

(2020) 01 CAL CK 0026

In the Calcutta High Court

Case No : General Application (GA) No. 3315 Of 2018, Writ Petitions (WP) No. 4961 Of 2019

Maumita Bhattacharya

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 02-01-2020

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 4C Code Of Criminal Procedure, 1973
— Section 340
Indian Penal Code, 1860 — Section 199, 200

Citation : (2020) 01 CAL CK 0026

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : T. Mukherjee, A.K. Saha, I. Pant, T.K. Bhattacharyya, M. Banerjee, A. Majumder, D. Ghosh

Final Decision : Dismissed

Judgement

Tapabrata Chakraborty, J

The Court : The present application under section 340 of the Code of Criminal Procedure (in short, the said Code) has been preferred in connection with a writ petition being W.P. no.161 of 2018, which was disposed of by an order dated September 27, 2018.

Mr. Mukherjee, learned advocate appearing for the applicants, being the respondent nos.3 and 4 in the writ petition, submits that the writ petition was filed upon suppression of material facts and with incorrect and false statements placing reliance upon forged documents. The writ petitioner had intentionally and deliberately misled the Court and obtained the order dated 27th September, 2018.

Drawing attention of this Court to the averments made in the application filed by a firm, namely, Murzello Engineering Services Private Limited praying for leave to

intervene in the original application pending before the learned Debts Recovery Tribunal-III being O.A. No.609 of 2016 and the averments made in the writ petition, Mr. Mukherjee submits that the entire claim of the writ petitioner is based on a fact that she was a tenant in the property measuring 100 decimals with pucca structure in the form of shed, office rooms, electric rooms etc. (in short, the said property) under the applicants on and from the month of June, 2008. At the said juncture there was no existing structure in the said property and the writ petitioner could not have been granted license by the applicants in the month of June, 2008 since the applicants themselves purchased the said property on the basis of two deeds of conveyance executed on 9th February, 2012. The leave and license agreement was thereafter executed in favour of the writ petitioner only on June 26th June, 2017. The applicants thereafter, filed an application for conversion under section 4C of the West Bengal Land Reforms Act, 1955 and such application was allowed on November 20, 2012. Upon availing such permission towards conversion of classification of the said property, the applicants applied to the competent authority for sanction of the building plan on 28th December, 2012. Prior thereto, there was no structure on the said land. Furthermore, it would be explicit from the documents annexed to the present application itself that the writ petitioner obtained electricity connection only after execution of the leave and license agreement on 26th June, 2017.

He argues that bank loan was obtained by the applicants upon mortgaging the property in the year 2013. The writ petitioner might have been prejudiced had she acquired any interest upon the concerned property prior to such mortgage. The leave and license agreement was executed only on 26th June, 2017. The writ petitioner had sought to substantiate her claim on the rudiments of an erroneous statement that she acquired right upon the said property on and from the month of June, 2008.

Per contra, Mr. Bhattacharyya, learned advocate appearing for the writ petitioner submits that the present application is not maintainable since an application under section 340 of the said Code had already been preferred by the applicants on December 6, 2018 in connection with the title suit being Title Suit No. 175 of 2018 pending before the competent civil forum. Such fact has been suppressed in the present application affirmed on 6th December, 2018. As the application under section 340 of the said Code is pending before the civil forum, the present application is not maintainable inasmuch as there is no provision to file parallel applications before different fora.

Drawing the attention of this Court to the averments made in paragraphs 7 and 10 of the plaint, Mr. Bhattacharyya submits that the plaintiff had categorically pleaded that in the month of June, 2008 the plaintiff approached the respondent no.3 for taking the property on a monthly rent of Rs.5000/- and such proposal was accepted and such arrangement was continuing for about three years and four months and thereafter the monthly rent was revised and enhanced to Rs.7500/- in the month of June, 2012. In the written statement filed by the

applicants there had been only been a general denial of the said specific averments made in the plaint. Such disputed issues are under consideration in the pending title suit being Title Suit No.175 of 2008. No application has been filed by the applicants in the pending title suit for recalling the interim order passed on 19th March, 2018. The issues involved in the present application were also not urged by the applicants in the writ petition or in the appeal preferred against the order dated September 27, 2018. The order passed in the writ petition on September 27, 2018 was also not interfered with in the appeal preferred by the applicants.

Mr. Mukherjee, in reply, submits that there is no bar in preferring the present application in connection with the writ petition since the applicants had filed similar application before the civil forum where the title suit is pending and as such the allegation of suppression of material facts is not sustainable.

The primary pre-condition towards initiation of proceedings under section 340 of the said Code is that the Court has to arrive at a finding that it is expedient in the interest of justice that an enquiry should be made into the alleged offence. The mere fact that a person has made contradictory statements in a judicial proceeding is not, by itself, always sufficient to justify prosecution under sections 199 and 200 of the Indian Penal Code (in short, IPC). It must be shown that the person had intentionally made a false statement in the proceeding or fabricated false evidence for the purpose of using the same at any stage of the proceeding.

In the present case, the issue as to whether the writ petitioner had been a tenant in the concerned property from the month of June, 2008 or in the year 2017, is contentious and is pending adjudication before the competent civil forum. The disputed issues are yet to be finally decided. The allegation that the conduct of the writ petitioner has affected the administration of justice is not acceptable. In the said conspectus, no enquiry at this stage is required in the interest of justice towards initiation of proceedings under section 340 of the said Code.

In view thereof, this Court is unable to grant the relief as prayed for by the applicants and the present application is, accordingly, dismissed.

There shall, however, be no order as to costs.