

(2013) 11 CAL CK 0030
In the Calcutta High Court
Case No : C.R.R. No. 3063 of 2009

Manju Bikash Basu and Others

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 CAL CK 0030

Hon'ble Judges : Asim Kumar Mondal, J

Bench : Single Bench

Advocate : Milon Mukherjee, Mr. Sourav Chatterjee and Mr. Pratim Chatterjee, for the Appellant; Arup C. Chatterjee, Anirban Mitra and Mr. Prasenjit Saha for Opposite party No. 2, for the Respondent

Judgement

Asim Kumar Mondal, J.—This is an application u/s 482 of the Code of Criminal Procedure praying for quashing of proceedings being case No. C/1530/2008 (T.R. No. 1697 of 2008) pending before the learned Metropolitan Magistrate, 14th Court, Calcutta u/s 406/420/120B of the Indian Penal Code and all orders passed therein including the orders dated 15.12.2008 and 02.04.2009. The opposite party No. 2 Sri Kalyan Kumar Basu filed a complaint case on 15.12.2008 before the Learned Additional Chief Metropolitan Magistrate, Calcutta which was registered as C. Case No. C/1530/2008 against the present petitioners. Learned Additional Chief Metropolitan magistrate after taking cognisance transferred the case before the learned Metropolitan magistrate at 14th Court u/s 192(1) of Code of Criminal Procedure for enquiry and disposal subject to amended provisions of Section 202 of the Code of Criminal Procedure. The case of the opposite party No. 2 has averted in the said complaint case is that the accused persons/petitioners sold a plot of land measuring 1 acre 50 decimals situated at Parganas Sabang, Dag No. 1573 which a joint property and initially the share of the opposite party No. 2 and some other co-owners were sold by the said accused persons as sole owners thereby suppressing the names of the opposite party No. 2 along with other co-owners to one Sisir Sen and executed a deed of sale amongst themselves to deprive of other legitimate owners including the

opposite party No. 2; that the said conspiracy was hatched up at 6A, Mohan Bagan Lane under P.S. Shyampukur, Kolkata on 20.07.2007 that the consideration was shown as Rs. 20,000/- though the registering authority valued the same at Rs. 4,50,000/-; that upon being aware of the same the opposite party No. 2 after obtaining the certified copy of the sale deed filed the complaint for taking necessary action by the Court. The learned Trial court examined the sole complainant i.e. opposite party No. 2 and considered the evidences thereafter sending complaint to concerned police station for enquiry u/s 202 of the Criminal Procedure Code. After obtaining the report from the concerned police, the learned Trial Court issued process against the accused persons/petitioners under Sections 406/420/120B of the Indian Penal Code. The petitioners have preferred the present application challenging the legality and propriety of the same order of learned Trial court and also for quashing the proceedings on the grounds that the complaint even if are believed to be true, have no basis whatsoever after the deed of rectification dated 01.08.2009, could not written in the schedule, the schedule property was described as 7/14th part of land admeasuring about 1.5 acres further that the petitioners are also the owners of the suit property. They have executed a sale deed, execution of sale deed is not denied if somebody is aggrieved by the false assertions as alleged to have been made in the said sale deed, he would be the vendee and not the co-sharers. Further that there is no ingredients of initial deception on the part of the petitioners right at the beginning of the transaction has neither been expressly stated nor indirectly suggested in complaint. There is nothing reflected in the order under challenge that learned magistrate summoning the accused persons applied mind to the facts of the case and law applicable thereto and finally that the allegations made in the petition of complaint and the materials furnished in support of such allegations do not disclose the commission of offences by the petitioners and hence the criminal proceedings instituted the accused/petitioners is not maintainable in law and is liable to be quashed.

2. Mr. Milon Mukherjee with Mr. Sourav Chatterjee and Mr. Pritam Chatterjee appeared on behalf of the petitioners. Mr. Mukherjee submitted and argued at length relying upon some decisions reported in : -

1. 1990 C.Cr.LR (Cal - DB) 1
2. 2003 C.Cr. L.R. (Cal) 249
3. Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others,
4. (2009) 3 SCC (Cri) 461
5. (2009) 3 SCC (Cri) 929
- 6 Ramesh Dutt and Others Vs. State of Punjab and Others,

