

(2010) 06 CAL CK 0093
In the Calcutta High Court
Case No : C.R. R. No. 2349 of 2006

Nissan Developer and Properties Pvt. Ltd. and Others	APPELLANT
Vs	
State of West Bengal and Another	RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 397, 401, 482
Penal Code, 1860 (IPC) — Section 406, 420, 420B, 467, 468

Citation : (2010) 06 CAL CK 0093

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Farhauddin, for the Appellant; Abdus Salam, for State, Y.Z. Dastoor and Mayukhi Mitra for O.P. No. 2, for the Respondent

Judgement

Prasenjit Mandal, J.—This is an application under Sections 397/401/482 of the Code of Criminal Procedure, 1973 praying for quashing the proceeding being No. C-3256 of 2006 dated 21.04.2006 of the Shakespeare Sarani P.S. FIR No. 201 dated 18.06.2006 under Sections 120B/420/406/467/468/471 of the I.P.C. pending before the learned Chief Metropolitan Magistrate, Calcutta.

2. The petitioners are the accused persons in the complaint case lodged by the opposite party No. 2. The allegations of the opposite party No. 2 is that in October, 2003 he booked a flat and a covered car parking space at Rabindrapally, P.O. Krishnapur at a cost of Rs. 17,51,000/-. An agreement was executed for that purpose. The opposite party No. 2 paid full payment and he was put in possession of the flat by the petitioners. But when the opposite party No. 2 asked the petitioners to make registration of the flat in his favour, the petitioners did not agree and began to pass times on one plea or other. The flat was booked showing measurement 1622 sq. ft. But, actually when the delivery was made it was found that the covered area was only to the extent of 1343 sq. ft. Though the petitioners took price for 1622 sq. ft. built up area. Thus, the opposite party No. 2 was cheated. So he filed the petition of complaint before the learned Chief

Metropolitan Magistrate, who sent the said petition of complaint to the concerned P.S. u/s 156(3) of the Cr. P.C. The petitioners have come up for quashing the said proceeding on the ground that no prima facie case was made out in the petition of complaint.

3. Mr. Farhauddin has submitted that dispute between the parties, if any, is purely a civil dispute and it does not give rise any cause of action to lodge a criminal proceeding. Possession of the flat has been delivered to the opposite party No. 2 and he is enjoying the same. As per agreement, the deed of conveyance is to be done by the learned lawyer of the company of the petitioners and none else and for that reason a specific amount of money was to be claimed as per agreement and the intending buyer is bound to follow such agreements. The petitioners asked the opposite party No. 2 time and again to complete the same by having a registered deed through the appointed lawyer of the petitioners but he did not co-operate. So for non-execution of any deed in favour of the opposite party No. 2, the petitioners could not be blamed. Therefore, the proceeding should be quashed.

4. On the other hand, Mr. Abdus Salam appearing for the State and Mr. Dastoor appearing for the opposite party No. 2 support the lodging of criminal case by the opposite party No. 2 and submit that criminal case shall proceed in accordance with law. The case diary is produced and it appears that chargesheet has been submitted against the petitioners. So the trial of the case shall proceed.

5. Having considered the submission of the learned Advocate of both the sides and on perusing the materials on record, I find that admittedly the petitioners were acting as promoters in the matter of construction of buildings and they advertised for booking of flats of a building complex at Rabindrapally, P.O.-Krishnapur. In response to that advertisement, the opposite party No. 2 inspected the building complex and on being satisfied he agreed to book a flat of 1622 sq. ft. and a covered car parking space at a nominal cost of Rs. 21,000/- only. Thereafter, he made full payment as per agreement. Before doing so, he inspected the premises again and again and on being satisfied, he paid the consideration value. Though the inspection was done by the opposite party No. 2 a number of times, he never complained that the flat was short of the measurement to which he agreed to. From the materials available in the record, it appears that the petitioners asked the opposite party No. 2 to have the flat registered through the advocate appointed by the petitioners. As per the proforma which was also approved by the other flat owners. But the opposite party No. 2 did not agree with such proposal. What I find is that before purchase of the flat and subsequently thereafter the opposite party No. 2 visited the flat a number of times and so he had every opportunity to inspect thoroughly of the flat he was going to purchase. Subsequently, dispute arose. So from the facts stated above, it is crystal clear that initially the petitioners have no criminal intention to cheat or commit breach of trust or any other offence, as alleged by the opposite party No. 2.

6. Since there was no element of cheating at the very inception and the opposite party No. 2 had inspected the flat before making full payment and he did not comply with the terms of agreement, I am of the view that the petitioners could not be charged, though they had criminal intention in the matter of giving flat to the opposite party No. 2. Whatever the dispute between the two parties is nothing but a civil dispute and for that reason a civil court of competent jurisdiction is the proper forum for ventilation of the grievance of the opposite party No. 2.

7. This being the position, the criminal case lodged by the opposite party No. 2 should not be allowed to proceed because if it is allowed it will be nothing but an abuse of the process of the Court and unnecessary harassment to the accused petitioners.

8. Moreover, as per address of the parties and the location of the flat in question, all such places are outside the territorial jurisdiction of the learned Chief Metropolitan Magistrate. The subject matter for immovable property is, therefore, situated outside the jurisdiction of the learned Chief Metropolitan Magistrate. So, offence, if any, at all committed, it cannot be said to have been done within the territorial jurisdiction of the learned Chief Metropolitan Magistrate. Therefore, I am of the view that cognizance of the case is bad also. In view of above findings, I am of the view that prayer for quashing the proceeding should be allowed. The application should be allowed. Accordingly, the application under Sections 397, 401 and 482 of the Cr. P.C., 1973 is allowed.

9. The complaint case No. C-3256 of 2006 dated 21.04.2006 and FIR No. 201 dated 18.06.2006 under Sections 120B/420/406/467/468/471 of the I.P.C. pending before the learned Chief Metropolitan Magistrate, Calcutta stand quashed.

10. Consequently, all the subsequent orders arising out of the said case number also stand quashed.

11. Interim order, if any, is hereby vacated. The case diary be returned to the concerned authority.

12. Considering the circumstances, there will be no order as to costs.

13. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.