

(2023) 11 CAL CK 0045
In the Calcutta High Court

Case No : Criminal Revision No. 1027 Of 2023, IA No. CRAN 1 Of 2023

Ram Baboo Bansal @ Ram Babu Bansal & Anr.

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 29-11-2023

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406, 420, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 156(3), 172, 173(2)(i), 173(8), 200,
202, 397, 397(2), 401, 482
Evidence Act, 1872 — Section 45, 47

Citation : (2023) 11 CAL CK 0045

Hon'ble Judges : Bibhas Ranjan De, J

Bench : Single Bench

Advocate : Ayan Bhattacharya, Chiranjib Sinha, Suchitra Chatterjee, Aniruddha Bhattacharya, R.K. Gautam, Rajesh Bashandi, Rajesh Bashandi, Rashmi Singhee, Shreya Choudhury, Sudip Ghosh, Bitasok Banerjee

Final Decision : Dismissed

Judgement

Bibhas Ranjan De, J

Facts of the case:-

1. Opposite party no. 2, Smt. Radha Bansal lodged a written complaint dated 02.01.2021 with the Inspector-In-Charge, Asansol Police Station and the same was treated as the F.I.R. thereby giving rise to the instant proceeding being Asansol South Police Station case No. 03 of 2021 dated 02.01.2021 under Section 420/467/468/471/406/120B of the Indian Penal Code (for short IPC).

2. In the written complaint it was alleged inter alia that Mr. Jay Prakash Bansal (husband of opposite party no. 2) (for short J.P. Bansal) since deceased along with his brothers were dealing with a business styled as Mining Associates Pvt. Ltd. Atwal Nagars, Garai Road, Asansol and during his lifetime he executed a 'will' on 03.03.2015 in respect of his 13.86% share of the aforesaid business in favour of the defacto complainant to enjoy the share of his business in her life

time and after that his son Anish Bansal was to become the owner of the said share.

3. After death of her husband, J.P. Bansal on 06.02.2018, the defacto complainant claimed herself as legal share holder of the business of her husband in the said company. At that time one Sanjay Bansal son of Ram Babu Bansal, one of the partners of the said business produced one letter of Gift dated 01.01.2018 reportedly executed by the husband of the defacto complainant in his favour and claimed himself to be the owner of the shares held by J.P. Bansal. Later on, the defacto complainant arranged to verify the signature of her husband on the letter of Gift dated 01.01.2018 by Private Forensic Document and Fingerprint Expert who opined that the signature on the letter of Gift dated 01.01.2018 and share Transfer Form are forged one and thereby accusation of commission of offence of cheating and misappropriation of property was levelled against the alleged persons.

4. That after conclusion of the purported investigation in connection with the instant case, the Investigating Agency submitted a Final Report as Mistake of Fact being FRT No. 84 of 2021 dated 19.03.2021 due to 'want of evidence' and prayed for discharge of the accused persons, being the petitioners herein.

5. On 28.12.2021, the opposite party no.2 preferred a protest Petition (Narazi petition) before the Ld. Chief Judicial Magistrate, Paschim Bardhaman, Asansol with a prayer for further investigation into the instant case.

6. On 21.02.2023 the Ld. Chief Judicial Magistrate, Paschim Bardhaman in connection with G.R. Case No. 10 of 2021 arising out of Asansol South Police Station Case No. 03 of 2021 dated 02.01.2021 under Section 420/467/468/471/406/120B of the Indian Penal Code allowed the Narazi Petition filed by the opposite party no. 2 herein and was inter alia pleased to direct the Inspector-In-Charge, Asansol South P.S. to further investigate the case either personally or by a competent police officer under his control other than previous Investigating Officer and by the self same order the Ld. Chief Judicial Magistrate was further pleased to direct the Inspector-In-Charge, Asansol South Police Station to get the documents in question examined and/or verified by any competent Central Agency.

7. Being aggrieved by and/or dissatisfied with the order dated 21.02.2023 passed by the Ld. Chief Judicial Magistrate Paschim Bardhaman (Asansol), the petitioner has approached this Hon'ble Court under Section 397/401 read with Section 482 of the Code of Criminal Procedure (for short Cr.P.C.).

