 1051 the Investigating Agency submitted charge-sheet under Section 173(2) of the Code of Criminal Procedure and Learned Magistrate framed charges against six accused persons and discharged the remaining ten accused persons and also directed for further investigation. On revision at the instance of the accused

persons the High Court reversed the said order of Learned Magistrate by observing that the order passed by Learned Magistrate is barred under Section 362 of the Code of Criminal Procedure. The Supreme Court declined to interfere in the order of the High Court as the order passed by Learned Magistrate amounted to review of his earlier order which is barred under Section 362 of the Code of Criminal Procedure. In the present case, Learned Magistrate has not taken cognizance of any offence, nor has Learned Magistrate directed for further investigation and as such the ratio of the report is not applicable in the facts of the present case.

26. In "Popular Muthiah V. State" reported in , (2006) 3 SCC (Cri) 245 the High Court directed for further investigation from a particular angle at the time of hearing of appeal against conviction and as such order was passed by the High Court without giving opportunity of hearing to the concerned persons. On appeal, the Supreme Court remitted the case back to the High Court for fresh adjudication particularly to ascertain whether the purpose of further investigation will be served after long lapse of ten years. In this report the High Court directed for further investigation in connection with the hearing of an appeal against conviction, whereas in the present case further investigation was refused by Learned Magistrate after accepting final report submitted by the Investigating Agency. The order of Learned Magistrate passed on December 29, 2011 is challenged by filing this revision in the year 2012 but the hearing of the revision did not take place during the last three years in the High Court for which delay cannot be attributed to the petitioner. Accordingly, the ratio of the report is not applicable in the facts of the present case.

27. In "Ragina Bewa V. State of West Bengal" reported in 2012 (2) CLJ (Cal) 669 Learned Magistrate took cognizance of the offence and thereafter the de facto complainant filed an application for further investigation which was turned down by Learned Magistrate. The High Court declined to interfere in the order passed by Learned Magistrate. In this report Learned Magistrate could not give direction for further investigation after taking cognizance of the offence. In the case at hand Learned Magistrate has not taken cognizance of any offence and he accepted the final report submitted by the Investigating Agency. So, the facts of the present case are clearly distinguishable from the facts of "Ragina Bewa V. State of West Bengal" (supra) and as such the ratio of the said report cannot be made applicable in the facts of the present case. The law dealt with by the Supreme Court in "Namdeo V. Collector, East Neemar Khandwa" reported in , (1995) 5 SCC 598 does not have any bearing on the present case and as such the same is not relevant for the present revision.

28. Relying on the case of "Sanjaysingh Ramrao Chavan V. Dattatray Gulabarao Phalke" reported in (2015) 2 C Cr LR (SC) 268, Mr. Maitra vehemently argues that this court cannot interfere in the order of Learned Magistrate by way of revision unless the order passed by Learned Magistrate is totally perverse. According to Mr. Maitra, this court may not interfere in the order of Learned

Magistrate even if this court comes to a different view from the view taken by Learned Magistrate by rejecting prayer for further investigation and by accepting the final report. In this report the Supreme Court has laid down in paragraph 14 that "unless the order passed by the Magistrate is perverse or the view taken by the Court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the revisional Court is not justified in setting aside the order, merely because another view is possible." This proposition of law will be kept in mind for deciding whether this court will interfere in the order passed by Learned Magistrate.

29. In "Kishan Lal V. Dharmendra Bafna" reported in , (2009) 3 SCC (Cri) 611 the Supreme Court has laid down the proposition of law for further investigation in paragraph 16 which is as follows:

"16. The investigating officer may exercise his statutory power of further investigating in several situations as, for example, when new facts come to his notice; when certain aspects of the matter had not been considered by him and he found that further investigation is necessary to be carried out from a different angle(s) keeping in view the fact that new or further materials came to his notice. Apart from the aforementioned grounds, the leaned Magistrate or the superior courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice. The question, however, is as to whether in a case of this nature a direction for further investigation would be necessary."

The above proposition of law will be followed by this Court to decide whether direction for further investigation is necessary in the facts of the present case.

30. The proposition of law laid down by the Supreme Court in "Vinay Tyagi V. Irshad Ali" reported in , 2013 CRI L.J. 754 is that the Magistrate has the power to direct for further investigation, but he has no authority under the law to direct re-investigation or fresh investigation. In "Chandra Babu V. State" reported in , (2015) 8 SCC 774 the Supreme Court has laid down in paragraphs 20 and 21 that the Magistrate can direct for further investigation, while the courts of higher jurisdiction can direct for further investigation, re-investigating or even investigation de novo depending on the facts of a given case. I would like to be guided by the above proposition of law for deciding whether further investigation is required in the facts and circumstances of the present case.

