
(2015) 04 CAL CK 0022
In the Calcutta High Court
Case No : CRR 2820 of 2011

Jiban Krishna Ghosal and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 419, 420, 460, 467

Citation : (2015) 3 CALLT 448

Hon'ble Judges : Subrata Talukdar, J.

Bench : Single Bench

Advocate : Amalesh Ray, for the Appellant; Subir Banerjee, Advocates for the Respondent

Judgement

Subrata Talukdar, J.—In this application the petitioner challenges the criminal proceedings arising out of Beliaghata Police Station Case No. 32 dated 2nd February, 2010 under Sections 419, 420, 460, 120B, 467, 668 and 471 of the Indian Penal Code corresponding to G.R. Case No. 311 of 2010 pending before the Ld. Additional Chief Judicial Magistrate (for short the Ld. A.C.J.M.) at Sealdah.

2. Sri Amalesh Ray, Ld. Counsel appearing for the petitioners submits that the petitioners are bona fide purchasers for value of 3 flats from a Developer, Sri Amit Bhattacharjee, proprietor of M/s. Bhattacharjee Construction. The said flats comprise the Developer's allocation at the premises No. 53/1 M. Chaul Patty Road (for short the subject premises), Police Station Beliaghata, Kolkata, 700010.

3. Taking this Court to the Agreement for the Sale dated 30th May, 2004 Sri Ray submits that such Agreement was entered into by the Developer with the individual purchasers and, in the said Agreement the present OP2-complainant was shown to be the owner/confirming party.

4. Sri Ray further submits that pursuant to the Agreement for Sale the petitioners-purchasers wrote to the Developer sometime around 2009 requesting him to take necessary steps for execution of the Deed of Conveyance of their

respective flats. The communication made as aforesaid was replied to by the Developer stating, inter alia, that he has come to learn of the fact that the OP2-complainant has illegally claimed herself to be the owner of the subject premises and induced the Developer to enter into a Development Agreement with her. It was further contended by the Developer that the subject premises is "Khas Mahal" property under the Collector, South 24-parganas and mutated in the names of Gour Krishna Sen, Gopendra Krishna Sen and Brojo Gopal Sen of 91, Durga Charan Mitra Street, Kolkata vide Rent Roll Register No. 1 being Mutation case No. 760 of 1926-27.

5. The petitioners were further informed by the Developer that the subject premises was mutated from time to time in the names of the successors-in-interest of the Sens. The said successor-in-interest had expressed their willingness to execute the Deed of Conveyance in their capacity as the original owners in favour of the intending purchasers-petitioners. On the other hand, the OP-complainant has not shown any interest in executing the registered Deed of Conveyance.

6. Ld. Counsel further submits that pursuant to such reply steps were taken to execute the Deeds of Conveyance in 2009 between the successors-in-interest of the Sens, through their constituted attorney, one Sri Subir Roy Chowdhury with each of the petitioners as purchasers and the Developer as the Confirming Party.

7. Ld. Counsel also draws the attention of this Court to Title Suit No. 150 of 2009 filed by the successors-in-interest of the Sens before the Ld. 1st Civil Court (Junior Division at Sealdah) impleading the OP-complainant as the defendant No. 1, the Developer as the defendant No. 2 and others for declaration, injunction and recovery of khas possession. The Ld. Civil Court having refused the order of temporary injunction against the Sens-plaintiffs, such order was carried in appeal being Misc. Appeal No. 42 of 2010 filed before the Ld. Additional District Court (South, Sealdah).

8. In the Misc. Appeal the Ld. Appellate Court was pleased to hold by order dated 6th January, 2011 as follows:-

"That the Misc. Appeal be and the same is allowed on contest but without costs. The order No. 16 dated 11.06.10 passed by Ld. Civil Judge, Jr. Division, 1st Court Sealdah in connection with Title Suit Case No. 150/09 is hereby set aside.

Respondents/defendants are hereby restrained from entering into sale transaction with each other with regard to any flat sale transaction or execution of conveyance deed to any third party from 40% of respondents/defendants No. 1/Occupier's allocation in any manner whatsoever. Similar restraintment order would be for 60% Developers Allocation with whom agreement of sale has already been made. Order of this court will not, for the time being disturb the existing possession or interfere with any rights of prospective buyers which have already been created before filing of this Title Suit and there shall be status quo with regard to possession as on this date for the prospective buyer who is

already in possession.

The Ld. Court below to expedite the hearing of this case as early as possible Instant Misc. Appeal is disposed of.

Send the L.C.R. back to the Ld. Court below along with the copy of the judgment of this Court for information and taking necessary action."