Issues:-

8. Monetary gain/loss

9. J.P. Bansal transferred entire shares in favour of his wife via a will on 03.03.2015.

10. But subsequently on 01.01.2018 he transferred his shares via a letter of Gift in favour of his nephew Sanjay Bansal that too just few days before his demise on 06.02.2018[credibility/dispute of signature in between report of Q.D.E.B. (Questioned Document Examination Bureau, Government of West Bengal, C.I.D.) and report of private expert of (Brilliant Forensic Investigation Pvt. Ltd.) (BFI)].

11. Reason behind subsequent transfer of shares by J.P. Bansal.

Argument advanced:-

12. Ld. Advocate, Mr. Ayan Bhattacharya, appearing on behalf of the petitioner has contended that impugned order is factually wrong as the very premises on which the Ld. Judicial Magistrate has interfered with the closure Report is factually wrong as the alleged non co-operation was at the behest of the accused.

13. In the impugned order the Ld. Chief Judicial Magistrate did not furnish any adequate reason to upset the closure Report so filed. He didn't assign any reason/ground as to why Q.D.E.B. Report was not acceptable in the eye of law.

14. The first informant averred in the protest petition that she obtained all the prosecution papers which were part of C.D. under Section 172 of CrPC 'otherwise unofficially' on the basis of which the present protest petition was preferred.

Thus, she falls in the creed of dishonest litigants.

15. The allegation of involvement of Rs. 27 crores is not backed by any solid foundation as the Mining Associates is an unlisted company.

16. There is no mentioning of any reason behind rejection of QDEB Report.

17. In the impugned order, the Ld. Magistrate has recorded that signatures on the 'Letter of Gift' were duplicate. This view has not been substantiated by any solid documentary evidence. As the expert whose opinion was relied on is not an empanelled expert.

18. The Ld. Magistrate has failed to identify contradictory allegations in FIR.[Para 11 of page 22 of Narazi Petition]

19. In the will there was no specific description of the shares and also the will was not probated.

20. To further substantiate his argument Mr. Bhattacharya has relied on the following cases:-

- Suresh Kumar Goyal and others V. State of Uttar Pradesh and another reported in AIR 2019 Supreme Court 535
- Ajit Savant Majagvai Vs. State of Karnataka reported in (1997) 7 Supreme Court Cases 110
- Kishan Lal Vs. Dharmendra Bafna and another reported in (2009) 7 Supreme Court Cases 685

- Madhu Limaye Vs. The State of Maharashtra reported in (1977) 4 Supreme Court Cases 551
- Vinay Tyagi Vs. Irshad Ali alias Deepak and others reported in (2013) 5 Supreme Court Cases 762
- Dalip Singh Vs. State of Uttar Pradesh and others reported in (2010) 2 Supreme Court Cases 114
- Dulal Sarkar reported in 2012 SCC OnLine Cal 2824
- State of Haryana and others Vs. Ch. Bhajan Lal and others reported in AIR 1992 Supreme Court 604
- H.N. Rishbud and another Vs. State of Delhi reported in AIR 1955 Supreme Court 196

21. Per contra, Ld. Advocate, Mr. R.K. Gautam, appearing on behalf of the opposite party no. 2 has submitted that the Criminal Revision Petition is not legally maintainable as the same has been filed by the third person, namely Abhijit Sen Sharma who is not an accused. Hence he is not competent to file the same on behalf of the present petitioners/accused.

22. As per Section 397 (2) of the CrPC there is a clear cut bar to file the Criminal Revision against inter locutory orders, and undoubtedly, the order in question, dated 21.02.2023, passed by the Court of Ld. Chief Judicial Magistrate is an inter locutory order.

23. The petitioners have never contested the contents of the protest petition of the opposite party no. 2 before.

24. There is no provision in CrPC about the limitation/time limit in filing the protest petition and from the facts and circumstances it is clear that there is no delay in filing the protest petition before the Ld. Court.

25. During investigation, the police has seized four documents, including the Registered will dated 03.03.2015 from the opposite party no. 2. But, unfortunately the said seized will was not sent intentionally and willfully, by the police, to Director, Q.D.E.B for comparison with other relevant documents, which have been seized in connection with the instant case.

