**(2019) 08 CAL CK 0068**

**In the Calcutta High Court**

**Case No :** CRAN No. 183 Of 2019 In Criminal Revision (CRR) No. 3418 Of 2006

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| Priti Surekha & Ors | APPELLANT |
| Vs | |
| State Of West Bengal & Anr | RESPONDENT |

**Date of Decision :** 22-08-2019

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 144(2), 156(3), 161, 173, 207, 482
Indian Penal Code, 1860 — Section 120B, 406, 420

**Citation :** (2019) 08 CAL CK 0068

**Hon'ble Judges :** Tirthankar Ghosh, J

**Bench :** Single Bench

**Advocate :** Ayan Bhattacharya, Kausik De, Subhashree Patel, Mohini Majumder, Anusuya Sinha

**Final Decision :** Allowed/Disposed Off

## Judgement

Tirthankar Ghosh, J

The application under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "CrPC") was preferred by the petitioner for quashing of the proceeding being GR Case No. 1939 of 2011 arising out of Kolkata Leather Complex Police Station (hereinafter referred to as the said "police station" only) Case No. 87 dated 14th June, 2011 under Sections 420/406/120B of the Indian Penal Code (hereinafter referred to as "IPC").

The aforesaid police station case was registered pursuant to an application under Section 156 (3) of CrPC preferred at the instance of the defacto complainant / opposite party No.2 before the Court of the learned Additional Chief Judicial Magistrate (hereinafter referred to as ACJM or the "learned Magistrate"), Baruipur, South 24 Parganas. The learned Magistrate on being satisfied with the allegations and the contentions advanced in the said application under Section 156 (3) of CrPC was pleased to direct the Officer-in-Charge of the said police station to register a case and investigate into the allegations made in the petition of complaint, treating the same as FIR.

 

The allegations made in the application under Section 156 (3) of CrPC were to the effect that the defacto complaint / opposite party No.2 entered into an agreement for sale on or about 25th November, 2010 with the accused persons for the purpose of purchasing a plot of land measuring about 25 cottahs situated at Mouza Kulberia, JL No. 7, RS No. 190, RS Khatian No. 541, LR Katian No. 2953, 2954, 2955, 2956, 2957, 2958 & 2959, Hal Dag No. 586 and the character of the said land was described as 'Sali'. It was categorically stated on oath that the said land was free from all encumbrances and the defacto complainant on being satisfied with the representations made, entered into an agreement with seven vendors. It was alleged that four of the vendors illegally executed a deed of sale on or about 19th May, 2011 and the same was registered in the office of the Registrar of Assurance-I, Kolkata. The defacto complainant was apprehensive of such illegal act of the accused persons and accordingly informed the same to the Officer-in-Charge of the said police station vide GD No. 1213 dated 29th April, 2011, but no action was taken by the said police station inspite of the information being received by them. The defacto complainant further alleged that the accused persons accepted a sum of Rs. 4 lacs at the time of agreement for sale by way of advance and agreed that rest of the amount were to be paid within 9 months from the date of the execution of the agreement for sale. It was further alleged that the accused persons by accepting huge amount of money from third parties namely, Smt. Rakhi Surekha, Smt. Politi Surekha and Smt. Puspa Devi Surekha transferred the property illegally inspite of accepting a sum of Rs. 4 lacs from the defacto complainant. Being dissatisfied by the manner in which, the execution of the sale took place, the defacto complainant preferred an application under Section 144 (2) of CrPC and also a suit for declaration and injunction in respect of the said plot of land before the Civil Court (Junior Division) at Alipore. The learned Civil Court, after being satisfied with the contentions, passed an interim order of injunction to maintain status quo by both the parties till 12th June, 2011. The accused persons, even after knowing such an order of injunction, disobeyed the same and with an ulterior motive executed the deed of sale in favour of the aforesaid third parties. The defacto complainant finally contended that the act and conduct of the accused persons have made them liable for commission of offences punishable under Sections 420/406/120B of IPC.

On the basis of the aforesaid application under Section 156 (3) of CrPC, Kolkata Leather Complex Police Station Case No. 87 dated 14th June, 2011 under Sections 420/406/120B of IPC was registered for investigation against five persons namely, (i) Gouri Naskar, (ii) Heena Mondal, (iii) Minu Mondal, (iv) Basana Naskar and (v) Bikash Mondal. However, the persons being Priti Surekha, Rakhi Surekha and Puspa Devi Surekha alias Puspa Surekha were not named in the formal FIR so registered by the Investigating Agency.

On completion of investigation, the Investigating Officer submitted chargesheet in connection with the instant case being Chargesheet No. 158 of 2011 dated 30th December, 2011 under Sections 420/406/120B of IPC against 10 accused persons including the petitioners.

On receipt of the chargesheet the learned ACJM, Baruipur was pleased to take cognizance of the offence after perusal of the charesheet, case diary and the documents under Section 173 of CrPC relied upon by the Investigating Agency. It is reflected from the said order dated 12th June, 2012 that the learned Magistrate was pleased to issue warrant of arrest against the petitioners and another. The present petitioners thereafter surrendered before the learned Court on 21st April, 2015 and prayed for bail when the learned Court was pleased to release the petitioners on bail. Subsequently, the petitioners approached this Court challenging the proceedings relating to GR Case No. 1939 of 2010 arising out of Kolkata Leather Complex Police Station Case No. 87 dated 14th June, 2011 under Sections 420/406/120B of IPC.

