
(1996) 10 CAL CK 0002

In the Calcutta High Court

Case No : G.A. No. 1381 of 1996 & G.A. No. 1381 of 1996, A.P.O. No. 785 of 1993 and W.P. NO. 1759 of 1993

Prasanna Kumar Roy Karmakar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-10-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 195, 340
Penal Code, 1860 (IPC) — Section 182, 191, 192, 193, 199

Citation : (1997) CriLJ 999

Hon'ble Judges : V.N. Khare, C.J; V.K. Gupta, J

Bench : Division Bench

Advocate : Suradjit Samanta, S. Roy chowdhury and T.K. Sarkar, for the Appellant; Prasanna Kumar Roy Karmakar and Malay K. Singh for Respondent No. 4 and Prabir Roychowdhury, for the Respondent

Judgement

V.K. Gupta, J.—This is indeed an extraordinary case, as has also been observed by the Supreme Court while disposing of Civil Appeal Nos. 5099-51 (X) of 1996 (arising out of SLP (C) Nos. 16861 -16862 of 1994) vide judgment dated 26-3-96. The facts are very interesting and intricate. However these are required to be stated to understand and properly appreciate the entire gamut of the controversy between the parties and the extent to which the process of law has been abused by one of the litigants.

2. One Smt. Geeta Rani Roy filed a petition under Article 226 of the Constitution of India in this Court against some persons, including Shri Prasanna Kumar Roy Karmakar, and Shri Robin Roy with respect to a portion of the property situated at 36, Gokul Boral Street, Calcutta-700 012. It was alleged in this petition by the petitioner Smt. Geeta Rani Roy that she had bought this property and that interference was being caused in her possession of the property by the private respondents in the writ petition. The learned single Judge of this Court vide his judgment dated 30-8-93, while disposing of the writ petition, after making

certain observations regarding the status of the writ petitioner and the forcibly taking over of the premises by the private respondents, directed the police authorities to see to it that free egress and ingress of the writ petitioner was not interfered with by the private respondents and that the police authorities remove the obstruction to such free egress and ingress, if there be any. Appeal against this order and judgment was filed by Shri Prasanna Kumar Roy Karmakar, sole appellant, being appeal No. 785 of 1993 (Matter No. 1759 of 1993). He claimed to be a tenant in possession of the disputed premises and stated that he felt aggrieved of the order and judgment of the learned single Judge which had resulted in his dispossession from the premises in question. This appeal filed by Shri Prasanna Kumar Roy Karmakar was allowed by a Division Bench of this Court vide their judgment dated 14-10-93 by observing that the dispute between the parties was purely of a private nature and that the writ petition filed by Smt. Geeta Rani Roy not being maintainable should not have been entertained. The appellant Prasanna Kumar Roy Karmakar made an application subsequently to the Appellate Bench that, despite his appeal having been allowed, he was not restored the possession of the disputed premises and that the Court may order restoration of the possession over such premises to him. The Division Bench however did not agree with his request and, while observing that by the disposal of the appeal, the Court had become functus officio, no relief could be granted to him. This was done vide order and judgment dated 14-1-94. Against this order, appellant preferred a SLP in the Supreme Court, which as noticed at the outset in the very beginning of the judgment, was allowed by their Lordships on 26-3-96. The Supreme Court passed the following operative order, while disposing of the appeal:-

In view of the aforesaid, the order passed by the appeal Court dated 14th January, 1994 is set aside and we remand the case back to the appeal Court. The appeal court will direct an enquiry as to whether Prasanna Kumar Roy Karmakar was the person who was actually evicted from possession on the strength of the order passed on 30-8-1993 and, if so, restore Prasanna Kumar Roy Karmakar back into the possession of the disputed premises. Before passing any order the Court must satisfy itself as to the true identity and the wish of the appellant, Prasanna Kumar Roy Karmakar. If necessary, the Court will direct Prasanna Kumar Roy Karmakar to be personally present in the Court.

The appeal Court will be at liberty to pass such order in the interest of justice as it thinks fit after ascertaining the facts and in accordance with law. The respondents, who were the writ petitioners in this case, will pay costs assessed at Rs. 1,000/- to the appellant.

3. In the course of the judgment referred to above, certain observations were made by their Lordships with regard to the judgments and orders passed in this case by the learned single Judge, by the Division Bench while disposing of the Letters Patent Appeal and by the Division Bench while refusing to grant relief to the appellant vide order passed on 14-1-1994.