3. It is submitted by Mr. Mukherjee that out of eight petitioners, the petitioner No. 5 namely Smt. Tripti Ghosh has passed away on 6th April, 2012 and a death certificate to that effect is also filed before this Court as such the impugned

proceeding against the petitioner has already abetted. Further it is submitted admittedly on July 20th, 2007 the petitioner No. 1 to 6 and one Smt. Archana Mitra, since deceased executed a deed of sale in favour of one Sisir Sen (Accused No. 9) which was registered as Sub-registry Office at Pingla, Police Station - Pingla. It is also admitted position that the petitioner sole a piece of land admeasuring about 1.5 acres. The petitioner No. 7 is a signatory to the said deed and petitioner No. 8 and one Tarak Ghosh described as accused No. 10 were witnesses to the said deed of sale. The purchaser Sri Sisir Sen has also rectified in the impugned petition of complaint as accused No. 9. It is also an admitted position that when petitioners detected the errors, they immediately along with purchaser namely Sisir Sen presented a deed of rectification on August 1st, 2009 which was admitted on August 3rd, 2009 by the Additional Registrar of Assurance-III, Kolkata. In the said rectification deed the property was described as 7/14th part of a land admeasuring about 1.5 acres. In the said deed of rectification it has been mentioned that the area of the land in the schedule of the aforesaid deed of sale was inadvertently described as 1.5 acres and it should be read as 7/14th part of land. Mr. Mukherjee argued that cognisance was taken in a printed order sheet which demonstrate complete non-application of mind on the part of learned Magistrate to determine the question whether it constitute certain facts or whether there is a prima facie case persists an exercise of judicial mind is preeminently required and the same cannot be done in a mechanical process. It appears that learned Magistrate did not feel inclined to issue process at the initial stage and, therefore, by order dated January 6th, 2009 directed an enquiry in terms of Section 202 of the Code of Criminal Procedure so, it can be said that learned magistrate was not satisfied in issuing process initially and directed for enquiry as to whether or not there is sufficient ground for proceeding. Police enquired into the matter and submitted a report on March 30th, 2009 before the learned Magistrate. Mr. Mukherjee submits that a perusal of the enquiry report would indicate that apart from the petitioner No. 4 all the accused persons are residing outside the jurisdiction of the learned Magistrate. In the said report it was also noted that the petitioner No. 4 too frequently stayed Basirhat at her daughter's matrimonial home. There is nothing reflected in the enquiry report as to whether or not there was sufficient ground for proceeding, in fact, in the enquiry report nothing has been reflected or no case has been made out for proceeding against the petitioners and does not add any material to what was already furnished and available before the learned Magistrate on January 6th, 2009 at the time of ordering such enquiry u/s 202w of the Code of Criminal Procedure. Mr. Mukherjee further submits that by the impugned order dated April 2nd, 2009 the learned Magistrate mechanically and without application of his mind issue process against the accused persons. Learned magistrate should have examined the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. Magistrate should not be a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The complaint has made petitioner NO. 7 Dr.

Sayambhu Mitra as an accused who was not even a signatory to the sale deed in question. In fact he has been roped in the case only because he happens to be the son of a signatory who has died, namely Smt. Archana Mitra. Mr. Mukherjee submits that such action by itself demonstrates the malafide in the institution of the instant case. The malafide intention of the complainant is also appears clear from the fact that the signatory and the witnesses in the sale deed in question as well as the vendee Sri Sisir Sen ahs also been roped in as an accused.

4. Mr. Mukherjee submits that believing such allegations to be true, no case of either cheating or criminal breach of trust can be said to have been made out against the petitioners and other co-accused persons and the complainant being the opposite party No. 2 cannot be said to be aggrieved as a result thereof. On the contrary Mr. Sisir Sen, being the purchaser for valuable consideration may claim that he has been victim of criminal offences. The instant proceeding is liable to be quashed merely on the ground of lack of territorial jurisdiction. The appellants are co-sharers is not in dispute, the dispute between them is confined to the extent of their respective shares. Such nature of dispute should be determined only in a civil suit. Finally Mr. Mukherjee argued and submitted that as there is no prima facie ingredients complained in the petition of complaint by taking cognisance and issuance of process, the same should be set aside or quashed.

4. Mr. Arup C. Chatterjee with Mr. Anirban Mitra and Mr. Prosenjit Saha appeared on behalf of the opposite party No. 2. Mr. Chatterjee submits and argued relying on : 1. 1996 SCC (Cri) 443`

2. 2004 SCC (Cri) 353

3. (2007) 1 C Cr LR (SC) 391

4. (2009) 3 SCC (Cri) 1421

5. (2009) 3 SCC (Cri) 1430

Mr. Chatterjee argued and submitted that there is a clear intention of the petitioner to deceive the opposite party No. 2 and other co-owners from the beginning of the sale deed admittedly the opposite party No. 2 and others are co-sharers of the property in question. In the sale deed in question the accused persons sold the entire property representing themselves as the sole owners and suppressing the names of the opposite party No. 2 along with other co-owners. From the sale deed it is clearly transpires that the fact of joint ownership was suppressed deliberately. It is further submitted that there are views of many Hon"ble High courts as well as Apex Court that revisional court interfere with the criminal proceedings at a very initial stage without going into the evidence during the trial. In the instant case, the stage has not given as yet and the revisional court should not enter into a debatable area of considering rival versions which is depreciated by the Hon"ble Supreme Court. Revisional Court should not disputed with the findings of the learned Trial court that a prima facie case made out in

the instant proceeding at this initial juncture. On careful consideration of the submissions advanced by learned Counsels for the parties and as well as on careful perusal of the States places before me by the learned Counsels for the parties in support of their respective submissions and arguments I find that there are some facts in the present revisional application which required to be taken into consideration in disposing of the present applications.