9. Sri Ray therefore submits that the dispute having arisen with regard to the ownership of the subject premises between the Sens and the OP2-complainant which became the subject matter of civil proceeding, no mens rea can be imputed against the present petitioners who are the third parties and have purchased the flats for value. Ld. Counsel also points out two observations of an Hon"ble Single Bench of this Court in a civil revisional application arising out of the pending suit and carried before this Court by the OP2-complainant-defendant No. 1 against the Sens being CO No. 1057 of 2011. Sri Ray submits that the Hon"ble Revisional Court was pleased to affirm the order of the Ld. Appellate Court and refused to interfere with the same. It will be useful to reproduce the directions dated 20th July, 2011 of the Hon"ble Single Bench below:-

"I think that it is the correct approach that has been adopted by the Appeal Court keeping the interest of the prospective buyers in mind since ultimately they would be the worst sufferers and their title would be imperfect if the plaintiff ultimately succeeds in the suit.

In view thereof, I am not inclined to interfere with the order passed by the Appellate Court.

Mr. Mukherjee, Ld. Advocate appearing on behalf of the defendant No. 1 submits that so far the owners' allocation is concerned, that is already sold, which fact, however, is being disputed by the plaintiffs.

Since it appears that there is an apparent conflict over the title in respect of the suit property and the buyers are likely to be affected, in the interest of justice the hearing of the suit should be expedited."

10. In the above backdrop Sri Ray argues that when both the Ld. Appellate Court and the Hon"ble Single Bench have directed expeditious disposal of the suit and confirmed the protection of third party buyers, such as the present petitioners, the filing of the criminal complaint is an abuse of the due process of law.

11. Ld. Counsel, taking this Court to the contents of the complaint, further submits that the primary allegations are against the Developer and the constituted attorney of the Sens being the accused Nos. 1 and 2. The only allegation against the petitioners is that they have entered into Deeds of Conveyance and thereby deprived the OP2-complainant of her proportionate share in the subject premises.

12. Sri Ray points out that the ingredients of the offences alleged in the complaint pertaining to cheating, breach of trust and forgery along with the

requisite mens rea is hopelessly found to be absent from the complaint.

13. In support of his arguments Sri Ray relies upon the decisions of the Hon'ble Apex Court reported in Joseph Salvaraj A. Vs. State of Gujarat and Others, and All Cargo Movers (I) Pvt. Ltd. and Others Vs. Dhanesh Badarmal Jain and Another, .

14. Therefore, Ld. Counsel prays for quashing of the proceeding qua the petitioners.

15. Strongly refuting the arguments of the petitioner, Sri Probal Mukherjee, Ld. Senior Counsel appearing for the OP2-defacto complainant submits that from paragraphs 8 and 9 of the complaint it would be evident that the petitioners along with the other accused persons actively participated in entering into a criminal conspiracy and cheating the OP2-complainant. Paragraphs 8 and 9 of the complaint read as follows:-

"8) That the above accused persons committed criminal breach of trust in respect of proportionate share of property which was entrusted by the complainant to the accused Sri Amit Bhattacharjee.

9) That the accused persons entered into a criminal conspiracy with each and other to sell the share of complainant's property to other persons i.e. serial No. 5 to 8 has mentioned earlier and for which they misrepresented the purchaser and different Government Authority including A.D.S.R. Sealdah intentionally and knowing it fully well that those representation were all false. Amit Bhattacharjee indulged in such illegal activities with active participation of serial No. 2, 3 and 4 mentioned above."

16. Ld. Senior Counsel further submits that the petitioners have knowledge of the fact that OP2-complainant was the owner of the property and her name figured in the Sale Agreement. Therefore, the petitioners in collusion with the Developer and the Sens acted in tandem to deprive the OP2-complainant of her proportionate share in the subject premises by omitting her from the Deeds of Conveyance.

17. According to Sri Mukherjee such offence has criminal overtones and must be allowed to reach its logical conclusion.

18. Sri Subir Banerjee, Ld. Additional Public Prosecutor takes this Court to a document in the nature of a consolidated rate chart of the Kolkata Municipal Corporation dated 4th of June 1997 which is part of the case diary and points out that the OP2-complainant has been shown to be the owner of the subject premises. At the same time Sri Banerjee also draws the attention of this Court to the written statement filed by the Collector, South 24-parganas being the proforma respondent No. 16 in Title Suit No. 150 of 2009. Paragraph (IV) of the said written statement reads as follows:-

"Therefore it appears from the Rent Roll Register No. 1 kept with the Khas Mahal

Authority since 1925-26 Smt. Suhasini Sen and others the predecessors of present plaintiffs were the recorded owners of the Schedule Property vide Mutation Case No. 925 of 1925-26, 760 of 1926-27, 1009 of 1929-30 and 180 of 1939-40. The names of the present plaintiffs are recorded Mutation Case No. 17(IX) of 2006-07. The Kolkata Khas Mahal Section are the controlling authority of the Khas Mahal Lands." 19. Having heard the parties and considering the materials on record this Court finds that the present petitioners are the bona fide purchasers for value of the subject premises. Admittedly the Agreement for Sale dated 30th May, 2004 mentions the name of the OP2-complainant as the owner/confirming party to the Agreement. It is also noticed that after the Agreement for Sale the petitioners in the usual course of conduct inter se the parties, approached the Developer for executing the Deed of Conveyance. The Developer vide his reply dated 7th January, 2009 pointed out to the petitioners-purchasers the fact of mutation in respect of the subject premises in favour of the predecessors-in-interest of the Sens. At the same time the Developer expressed his difficulties in getting the claimed owner, the OP2-complainant to give her consent to executing the Deed of Conveyance.