4. The operative portion of the judgment of the Supreme Court has been extracted above to indicate that it is as a result of the aforesaid directions of their Lordships, while remanding the appeal to this Court, that the matter was taken afresh for consideration by us.

5. G.A. No. 1381 of 1996, being application for restoration of possession of the disputed premises was filed, pursuant to the above quoted directions of the Supreme Court by Prasanna Kumar Roy Karmakar, the appellant. On 9-5-96, when the matter was taken for the first time after it was remanded by the Supreme Court, it was posted for 18-6-96 for directions. In view of the specific order of the Supreme Court regarding the identity of the appellant and the disputed question as to who had filed the appeal, on 18-6-96 itself we directed the learned Counsel appearing for the appellant to ensure the presence of Prasanna Kumar Roy Karmakar, the appellant, in the Court on 11th July, 1996. When the matter was taken up on 16th July, 1996 however Prasanna Kumar Roy Karmakar was not produced in the Court on the ground that he was lying ill at Patna and some more time was sought for his production. Despite a couple of adjournments thereafter and more opportunities, Prasanna Kumar Roy Karmakar did not appear in the Court with the result that the respondent Smt. Geeta Rani Roy represented to the Court that Prasanna Kumar Roy Karmakar is not being produced deliberately and that he is actually residing in Calcutta and that he can be produced in the Court if proper steps were taken for procuring his attendance. On the request of her learned Counsel therefore, Shri Somen Bose, Advocate of this Court was appointed as a Special Officer to find out about the whereabouts of Prasanna Kumar Roy Karmakar and as to whether he was residing in Calcutta at the address furnished by learned Counsel for respondent No. 4. Special Officer ultimately filed his report in this Court on 22nd August, 1996 Wherein he admitted that Prasanna Kumar Roy Karmakar was actually residing in Calcutta and that he had met his family members and that he had directed them to ensure the appearance of Prasanna Kumar Roy Karmakar in the Court on 22nd August, 1996 at 2 P.M. On 22nd August, 1996 when the matter appeared for consideration, Prasanna Kumar Roy Karmakar actually did appear into the Court personally. At that point of time it was pointed out to us that some one else had been allegedly impersonating as Prasanna Kumar Roy Karmakar and this name was stated to be Purnendu Kumar Roy Karmakar. It was also revealed that a shot-while age he was in the Court Room but after Prasanna Kumar Roy Karmakar appeared, the said Purnendu Kumar Roy Karmakar vanished. Accordingly we issued a non-bailable warrant of arrest against Purnendu Kumar Roy Karmakar for his production in the Court on 23rd August, 1996. On 23-8-96 Purnendu Kumar Roy Karmakar was produced in the Court by the Officer-in-Charge, Muchipara Police Station under arrest. On that day itself the statements of Prasanna Kumar Roy Karmakar and Purnendu Kumar Roy Karmakar were recorded by the Court. It shall be advantageous to recount a brief re"sume" of the statements, as recorded by the Court, of these two persons.

6. In his statement, Prasanna Kumar Roy Karmakar stated and admitted that he

had not filed the appeal in question, i.e., Appeal No. 785 of 1993 and that he was not even in possession of the disputed premises at any point of time after 1966 when he had left the premises. He also stated that he did not sign any documents, pleadings, affidavits, memos, petitions or powers of attorney in favour of any one for any proceedings in this case, either in this Court or in the Supreme Court except filing an affidavit in the Supreme Court about a year and a half back to the effect that he had not filed any proceedings taken in his name. He also stated that for more than a year, he has been residing in Calcutta. He also stated that he has not filed the present application for the restoration of possession (G.A. No. 1381 of 1996) nor the affidavit supporting the said application. In short, the tone and tenor of his sworn testimony in this Court is that he was not even aware of the proceedings in this case till about one and a half years back, that he did not prefer Appeal No. 785 of 1993 nor signed any papers, pleadings, documents, affidavits, memos, petitions or powers of attorney with regard to any such application that he did not file SLP in the Supreme Court against the judgment of the Division Bench of this Court nor signed any papers there. He also stated that he was not a tenant in the disputed premises nor was in possession therein when the order was first passed by the learned single Judge. In (sic) and substance therefore he clearly stated that he was not appellant as was being made out and that some one else might have filed the appeal in his name and on his behalf, but without his consent, knowledge or permission.