26. The said Expert Report by QDEB is undoubtedly without any corroboration and its opinion is also not absolute.

27. The petitioners/accused have misled the Hon'ble Court by stating that the deceased is a full blood brother of Shri. Ram Babu Bansal but the factual position is that the deceased is the step brother of Ram Babu Bansal.

28. The Argument regarding the fact that opposite party no. 2 did not question the validity of Report of the Director, Q.D.E.B, CID, Govt. of W.B. is also factually wrong as the same has been specifically questioned in para no. 34 at page-64 of

the Main paper Book of Criminal Revision.

29. Ld. Advocate, Mr. R.K. Gautam, in support of his contention relied on following cases:-

- Vinay Tyagi Vs. Irshad Ali @ Deepak and others reported in 2013(5) SCC 762
- Peethambaran Vs. State of Kerala & Anr. reported in 2023 ALL SCR (CRL.) 1035
- Kishan Lal VS. Dharmendra Bafna & Anr. reported in 2009 (7) SCC 685
- Girish Kumar Suneja VS. C.B.I reported in 2017 AIR (SUPREME COURT)3620
- Serious Fraud Investigation Office and Others Vs. Sahara Housing Investment Corporation Limited and Others reported in (2022) 9 SCC 794
- Amar Nath vs. State of Haryana reported in 1977(4) SCC 137
- Luckose Zachariah @ Zak Nedumchira Luke and Others VS. Joseph Joseph and others reported in 2022(2) R.C.R. (Criminal) 260
- Babubhai Vs. State of Gujarat & others reported in 2010 (12) SCC 254
- Sri Sumanta Sinha & Ors. Vs. The State of West Bengal reported in 2013 SCC OnLine Cal 23010
- Vinubhai Haribhai Malaviya and ors. Vs. State of Gujarat and anr. reported in 2019 (17) SCC1
- Hasanbhai Valibhai Qureshi Vs. State of Gujarat and ors. reported in 2004(5) SCC 347
- K. Chandrasekhar Vs. State of Kerala reported in 1998(5) SCC 223
- Murarilal Vs. State of M.P. reported in 1980(1) SCC 704
- Alamgir Vs. State (NCT, Delhi) reported in 2003 AIR (Supreme Court) 282
- M/s Neeharika Infrastructure Pvt. Ltd. State of Maharashtra and others reported in 2021 AIR (Supreme Court) 1918
- Siddharth Mukesh Bhandari Vs. the State of Gujarat and anr. reported in 2022 (10) SCC 525
- Chandra Deo Singh Vs. Prakash Chandra Bose alias Chabi Bose and another reported in 1963 AIR (Supreme Court) 1430
- Ranjeet Singh Vs. State of U.P. reported in 2000 (3) R.C.R. (Criminal) 355
- Mathura Prasad & Ors. Vs. State of U.P. & Anr. reported in 2007 (5) R.C.R. (criminal) 788
- Central Bureau of Investigation Vs. Aryan Singh reported in 2023 AIR (Supreme Court) 1987

- The State of Maharashtra & anr. Vs. Dr. Maroti S/o Kashinath Pimpalkar reported in 2022 (4) R.C.R. (Criminal) 934

30. In Suresh Kumar Goel (supra) it was held that dispute regarding ownership of shares can be dealt with under Section 482 CrPC if it is an attempt to wreck vengeance against the appellants.

31. Ajit Savant (supra) dealt with a matter of signatures, finger impression etc. within the meaning of Section 45 & 47 of the Indian Evidence Act, in an appeal against judgment and order of acquittal.

32. Kishan Lal (supra) & Vinay Tygai (supra) emphasized on the power of Magistrate with regard to further investigation for ends of justice in case of prior unfair investigation.

33. Madhu Limaye (supra) observed that court can exercise inherent power for quashing interlocutory order.

34. In Dalip Singh (supra) The Hon'ble Apex Court came across an effort to mislead the authorities and the Courts.

35. In Dulal Sarkar (supra) it was observed that the court has to record the reason for dissatisfaction in the investigation before passing any order of further investigation.

36. Bhajan Lal (supra) and H. N. Rishbud (supra) dealt with the issue which is not identical with that of ours.

37. In Peethambaran (supra) Hon'ble Apex Court refused to interfere with the power of District Police Chief to pass an order of further investigation.