31. Mr. Siladitya Sanyal, Learned Counsel appearing on behalf of the opposite parties No. 2, 3 and 4 supports the order of discharge of the opposite parties under Section 239 of the Code of Criminal Procedure in G.R. No. 1086 of 2011 on the ground that no offence is made out against the opposite parties under Section 406, 420, 120B, 34 of the Indian Penal Code. Mr. Sanyal also submits that the petitioner Kalpana Majumder was aware of the notice alleged to have been served by the opposite party Santosh Saha on behalf of the petitioner Kalpana Majumder long before the institution of the present criminal case. Mr.

Sanyal has relied on "Jibrial Diwan V. State of Maharashtra", "Trilok Singh V. Satya Deo Tripathi" and "J. Th. Zwart V. Indrani Mukherjee" in support of his contention that no offence is made out against the opposite parties and as such they have been rightly discharged by Learned Magistrate under Section 239 of the Code of Criminal Procedure.

32. In "Jibrial Diwan V. State of Maharashtra" reported in , 1997 S.C. 3424 the Supreme Court acquitted the appellant of the charge on the ground that no offence under Section 417, 420, 465 and 471 of the Indian Penal Code was made out against the petitioner. In this report, two letter-heads of the Minister were used to invite the artists for a cultural show. In the absence of any wrongful gain to anyone or wrongful loss to anyone, the intention of the appellant to defraud was not established. In the case at hand, the allegation is that the opposite party Santosh Saha prepared a notice on behalf of the petitioner Kalpana Majumder without any instruction from her end and the said notice was shown to have been served on the opposite party Ranju Sarkar by manipulating the facts to establish that the petitioner Bani Saha and her associates including Kalpana Majumder were not interested in the assignment of benefit of 1/5th share of the opposite party Ranju Sarkar in "the said disputed property" as per terms of deed of assignment dated April 14, 2006. The fabrication of such a notice by the opposite party Santosh Saha in collusion with the other opposite parties namely Arun Kumar Sarkar, his wife Ranju Sarkar and his son Abhijit Sarkar is for the purpose of depriving the petitioner Bani Saha and the petitioner Kalpana Majumder of their rights to acquire 1/5th interest of the opposite party Ranju Sarkar under the agreement for sale dated November 15, 2002 in respect of "the said disputed property" and for making wrongful gain of Rs. 1,35,500/- by the opposite party Ranju Sarkar, which is alleged to have been returned by the opposite party Ranju Sarkar in the said notice. So the facts of the present case are clearly distinguishable from the facts of "Jibrial Diwan V. State of Maharashtra" (supra) and as such the ratio of the said report will not be applicable in the facts of the present case.

33. In "Trilok Singh V. Satya Deo Tripathi" reported in , AIR 1979 S.C. 850 the criminal proceeding was quashed as the dispute between the parties related to purchase of a truck by way of higher purchase agreement. In the said report the seizure of the truck was done on the basis of terms of agreement between the parties and as such no criminal offence was made out and criminal proceeding was quashed. The facts of the said case are also clearly distinguishable from the facts of the present case where the allegation is made of deep rooted conspiracy for making wrongful gain by the opposite parties and wrongful loss of the petitioner Kalpana Majumder and her associates including Bani Saha and as such the ratio of the said report will not be applicable in the facts of the present case.

34. In "J. Th. Zwart V. Indrani Mukherjee" reported in , (1990) 1 Cal L.T. 99 two documents on the basis of which criminal proceeding was initiated were found to have been created on the dates which are not appearing on the documents and

as such proceeding was quashed. The ratio of the said report cannot have any bearing on the facts of the present case.

35. Mrs. Rituparna Ghosh, Learned Counsel appearing on the behalf of the opposite party State contends that the investigation is carried out fairly and impartially by the Investigating Officer and she supports the order passed by Learned Magistrate by accepting the final report in Alipore Police Station Case No. 73 dated March 30, 2010 and by rejecting the prayer for further investigation.

36. Mr. Debasish Roy, Learned Counsel appearing on behalf of the opposite party Santosh Saha submits that no materials have been collected by the Investigating Agency to prosecute him for any offence and as such Learned Magistrate has rightly discharged the opposite party including Santosh Saha under Section 239 of the Code of Criminal Procedure.

37. Mr. Anirban Mitra, Learned Counsel appearing on behalf of the opposite party Badal Shaw submits that the said opposite party is not connected with the offences alleged to have been committed by the opposite parties No. 2 to 4 and as such he deserves to be exonerated of any charge in connection with these criminal cases.

