
(2012) 07 CAL CK 0184
In the Calcutta High Court
Case No : C.R.R. 2414 of 2011

Bhagwan Singh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 120B, 323, 406, 420, 447

Citation : (2012) 07 CAL CK 0184

Hon'ble Judges : Dipak Saha Ray, J

Bench : Single Bench

Advocate : Pushpal Satpathi and Mr. Suman Das Adhikary, for the Appellant; Amartya Ghosh for the State, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Saha Ray, J.—The present case arises out of an application u/s 482 of the Code of Criminal Procedure, 1973 for quashing the proceeding of G.R. Case No. 118 of 2011 arising out of Kotwali P.S. Case No. 22 of 2011 dated 16.1.2011 under Sections 420/406/120B/447/506/323 of the Indian Penal Code, which is pending before the learned Chief Judicial Magistrate, Paschim Medinipore. The relevant facts of the present case are, in a nutshell, as follows :

Opposite party no. 2 herein as defacto complainant filed a petition of complaint before the learned Chief Judicial Magistrate, Paschim Medinipore which was sent to the O.C., Kotwali P.S. for investigation after treating that complaint as FIR u/s 156(3) of the Code of Criminal Procedure, 1973. Accordingly, Kotwali P.S. Case No. 22 of 2011 dated 16.1.2011 under Sections 420/406/120B/447/506/323 of the Indian Penal Code was started.

2. In the said petition of complaint the defacto complainant has alleged inter alia that on 24.12.2010 accused No. 1 alongwith some miscreants entered into the land of the defacto complainant/petitioner herein and other and informed him that he (accused no. 1/petitioner herein) obtained possession of that land on the

basis of an agreement of sale executed by him (defacto-complainant) and other co-sharers of that land on 24.09.2010 in favour of the accused No. 1 and for that purpose accused No. 1 paid Rs. 20,00,000/- and that the deed of sale in respect of the said land would be executed on payment of the rest amount of Rs. 6,00,000/-. It is contended in the petition of compliant that the defacto complainant never signed any such agreement; nor did he take any amount of money as advance as alleged and accordingly he informed the matter to the I.C., Kotwali P.S. It is further alleged that on query he also came to know that other co-sharers of the said property neither took any advance nor signed any such agreement of sale. It is accordingly alleged that the accused persons committed offences punishable u/s 420/406/120B/447/506/323 of the Indian Penal Code.

3. It is the case of the petitioner that the defacto complainant/O.P. No. 2 has filed the case with an ulterior motive to harass him. It is alleged that the dispute between the parties is purely civil in nature and civil remedies are available. It has also been alleged that the ingredient of offences punishable u/s 420/406/120B/447/506/323 of the Indian Penal Code are also found absent in the contents of the FIR.

4. The learned counsel for the petitioner has submitted that the defacto complainant/O.P. No. 2 herein in his petition of complaint has never stated that the accused persons dishonestly induced him to deliver any property. In fact, the petition of complaint does not disclose that being entrusted to look after the property, the accused dishonestly transferred that property in his name. The learned counsel has further submitted that no averment has also been made in the petition of complaint disclosing that accused persons threatened the defacto complainant with injury or that he assaulted the defacto complainant. So, the petition of complaint does not disclose any ingredient of offence punishable under Sections 420/406/120B/447/506/323 of the Indian Penal Code.

5. The O.P. No. 2/State has submitted that the FIR discloses commission of criminal offences; so the allegations made therein will have to be taken on the face value. He has further submitted that the inherent power u/s 482 of the Code of Criminal Procedure has to be exercised sparingly, carefully and with great caution and also in the rarest of rare cases. So, the prayer for quashing the FIR is required to be rejected.

6. In the instant case, the controversy mainly relates to the question as to i) whether the FIR of this case was filed against the accused persons mala fide and with ulterior motive and ii) whether the allegation made in the complaint prima facie discloses commission of offences as alleged in the FIR.

7. Now, after taking into consideration all relevant facts and materials and giving due regard to the submission made by the learned counsels for the parties, it appears that three points are required to be considered i.e., i) whether there is sufficient ground for proceeding against the petitioner/accused persons, ii) whether there is an abuse of process of the Court and iii) whether ends of justice

demands quashing of the proceedings.

8. In paragraph 1 of the petition of complaint it has been alleged that accused No. 1 was entrusted to look after the property belonged to the defacto complainant and others. The petition of complaint further goes to show that the accused persons by forging a document claimed that the defacto complainant and other co-sharers of that property executed an agreement of sale in favour of the accused No. 1 and at the time of execution of that agreement, they delivered the possession of the said property in his favour. It is the case of the defacto complainant that neither he nor any of the co-sharers of that property executed any such agreement of sale. So, on plain reading of the FIR it appears that the contents of the FIR disclose criminal offences.

9. In the instant case, though it is submitted on behalf of the petitioners/accused persons that the dispute between the parties in civil in nature and civil remedies are available. But in this case, there is nothing on record to show that the petitioner filed any suit before any civil court for availing of remedy in respect of the alleged agreement of sale. So, it may be reasonably presumed that it is within the knowledge of the accused persons that no civil remedy is available in respect of the alleged dispute between the parties.

10. Considering the above facts and circumstances and materials on record and since the petition of complaint constitutes criminal offences, I find no merit in the present application u/s 482 of the Code of Criminal Procedure which must be dismissed.

11. Accordingly, the instant application u/s 482 of the Code of Criminal Procedure fails.

12. CRR No. 2414 of 2011 is dismissed and in the nature and background of the case without cost.

13. Let a copy of this judgement be sent to the learned trial court for information and necessary action. Urgent Photostat certified copy of this judgement be supplied to the parties, if applied for, subject to compliance with all necessary formalities.