38. Girish Kumar Suneja (supra) & Amar Nath (supra) held that revision against interlocutory order is not maintainable under Section 397(2) or 482 of CrPC.

39. In Sahara Housing Investment Corporation (supra) Hon'ble Court discouraged to stay all investigation at interlocutory stage.

40. Luckose Zachariah (supra) held that the Magistrate would have to take considered view in accordance with law to analyze validity of ground for presumption that the accused have committed offence.

41. Babubhai (supra) held that fresh investigation by independent agency can be ordered where one party has been favoured in a biased investigation.

42. In Sumanta Sinha (supra) order of further investigation was upheld on the ground of no illegality in passing order of further investigation on a protest petition.

43. Hasanbhai (supra) held that further investigation cannot be refused on the ground of delay in trial proceeding.

44. In K. Chandrasekhar (supra) The Hon'ble Apex Court held that even after

submission of police report under (2) on completion of investigation, the police has a right of 'further investigation' under (8) but not 'fresh investigation or reinvestigation'.

45. Murarilal (supra) & Alamgir (supra) held that the opinion of hand writing expert cannot be accepted unless substantial corroboration.

46. In Neeharika Infrastructure Pvt. Ltd. (supra) the Hon'ble Apex Court observed that High Court should not pass interim order 'not to arrest' or no coercive steps 'to be adopted' during pendency of quashing petition under Section 482 CrPC.

47. Siddharatha Mukesh bhandari (supra) held that grant of any stay on investigation and/or any interim relief would be only in rarest of rare cases. As a result, stay on further investigation with respect to criminal proceeding was set aside.

48. In Chandra Deo Singh (supra) The Hon'ble Apex Court held that the accused has no right to take part in enquiry before issue of process to the accused.

49. Ranjeet Singh (Full bench) (supra) held while accepting or rejecting a final report submitted by police after investigation there is no requirement to hear the accused.

50. Mathura Prasad (supra) held as follows accused is not entitled for opportunity of hearing at pre-cognizance stage and Magistrate is not required under law to hear an accused at pre-cognizance stage.

51. It was held in Central Bureau of Investigation (supra) that Court is only required to see if prima facie case exists and whether any sufficient material is available to proceed further against accused for which accused is required to be tried or not.

52. The State of Maharashtra (supra) held as follows-exercise of power under Section 482 should be done sparingly as it is an exception and not a rule and it should be done to do real and substantial justice.

Decisions:-

53. After submission of final report (mistake of facts) defacto complainant filed one protest petition which was considered and allowed by the following order of the Learned Chief Judicial Magistrate, Asansol :-

"Order dated 21.02.2023

Today is fixed for passing order in respect of narazi petition.

Both parties file their respective haziras.

The case record is taken up for passing order.

Perused the petition case record and C/D.

Present case utterly serious one where allegedly the accused persons conspired to deprive the complainant of the shares mining Associates Pvt., Ltd, worth more than Rs.27 crore.

Admittedly Jay Prakaswh Bansal having 13.86 % equity shares in the said Mining Associates Pvt. Ltd. The complainant claimed that Jay Prakash Bansal executed a valid will on 03.03.2015 in respect of his 13.86% equity share in the said company in favour of his wife i.e. the complainant in this case. After demise of her husband she made correspondence with the said company in respect of shares got by the complainant on the strength of that will. The management showed utter apathy in respect of her claim and she had to make complaint over the matter to Ministry of Corporate Affairs (in short MCA). Subsequently, she was informed that her late husband J. P. Bansal gifted his entire shares in favour of accused Sanjay Bansal. The signatures on the letter of gift were doubtful and was verified by the complainant with skilled agencies and on getting report she became sure that the signatures appeared on the gift were forged and were not made by her husband. Having no way out ultimately this complainant being the wife of said Jai Prakash Bansal had to file written complaint with police of Asansol South P.S on 02.01.2021.

Police, after completion of investigation submitted final report in this case as police found that the accused persons were not guilty.

The defacto complainant namely Radha Bansal challenged such submission of FRT by the police and prayed for further investigation of this case.