Mr. Ayan Bhattacharyya, learned Advocate appearing for the petitioners submitted that the police station case was registered on the basis of an application under Section 156 (3) of CrPC wherein, the petitioners were not alleged to be accused persons, neither the formal FIR incorporates the name of the petitioners in the column provided for the accused persons, however, the Investigating Officer in the chargesheet has made the present petitioners as accused without there being any iota of materials available against them. He further submits that the petitioners were bona fide purchasers without any notice and the materials collected by the Investigating Agency prima facie do not make out any case against the petitioners to compel them to face the ordeal of a criminal trial.

Mr. Bhattacharyya further submitted that none of the allegations either in the chargesheet or in the documents relied upon by the prosecution under Section 207 of CrPC reflect any conspiracy of the present petitioners for committing the offence of cheating or criminal breach of trust.

The learned Advocate for the State, Mrs. Sinha produces the case diary relating to the instant case and draws the attention of this Court to the statement of three witnesses namely, Montu Barui, Debasish Chakraborty and Ranjit Mondal. She also draws the attention of this Court to the agreement for sale dated 25th November, 2010 entered between the defacto complainant / opposite party namely Anil Mondal with the seven vendors and the deed of sale dated 19th May, 2011 between Gouri Naskar, Minu Mondal, Basana Naskar, Hena Mondal and Bikash Mondal with the petitioners.

I have perused the case diary and the chargesheet filed in connection with the police station case wherein ten witnesses have been relied upon, however, eight witnesses out of them are not associated with any department yet only three statements are recorded in the case diary. The case diary do not contain any seizure list or production list, pursuant to which the agreement for sale dated 25th November, 2010 and the deed of sale dated 19th may, 2011 were brought on record.

 

Having due regard to the circumstances, under which the petitioners have been implicated in the instant case, I have perused the statement of the three witnesses so relied upon by the Investigating Agency and on the basis of which, the learned Magistrate was pleased to take cognizance of the offence and issue warrant of arrest against the petitioners.

On perusal of the statements, I find that the defacto complainant / opposite party No.2 entered into an agreement for sale by advancing an amount of Rs. 4 lacs in respect of a plot of land as described above (in the application under Section 156(3) of CrPC). The witnesses further stated that out of seven vendors, five of them were involved in illegally transferring the plot of land to the third party and the defacto complainant apprehending such illegal act reported the incident to the police station who did not take any action and subsequently, the defacto complainant was compelled to file an application under Section 144(2) of CrPC and a suit for declaration and injunction wherein the learned Civil court was pleased to direct status quo to be maintained by the parties and violating such order, the illegal sale took place. In none of the three statements so recorded by the Investigating Officer, I have found that the petitioners have been named or any fact of conspiracy surfaced out to rope in or compel them, to face the ordeal / mental agony of a criminal trial. The five vendors who entered into an agreement for sale on 25th November, 2010 and also transferred the said property by way of a deed of sale in favour of the petitioners could in some way or the other have knowledge regarding both the transactions but from the materials on record it is not possible to say that the present petitioners had any knowledge regarding a previous agreement for sale existing between the defacto complainant /opposite party and five of the vendors. The fact is further fortified by the agreement for sale dated 25th November, 2010 which is a notarized document and was not registered. Therefore, if the vendors did not produce the same before the transaction which took place with the petitioners, it was not possible for them to be aware regarding any sort of transaction relating to the same plot of land having taken place earlier.

In view of the settled position of law as observed in 2000 SCC (Cri) 786 in the matter of Hridaya Ranjan Prasad Verma & Ors. vs. State of Bihar & Anr. at Paragraph 15, as follows:-

"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

The petitioners have purchased the property by paying their own money and the deed of sale categorically contains a recital "that the vendors have not entered into any agreement for sale and/or development or any other agreement whatsoever or howsoever in respect of the said premises".

On careful scrutiny of the application under Section 156(3) of CrPC, the statements of the witnesses under Section 161 of CrPC as also the documents relied upon by the prosecution which forms part of the case diary, I find that in this case, there has been no scope for the petitioners to be acquainted with the defacto complainant to induce or make misrepresentations, so as to cause wrongful loss to him. As such the offences of criminal breach of trust or cheating do not apply so far as the present petitioners are concerned. If the same is considered on the angle of conspiracy, nothing transpires from the aforesaid documents relied upon by the prosecution to make out a prima facie case that there was any scope to join hands with the vendors/section of the vendors to purchase a property for the purpose of depriving the dafacto complainant.

In State of Karnantaka vs. M. Devendrappa & Anr. reported in 2002 SCC (Cri) 539, it has been observed as follows:-

".......... All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quande lex aliquid aliqui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds initiation/ continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

..........Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of private complainant as unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana and others vs. Ch. Bhajan Lal and others (AIR 1992 SC 604)."

Having due regard to the documents relied upon by the prosecution (as referred to above) and the settled principles of law, the further continuance of the proceedings so far as the petitioners are concerned are abuse of the process of law and the same as such is bound to cause miscarriage of justice.

Consequently, the proceedings being Kolkata Leather Complex Case No. 87 dated 14th June, 2011 (GR Case NO. 1939 of 2011) presently pending before the learned Additional Chief Judicial Magistrate, Baruipur, South 24 Parganas is hereby quashed so far as the present petitioners being Priti Surekha, Rakhi Surekha and Puspa Devi Surekha alias Puspa Surekha are concerned.

CRR 3418 of 2016 is accordingly allowed and all the connected applications are also disposed of.

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