20. In the background of the above facts the petitioners-purchasers having already paid the Developer part of the consideration money at the time of entering into the Agreement for Sale, in the normal course of conduct were keen to complete the transactions and take possession of their respective flats upon execution of the Deed of Conveyance. It is not in dispute that the subject flats purchased by the petitioners pertain to the Developer's allocation and, with the Developer taking the responsibility for executing the Deed of Conveyance on behalf of the Sens, whose names are found in the records of the "Khas Mahal" subject premises through their constituted attorney, Subir Roy Chowdhury, the petitioners entered into their respective Deeds of Conveyance. This Court is at pains to notice any semblance of mens rea on the part of the petitioners qua the OP2-complainant from their conduct in completing the sale transaction and obtaining their respective flats from the Developer after having invested considerable sums of money.

21. It is further noticed by this Court that simultaneous to execution of the Deed of Conveyance in the year 2009, the Sens filed a Title Suit being No. 150 of 2009. The interim relief of injunction being denied to the plaintiffs, the Sens approached the First Appellate Court and their Misc. Appeal was allowed on contest.

22. It is relevant to note that the Ld. Appellate Court by its order dated 6th January, 2011 while prohibiting any fresh sale transaction in respect of any third party from either out of the Developer's allocation or the occupier's allocation prospectively, did not disturb the existing position of the rights of buyers, who have already entered into their respective possession of the suit flats. The petitioners fall into the class of buyers whose rights have been protected by the order of the court in the Misc. Appeal.

23. Similarly an Hon''ble Single Bench of this Court by its solemn order dated 20th July, 2011 opined that the interests of the prospective buyers must be kept in mind and therefore did not interfere with order of the Ld. Appellate Court. The Hon''ble Single Bench observed with perspicuity that there is an apparent conflict over the title in respect of the subject premises and to resolve the same the hearing of the suit requires to be expedited.

24. The petitioners-purchasers had entered into their respective Sale Agreements in 2004 and executed their Deeds of Conveyance in 2009 and therefore belong to the class of buyers whose rights were protected by the Ld. Appellate Court and affirmed by the Hon''ble High Court. At the same time it must be noticed that the complaint was filed thereafter in February, 2010.

25. Even from a bare reading of the written complaint it can be gathered that the thrust of the allegations are against the accused Nos. 1 and 2, being the Developer and the constituted attorney of the Sens respectively. The only allegation, as sought to be strenuously argued by Sri Mukherjee is the alleged connivance of the accused Nos. 2, 3 and 4, being the present petitioners with the Developer. It is suggested in the complaint that the petitioners-purchasers misrepresented the fact of the ownership of the subject premises before several government authorities and thereby caused deprivation to the OP2-complainant of her rights. The OP2-complainant claims to have been cheated on such score.

26. However, to the mind of this Court the contours of the complaint speak of a counterblast by the OP2-complainant having met with little success in the civil action. Even if it is presumed for the sake of argument that the dispute with regard to the subject premises or, the suit property as distinguished from the subject flats, is one of title and involves the Sens with the Developer on the one hand and the OP2-complainant on the other hand and such position appears to have been confirmed by the competent Civil Court right up to this Hon''ble Court, this Court finds substance in the argument of Sri Ray that the disputes being purely civil in nature and there being the little to show by way of an animus or mens rea on the part of the petitioners qua the OP2-complainant the ingredients of the IPC offences sought made out in the complaint are absent in so far as the petitioners are concerned.

27. In the backdrop of the above discussion this Court finds that the present petitioners-purchasers have been roped in vexatiously by the OP2-complainant in order to mount pressure on the Developer and the Sens. It cannot be forgotten that in the dispute regarding title to the subject premises the petitioners are third parties.

28. This Court is not unmindful of the law settled that caution must be exercised in closing proceedings at the investigation stage. However, at the same time this Court cannot be a mute spectator to a vexatious criminal prosecution.

29. For the above reasons the criminal proceedings being Beliaghata Police Station Case No. 32 dated 2nd February, 2010 corresponding to G.R. Case No.

311 of 2010 pending before the Ld. Additional Chief Judicial Magistrate, Sealdah are quashed qua the petitioners only.

30. CRR 2820 of 2011 stands accordingly allowed.

31. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.