Admittedly the petitioners are sufficiently aged persons. Some of the petitioners appeared that they signed the disputed sale deed as a witness without having any interest in the property. Petitioner No. 7 not even a signatory in the deed but has roped with this criminal proceeding. The purchaser Mr. Sisir Sen who might be the aggrieved person for such misrepresentation in the sale deed in question has also made accused in the proceeding.

Admittedly the fact is that a deed of rectification has been executed by the accused persons in favour of the purchaser stating that in spite of 1.5 acres of land it should be read as 7/14th part of land admeasuring about 1.5 acres of land. The disputes as raised in the petition of complaint by the opposite party No. 2 is relates to the shares of the parties in the property in question. Such a dispute is civil in nature. It is also as it appears from order dated January 6th, 2009 the learned Trial court examined the complainant u/s 200 of the Criminal Procedure Code and directed to enquire into the matter by the police u/s 292 of the Criminal Procedure Code. Therefore, it could be said the evidence already on record on January 6th, 2009 before the learned Magistrate was not satisfactory for issuance of process against the accused petitioners. On perusal of the report submitted by the police in order dated April 2nd, 2009 learned Trial Court made out his mind and opined that the prima facie case u/s 406/420/120B of the Indian Penal Code was made out against the accused person. There is no observations and discussion in the order dated April 2nd, 2009 as to the materials produced before learned Magistrate after police enquiry and upon which learned Magistrate was satisfied and issued process.

On careful perusal of the police report as it available in the record it appears to me that the enquiring police officer interrogated the complainant and ascertained the fact that there was a partition deed between the parties and by virtue of the said partition deed the complaint is one of the co-sharers of inhabitants. Nothing reflected in the report as to whether he interrogated the accused persons. On the contrary it appears that the accused persons are resident of Salt Lake, Burdwan, Beltala, Muchipara, Ballugunge and West Midnapore. All the places are beyond the jurisdiction of learned Trial Court. The property in question is also beyond the jurisdiction of Trial Court and the alleged deed of sale also registered on July 22nd, 2007 before the Sub-Registry, Pingla, Paschim Midnapore, which is also outside the jurisdiction of learned Trial Court.

Here, the process has been issued by the learned Trial Court u/s 406/420/120B of the Indian Penal Code in view of the ingredients u/s 420 of I.P.C. I do not find any materials in the alleged petition of complaint to show that the complainant

was dishonestly induced to deliver the property in question by making a false or misleading representation and has been induced to do or omit to do anything which he could not do or omit. There is no intention has been established which may be called dishonest intention on the part of the petitioners. In view of the fact that immediately after detection of the errors they have execute a deed of rectification correcting the mistake. There is no ingredients to establish the offences u/s 406 of the Indian Penal Code. Admittedly both the parties are co-sharers and the dispute is relating to the extent of shares which is to be decided by an appropriate Civil Court having jurisdiction. In the instant case, from the orders impugned it is clear that learned Trial Court did not apply its judicial mind in taking cognisance of the alleged offences one learned Trial court observed that upon perusal of the offences u/s 200 of the Criminal Procedure Code he is not inclined to issue process on the other hand a perusal of the police report learned Trial Court issued the process without any observation regarding the materials available in the police report which made him satisfied to issue process.

In view of my finding as well as in view of the submissions advanced by learned Counsels for the parties as well as having regard to the citations pressed before me and the parties in consideration of the facts and circumstances of the present case, I am of the view that the learned trial court took the cognisance of the complaint without applying judicial mind and without proper consideration of the materials in the perspective of facts and circumstances of the present case.

Thus, the proceedings initiated in C. Case No. 1530 of 2008 on the basis of complaint filed by the opposite party No. 2 is not proper and legal and as such same is liable to be quashed. Hence the Criminal Revision u/s 482 of the Code of Criminal Procedure is allowed. The proceedings being case No. C-1530 of 2008 (T.R. No. 1697 of 2008) pending before the learned Metropolitan Magistrate, 14th Court, Kolkata under Sections 406/420/120B of the Indian Penal Code and all other orders passed therein including Orders dated December 15th, 2008 and April 2nd, 2009 are hereby set aside.

The office is directed to return the L.C.R. immediately.

Urgent Photostat Certified Copy of this order if applied for be given to the parties on priority basis.