7. The statement of Purnendu Kumar Roy Karmakar was indeed very interesting. Even while he made some clear admissions, he also made some patent contradictions in his own statement. Whereas in the opening part of the statement he gave an impression that he had filed the appeal with the knowledge and consent of Prasanna Kumar Roy Karmakar, in the subsequent part of the statement he clearly came out with an admission that the act of filing the appeal in this Court as well as in the Supreme Court was his own. He stated that he knew Prasanna Kumar Roy Karmakar, who was his blood relation. He also identified him in the Court. He stated that it was he who had engaged, briefed and instructed Shri Tridib Kumar Sarkar, advocate in this case and that he was doing it on his own and not on behalf of Prasanna Kumar Roy Karmakar or at his instructions. He also stated that he used to hand over/pass over documents, pleadings, affidavits and powers of attorney etc to Shri Tridib Kumar Sarkar, which were all signed by him as and in the name of Prasanna Kumar Roy Karmakar and not in his own name. He also stated that along with the Memo of appeal, the accompanying application were also signed by him as Prasanna Kumar Roy Karmakar. He had also signed the affidavit in support of the appeal and the said application as Prasanna Kumar Roy Karmakar and that he knew that he was signing all these documents as Prasanna Kumar Roy Karmakar. He also admitted that the present application for Restoration of possession was also signed by him as Prasanna Kumar Roy Karmakar, as well as the affidavit accompanying the said application. He also admitted that it was he who had filed

the appeal in the Supreme Court against the judgment of Division Bench of this Court, even though in the name of Prasanna Kumar Roy Karmakar and that it was he who had signed the power of attorney in favour of the advocate on record in the Supreme Court as Prasanna Kumar Roy Karmakar. He also admitted that along with the Special Leave Petition, the affidavit supporting the same was signed by him in the Supreme Court as and in the name of Prasanna Kumar Roy Karmakar. A very important admission made by him was that it he and his family members who had engaged the Counsel in the appeal in the Supreme Court and paid all the fees to the Counsel and that Prasanna Kumar Roy Karmakar has nothing to do with either the payment of the fees to the Counsel in the Supreme Court or their engagement etc. He admitted he did not have any power of attorney executed in his favour by Prasanna Kumar Roy Karmakar. He however denied that he had executed the initial power of attorney at the time he had engaged Shri Tridib Kumar Sarkar as a counsel for filing the appeal initially in this court. (We have however compared the signatures on this power of attorney, i.e. Ex-A/2 and we prima facie found that perhaps there is some degree of similarity between these signatures and all other signatures which Purnendu Kumar Roy Karmakar admitted to have made and signed as Prasanna Kumar Roy Karmakar on various documents).

8. Prasanna Kumar Roy Karmakar was not a party in the writ application filed by respondent Smt. Geeta Rani Roy. When she obtained the order dated 30th August, 1996 from the learned single Judge of this Court whereby writ-petition was finally disposed of. Prasanna Kumar Roy Karmakar even till then was not a party in the writ petition. It was only at the stage of appeal that his name came in the picture. He preferred the appeal against the judgment dated 30-8-93 on the plea and the ground that he was a tenant of the disputed premises and being a tenant in possession was dispossessed illegally because of the order passed by the single Judge on 30-8-93. It was at this stage, and from this moment that the proceedings in the appeal started, finally concluding in the Supreme Court, culminating in the judgment dated 26 March, 1996 passed by their Lordships.

9. In the light of the directions of the Supreme Court in the aforesaid judgment, on the basis of the evidence that we have recorded, and on consideration of all relevant aspects of the case, we have ,no hesitation in coming to the conclusion that the appeal was not filed by Prasanna Kumar Roy Karmakar. We also have no hesitation in coming to the conclusion that Prasanna Kumar Roy Karmakar was not even either the tenant or the person in possession of the disputed premises and therefore he had no reason or cause to file the appeal. Since the appeal was not filed by Prasanna Kumar Roy Karmakar, its very non-maintainability at the very threshold was without any doubt. The appeal was not maintainable as it was not filed by the person in whose name it was shown or purported to have been filed nor such person had any reason, cause or occasion to file the appeal. The appeal therefore has to be dismissed as not being maintainable at all and as not having been filed by the appellant.