38. Having heard Learned Counsel representing the respective parties and on consideration of the materials on record I find that the petitioner Bani Saha, her husband Uttam Kumar Saha, the petitioner Kalpana Majumder, her husband Mrinal Kanti Majumder and the opposite party Ranju Sarkar entered into an agreement for sale with one Mangobinda Shaw and seven others for purchase of "the said disputed property" on the basis of registered deed of agreement by and between the parties on November 15, 2002 on payment of advance consideration of Rs. 20,00,000/-. The opposite party Ranju Sarkar assigned her 1/5th interest under the agreement for sale dated November 15, 2002 initially in favour of the petitioner Bani Saha and her husband on the basis of unregistered deed dated July 28, 2005 and thereafter in favour of the petitioner Bani Saha and her associates under unregistered deed dated September 14, 2006 by accepting Rs. 1,35,500/-. Again, the opposite party Ranju Sarkar relinquished her 1/5th interest under the agreement for sale dated November 15, 2002 in respect of "the said disputed property" in favour of the intending vendors under registered deed dated August 7, 2009 by accepting Rs. 3,00,000/-. I have already observed in paragraph 19 that the benefit under a contract for sale of immovable property is assignable interest, as the same is not mere right to sue under Section 6(e) of the Transfer of Property Act. Now, the question for consideration is whether assignment of benefit to the extent of 1/5th interest of the opposite party Ranju Sarkar under agreement for sale dated November 15, 2002 amounts to an offence on the background of allegations made by the petitioner Bani Saha. On consideration of the contents of written complaint treated as FIR of Alipore Police Station Case No. 73 dated March 30, 2010, I find that the petitioner Bani Saha has made specific allegation how the name of the opposite party Ranju Sarkar was incorporated in the agreement for sale dated November 15, 2002 as one of

the intending purchasers of "the said disputed property" without making any contribution by her or her husband Arun Kumar Sarkar towards advance consideration money of Rs. 20,00,000/-. It is also alleged how the opposite party Ranju Sarkar assigned the benefit in respect of her 1/5th interest under agreement for sale dated November 15, 2002 in favour of the petitioner Bani Saha under unregistered deed dated July 28, 2005 by admitting the fact that the opposite party Ranju Sarkar did not make any contribution towards payment of advance consideration money of Rs. 20,00,000/- to the intending vendors. It is further alleged how the opposite party Ranju Sarkar managed to execute another unregistered deed dated September 14, 2006 in respect of her 1/5th interest under agreement for sale dated November 15, 2002 in favour of the petitioner Bani Saha and her associates by receiving Rs. 1,35,000/-. Lastly, it is alleged how the opposite party Ranju Sarkar relinquished her 1/5th interest under agreement for sale dated November 15, 2002 in favour of the intending vendors by executing registered deed dated August 7, 2009 through her son Abhijit Sarkar who held power of attorney on behalf of Ranju Sarkar for execution of the said deed by receiving Rs. 3,00,000/-. By taking into consideration the allegations made by the petitioner Bani Saha in its entirety in the written complaint treated as FIR of Alipore Police Station Case No. 73 dated March 30, 2010 I find that the contents of the written complaint disclose offences under Section 420, 120B, 34 of the Indian Penal Code. Accordingly, I am unable to accept the contention made on behalf of the opposite parties No. 2 to 4 that the contents of FIR do not disclose any cognizable offence.

39. The next point for determination of the Court is whether the investigation of Alipore Police Station Case No. 73 dated March 30, 2010 was done fairly and impartially or the investigation was biased and tainted. On consideration of the materials available in the case diary produced on behalf of the opposite party/ State, I find justification in the submission made on behalf of the petitioner that the investigation was carried out in a biased and tainted manner. It appears from the materials available in the case diary (i) that the petitioner Bani Saha being the de facto complainant was never examined by the Investigating Officer and she was never asked to produce any document to substantiate the allegation made by her, (ii) that the Investigating Officer relied on the affidavit submitted by the opposite party Ranju Sarkar who happens to be the accused of the said criminal case without cross verification of the statement made by her, (iii) that the Investigating Officer did not consider the unregistered deed of assignment executed by the opposite party/accused Ranju Sarkar in favour of the petitioner/ de facto complainant Bani Saha on July 28, 2005, by which Ranju Sarkar admitted that she did not make any financial contribution at the time of payment of advance consideration of Rs. 20,00,000/- under deed of agreement for sale dated November 15, 2002, (iv) that the Investigating Officer did not collect reliable information about the mode of alleged payment of 1/5th interest of advance consideration money by the opposite party/accused Ranju Sarkar through Allahabad Bank at the time of execution of agreement for sale dated