10. Coming to the role played by Purnendu Kumar Roy Karmakar, on a proper appreciation of the evidence recorded by us, in his own statement as well as the statement of Prasanna Kumar Roy Karmakar, we do find that it was Purnendu Kumar Roy Karmakar who impersonated as Prasanna Kumar Roy Karmakar and filed the appeal in his name, without his consent, knowledge or permissions and without holding any power of attorney on his behalf. We have also found prima facie, on a proper consideration of evidence recorded by us that Purnendu Kumar Roy Karmakar forged the signatures of Prasanna Kumar Roy Karmakar at the time of the filing of the appeal in this Court (Appeal No. 785 of 1993) and various documents as also subsequently application for relief resulting in the passing of the order dated 14-1 -94 by the Division Bench of this Court. Prima facie we also find, on appreciation of evidence that Purnendu Kumar Roy Karmakar also forged the signatures of Prasanna Kumar Roy Karmakar in the SLP that he filed in the Supreme Court and impersonating as Prasanna Kumar Roy Karmakar, led the Supreme Court to believe that the appeal was filed by Prasanna Kumar Roy Karmakar. He forged the signatures on the power of attorney, affidavit accompanying and other documents filed in Supreme Court. On a consideration of evidence we also found prima facie that the present application for restoration (G.A. No. 1381 of 1996) was also filed by Purnendu Kumar Roy Karmakar in the name of Prasanna Kumar Roy Karmakar by impersonating as Prasanna Kumar Roy Karmakar and by forging his signatures on the application and the affidavit accompanying therein. *"?"? 11. On a careful consideration of all facts and circumstances therefore we prima facie find that Purnendu Kumar Roy Karmakar does appear to have committed offences punishable under Sections 182, 191 and 192 read with Sections 193 and Section 199 and 200 as also Sections 205 and Sections 463 read with 466 and 471 of the Indian Penal Code. We shall advert to the details about the description of these offences a little later. In terms of the requirements contained in Section 195 and read with Section 340 of the Code of Criminal Procedure, we hereby record a finding that aforesaid Purnendu Kumar Roy Karmakar does appear prima facie to have committed the aforesaid offences and that in our opinion it is expedient in the interests of justice that an enquiry should be made into the alleged offences of the aforesaid alleged acts, since these are alleged to have been committed prima facie in and in relation to proceedings in this Court, which ultimately culminated in the filing of the SLP in the Supreme Court, which was actually a continuation of the proceedings initiated in this Court. Our aforesaid findings are prima facie, based as these are on our tentative consideration of evidence, purely from the point of view of finding out as to whether the said Purnendu Kumar Roy Karmakar has prima facie committed these offences or not and whether he should be tried for such alleged commission of such alleged offences by a competent criminal Court or not.

12. Because of the very nature of the proceedings, the admissions made by Purnendu Kumar Roy Karmakar in his statement recorded in the Court by us and upon consideration of all facts and circumstances we do feel and find that this is

a case where no preliminary enquiry is required to be held and that no formal show-cause notice is required to be issued to Purnendu Kumar Roy Karmakar with regard to the proposed action to be initiated against him. This is particularly so also in the light of the contents of the affidavit affirmed by Purnendu Kumar Roy Karmakar on 18th September, 1996 (filed by him in the Court on the same day) in which he has tendered an unconditional apology with regard to the acts done and has given an undertaking that he would not repeat such acts in future. While making a reference to his deposition in this Court on 20-8-96 he has also stated in the said affidavit that he has categorically stated the true facts under which the appeals had been preferred in the name of Prasanna Kumar Roy Karmakar. In fact he even tried to justify his acts of impersonation and forgery of documents, which he admitted in the affidavit, by attempting to say that his every action was actuated and dictated by the intention to see that his old and ailing mother and his three unmarried sisters were thrown out of their hearth and home where they were residing at the material point of time. The impression that he tried to give in the said affidavit on 18-9-96 is that even while he admits to have impersonated and forged the documents, he did so in the interests of his ailing mother and his three unmarried sisters. This affidavit affirmed by him on 18th September, 1996 was filed by him, entirely on his own free will and volition and without any direction or order, or even suggestion from the Court.

13. In the face of the aforesaid clear admissions on the part of Purnendu Kumar Roy Karmakar and in the light of clear, categorical and unimpeachable material on record, there is absolutely no requirement of holding any preliminary enquiry because nothing more is required to be enquired into. Similarly no purpose would be served by issuing any show cause notice to Purnendu Kumar Roy Karmakar because of the clear facts and circumstances as brought out in the evidence and further because of the admissions made by him in his own affidavit which he affirmed outside the Court and he voluntarily filed in the Court.

For the foregoing reasons therefore, we have no option but to dismiss the appeal. Since we rarely come across cases like this where a person so brazenly abuses the process of law, we should not have any hesitation in awarding exemplary costs while dismissing the appeal. We will be achieving a two-fold purpose by awarding exemplary costs in this case; firstly to set example for future and secondly to compensate the respondents Smt. Geeta Rani Roy to whatever little extent that is possible to compensate her. The appeal accordingly is dismissed with costs assessed at Rs. 10,000/- which shall be paid to respondent Smt. Geeta Rani Roy by Purnendu Kumar Roy Karmakar.

14. Coming to the question as to what penal action may be initiated against Purnendu Kumar Roy Karmakar, we have no doubt in mind that even though he has tendered unconditional apology, he deserves to be proceeded against under law for facing prosecution for the offences that he prima facie appears to have committed. We cannot accept his apology and let him off because that would defeat the ends of justice. In our view the law has to take its own course.

15. Here is a person who so brazenly abused the process of law that he even succeeded in misleading the highest Court in the country into believing that the appellant, in whose name the appeal was preferred had actually suffered because of the judgments rendered by this Court. His brazen attempt to mislead the Supreme Court in fact was a cause and an occasion for their Lordships of the Supreme Court to pass some disapproving remarks and make some adverse observations against the judgments rendered by this Court at all stages of the proceedings. All this was possible and happened only because this person, Purnendu Kumar Roy Karmakar abused the process of law.

16. By culling the material on record and on consideration of all relevant aspects of the case, we find that prima facie, following offences appear to have been committed by Purnendu Kumar Roy Karmakar:-

(i) Giving false information to the High Court of Calcutta and the Supreme Court of India, which he knew and believed to be false, regarding the filing of the appeal in the High Court, the application in the High Court and the SLP in the Supreme Court purportedly on behalf of and in the name of Prasanna Kumar Roy Karmakar, thus causing aforesaid Courts to adjudicate upon the matters as if the appeals, applications and the SLP were filed by Prasanna Kumar Roy Karmakar.

...Offences punishable u/s 182 of I.P.C.

(ii) He made statements by way of deposition on oath/solemnly affirmed affidavits and verifications etc. in the High Court of Calcutta and the Supreme Court of India in various proceedings which were false and which he believed and knew to be false and gave false evidence in the said proceedings.

...Offences punishable u/s 191 read with Section 193 of I.P.C.

(iii) Making false documents containing false statements, such as powers of attorney, memo of appeal, applications and Special Leave Petitions etc. Intending that such false documents containing false statements may appear in evidence in judicial proceedings in the High Court of Calcutta and in the Supreme Court of India and that such false evidence may cause the said Courts to form opinion upon evidence and/or to entertain an erroneous opinion touching any point material to the result of the said proceedings.

...Offences punishable u/s 192 read with Section 193 of I.P.C.

(iv) He made declaration in the High Court of Calcutta and in the Supreme Court of India and made false statements in these declarations in the said Courts which he knew and believed to be false and which actually were false, the said statements and declarations touching upon points which were material to the objects for which the declarations and the statements were made and used.

...Offences punishable u/s 199 read with Section 200 of I.P.C.

(v) Falsely personated as Prasanna Kumar Roy Karmakar and in such assumed character made statements in the nature of depositions, averments, pleadings

and documents and filed appeals and application in such assumed character, thus causing process to be issued to the respondents as also causing judgments to be delivered against the respondents, adverse to them.

...Offences punishable u/s 205 of I.P.C.

(vi) Committed forgery by making false documents like powers of attorney, applications, memo of appeal, affidavits, SLP etc. etc. in the Calcutta High Court and the Supreme Court of India with intent to cause damage and injury to the respondent Smt. Geeta Rani Roy and intent to commit fraud upon her in the aforesaid Courts....

...Offences punishable u/s 463 read with Section 466 and Section 471 of I.P.C.

17. We accordingly direct Additional Registrar (Vigilance) of this Court to file a criminal complaint in terms of Section 195 of the Code of Criminal Procedure against Purnendu Kumar Roy Karmakar, son of late Netai Chandra Roy of 36, Gokul Boral Street, Calcutta-700 012 for the aforesaid offences in a criminal Court of competent jurisdiction and to pursue it to its logical conclusion.

18. With the aforesaid directions, this Appeal is finally disposed of.

V.N. Khare, C.J.

19. I agree.