November 15, 2002, (v) that the Investigating Officer did not collect the statement of accounts from the concerned Allahabad Bank from where Banker''s cheques of Rs. 17,00,000/- were paid to the intending vendors to ascertain the genuineness of the claim made by the opposite party/accused Ranju Sarkar that she paid Rs. 3,00,000/- to the land-owner in cash and Rs. 1,50,000/- by cheque and did not make cross-verification of the mode and manner of payment of advance consideration money reflected in the Memo of consideration of the deed of agreement for sale dated November 15, 2002, (vi) that the Investigating Officer did not discover how the opposite party/accused Ranju Sarkar deposited money in the Allahabad Bank for disbursement of advance consideration money through Banker''s cheques to the tune of Rs. 17,00,000/- by the petitioner Bani Saha and her associates and (vii) that the Investigating Officer did not record the statement of Kalpana Majumder for cross verification of the authenticity of the notice alleged to have been issued by the opposite party/accused Santosh Saha, junior to Arun Kumar Sarkar on August 3, 2009 to the effect that Kalpana Majumder and other intending purchasers are not interested to obtain the assignment of the opposite party/accused Ranju Sarkar in respect of her 1/5th interest under agreement for sale dated November 15, 2002. Without collection of the evidence about mode of payment of alleged advance consideration money by the opposite party/accused Ranju Sarkar and cross verification of the same from the statement of accounts of Allahabad Bank, Calcutta Main Branch so far as deposit of Rs. 17,00,000/- is concerned and the mode of payment reflected in the memorandum of consideration attached to the agreement for sale date November 15, 2002, it will not be possible to decide whether the opposite party/ accused Ranju Sarkar has committed any offence under the law. Since Investigating Officer submitted police report in final form relying mostly on the statement of the opposite party/accused Ranju Sarkar and without examining the de facto complainant and without making interrogation of the de facto complainant and her associates and without collecting the documents from the de facto complainant, I am of the view that the investigation carried out by the Investigating Officer was tainted and biased.

40. Learned Chief Judicial Magistrate, Alipore accepted the final report submitted by the Investigating Officer without considering the recitals of the unregistered deed dated July 28, 2005 executed by and between the petitioner Bani Saha and the opposite party Ranju Sarkar in proper perspective. Learned Magistrate failed to consider that the Investigating Officer did not collect any evidence with regard to alleged payment of 1/5th share of advance consideration of Rs. 20,00,000/- by the opposite party/accused Ranju Sarkar from the concerned Allahabad Bank from where Banker''s cheques of Rs. 17,00,000/- were paid to the intending vendors and cash of Rs. 3,00,000/- was paid to the intending vendors at the time of execution of the agreement for sale dated November 15, 2002. I have already observed why institution of Title Suit No. 50 of 2005 for specific performance of contract in respect of "the said disputed property" will not stand on the way of institution of the instant criminal proceeding by the petitioner Bani

Saha against the opposite parties including Ranju Sarkar. In view of my above findings, I have no hesitation to hold that the order of accepting final report by Learned Chief Judicial Magistrate is perverse and not justified under the law. This Court should interfere in the order of Learned Magistrate by way of revision as per proposition of law laid down in "Sanjaysingh Ramrao Chavan V. Dattatray Gulabarao Phalke" reported in (2015) 2 C Cr LR (SC) 268.

41. I have already observed that the investigation is found to be tainted, unfair and biased and as such there is need of further investigation as per proposition of law laid down by the Supreme Court in "Kishan Lal V. Dharmendra Bafna" reported in , (2009) 3 SCC (Cri) 611. My view also gets fortified by the proposition of law laid down by the Supreme Court in "Vinay Tyagi V. Irshad Ali" reported in , 2013 Cri. L. J. 754 and "Chandra Babu V. State" reported in , (2015) 8 SCC 774. The logical inference of my above findings is that the order passed by Learned Chief Judicial Magistrate, Alipore in connection with Alipore Police Station Case No. 73 dated March 30, 2010 is liable to be set aside.

42. The petitioner Kalpana Majumder has alleged in the written complaint treated as FIR of Siliguri Police Station Case No. 345 dated June 20, 2011 that the opposite party Ranju Sarkar, her husband Arun Kumar Sarkar, her son Abhijit Sarkar and one Santosh Saha, junior to Advocate Arun Kumar Sarkar made criminal conspiracy with each other for preparation of a false notice by the opposite party Santosh Saha on behalf of Kalpana Majumder without any instruction from her end and served the said notice on the opposite party Ranju Sarkar in order to substantiate the ground for preparation of deed of relinquishment of 1/5th interest of the opposite party Ranju Sarkar under agreement for sale dated November 15, 2002 in respect of "the said disputed property" in favour of the landowners and intending vendors on August 7, 2009 for wrongful gain of Rs. 3,00,000/-. It is also alleged in the said written complaint that the opposite party Santosh Saha committed fraud in preparing false notice on behalf of Kalpana Majumder and thereby deprived Kalpana Majumder and her associates including Bani Saha of their right to obtain assignment of interest of the opposite party Ranju Sarkar in respect of her 1/5th share under agreement for sale dated November 15, 2002. The contents of the said written complaint treated as FIR of Siliguri Police Station Case No. 345 dated June 20, 2011 undoubtedly disclose offences under Section 465/468/120B of the Indian Penal Code. However, the charge-sheet submitted under Section 406/420/120B/34 of the Indian Penal Code was considered by Learned Judicial Magistrate who discharged the opposite parties by passing order on June 11, 2013 in G.R. No. 1086 of 2011 which is under challenge in CRR 2378 of 2013.

43. I have already observed that Alipore Police Station Case No. 73 dated March 30, 2010 and Siliguri Police Station Case No. 345 dated June 20, 2011 relate to the offences committed in the same transaction and the incidents in both the cases cannot be identified as distinct and independent of each other and as such Siliguri Police Station Case No. 345 dated June 20, 2011 started at the instance

of the petitioner Kalpana Majumder can be treated as 2nd FIR in connection with the offences arising out of the same transaction for which Alipore Police Station Case No. 73 dated March 30, 2010 was started. In "Babubhai V. State of Gujarat" reported in , (2011) 1 SCC (Cri) 336 the Supreme Court quashed the 2nd FIR as both the FIRs related to the offences committed in the course of the same transaction and the Supreme Court also quashed the charge-sheets of both the cases as the investigation carried out in connection with the first FIR was biased, unfair and tainted. In "Amitbhai Anil Chandra Shah V. Central Bureau of Investigation" reported in (2014) 1 SCC (Cri) 309 the Supreme Court quashed the 2nd FIR filed by the CBI and laid down that the investigation based on the 2nd or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offences arising out of the same transaction and in respect of which either investigation is underway or final report under Section 173(2) of the Code of Criminal Procedure has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of inherent power under Section 482 of the Code of Criminal Procedure. By following the above proposition of law laid down by the Supreme Court I am of the view that the criminal proceeding being G.R. No. 1086 of 2011 arising out of Siliguri Police Station Case No. 345 dated June 20, 2011 is liable to be quashed. However, the materials collected by the Investigating Officer in connection with Siliguri Police Station Case No. 345 dated June 20, 2011 will be used by the Investigating Officer who will make further investigation in connection with Alipore Police Station Case No. 73 dated March 30, 2010. In view of my above findings, criminal revision being CRR 2378 of 2013 by which the petitioner Kalpana Majumder challenged the order dated June 11, 2013 passed by Learned Judicial Magistrate, 2nd Court, Siliguri in G.R. No. 1086 of 2011 has no merit and as such the same is liable to be dismissed.

44. As a result, the order dated December 29, 2012 passed by Learned Chief Judicial Magistrate, Alipore, South 24-Parganas in CGR Case No. 1085 of 2010 is set aside. The Deputy Commissioner of Police (Special), Detective Department, Kolkata is directed to make further investigation of Alipore Police Station Case No. 73 dated March 30, 2010 and to submit police report in final form under Section 173(8) of the Code of Criminal Procedure as early as possible. The Deputy Commissioner of Police (Special), Detective Department, Kolkata will take into consideration the materials already collected by the previous Investigating Officer of Alipore Police Station Case No. 73 dated March 30, 2010 and Siliguri Police Station Case No. 345 dated June 20, 2011. The Deputy Commissioner of Police (Special), Detective Department, Kolkata will also take into consideration the allegation made by Kalpana Majumder in connection with Siliguri Police Station Case No. 345 dated June 20, 2011 during further investigation of Alipore Police Station Case No. 73 dated March 30, 2010. The Deputy Commissioner of Police (Special), Detective Department, Kolkata will not take any coercive measure against the accused persons so long they will co-operate with the investigation. The Criminal Revision being CRR No. 218 of 2012 is allowed and

CRR No. 2378 of 2013 is dismissed.

45. The Department is directed to forward a copy of this judgement to the Court of Learned Chief Judicial Magistrate, Alipore and another copy to the Deputy Commissioner of Police (Special), Detective Department, Kolkata for favour of information and necessary action. The urgent photostat certified copy of the judgment and order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.