Ld. Advocate for the defacto complainant apart from making oral submission also gave written argument wherein she mentioned that since December, 2017 said J.P Bansal was almost bed ridden. He also pointed out that with all fairness the defacto complainant made complaint before MCA. He also relied upon the report of the Forensic Document and Finger Print expert. It was pointed out that said J.P. Bansal had no reason to gift his share to the accused. It is interesting to note that Ld. Advocate pointed out that the accused was taken into police custody wherein it was mentioned, " Leading to the admission of PC accused persons, conducted several raids as led by them in view of verifying their admission to recover the materials evidences of this case but yielded no result due to their non- cooperation" He also mentioned that it was ridiculous to take note that police while submitting FRT mentioned that the defacto complainant did not cooperate police as relates to investigation of the case.

Ld. Advocate for the defacto complainant cited Murarilal-vs-State of M.P AIR 1980 Supreme Court 531 where Hon'ble Apex Court held that the opinion of hand writing expert cannot be accepted unless substantial corroboration. The same opinion was given by Hon'ble Apex Court in Alamgir -VS- State AIR 2000 (SC) 282 as regards the opinion evidence of handwriting expert.

On careful scrutiny of the record and CD as well and having considered the vital points pointed out by the Ld. Advocate for the defacto complainant coupled with

the verdict of Hon'ble Apex Court, I am of the view that I.O. did not investigate the present case which involved cheating and misappropriation of heavy amount to the tune of above 27 crore coupled with the story of forgery.

The investigating Police Officer showed utter apathy while investigating this serious case. By stretching my imagination, I cannot accept that the defacto complainant did not cooperate the police while investigation was being done.

Having considered all aspects, I am of the view that this is a fit case for further investigation to unearth the actual truth.

The I.C, Asansol South P.S is directed to investigate the case personally or to get it investigated by a competent Police Office under his control other than the previous I.O.

He is also directed to get the documents in question involved in this examined/verified by any competent Central Agency.

Let a copy of this order be sent to the I.C., Asansol, South P.S for compliance.

G.R.O. to comply.

To 19.05.2023 for report by I.O.”

54. Aforesaid order was assailed in this revision application invoking the provision of Section 397/401 read with Section 482 CrPC.

55. Having regard to the rival contention to the parties along with the reported decisions relied on behalf of the respective parties it is settled that the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hand of investigating agency for further investigation should not be tied down on the ground of mere delay. In other words, the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the Court in arriving at the truth and do real, substantial and effective justice.

56. In terms of the issue raised in this case, I proceed to discuss the power of Magistrate. Whenever a final report forwarded by the investigating officer to a Magistrate under Section 173(2) (i) of the CrPC is placed before him, several situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case Magistrate may either :-

- accept the report and take cognizance of offence by issuing process,
- Or may disagree with the report and drop the proceeding or may take cognizance on the basis of report submitted by the investigating officer.
- May direct further investigation under Section 156 (3) and require police to make a report under Section 173(8) of the CrPC.

- May treat the protest petition as a complaint and proceed under Section 200 & 202 of the CrPC.

57. Here, Ld. Magistrate preferred to pry into the track of further investigation, presumably due to unusual facts and circumstances.

58. We are dealing with an allegation of forgery of letter of gift culminating monetary gain.

59. From the investigation it is not intelligible as to what prompted Mr. J.P. Bansal to transfer his entire share to his nephew by a letter of gift after three years of execution of a will transferring all his shares in favour of his wife (defacto complainant) that too the letter of gift was executed only one month before his death.

60. During investigation, Investigating Officer collected both the will and letter of gift and send the letter of gift to the Questioned Document Examination Bureau and on receipt of report of 'no forgery', submitted final report (mistake of facts). On the other hand, defacto complaint also got that letter of gift examined by a private Forensic Document and Finger print expert (Brilliant Forensic Investigation Pvt. Ltd.) who found discrepancies between admitted signature of Mr. J.P. Bansal and his signature on the letter of gift.

61. In this circumstances, I am unable to refrain myself from relying on the settled principle enunciated in Vinubhai (supra) wherein Hon'ble Apex Court observed as follows:-

"..... To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173 (8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out....."

62. Regard being had to the aforesaid discussion, I find no reason to interfere with the order of further investigation in terms of particular facts and circumstances of this case. As a result, the revision application having no merit stands failed.

63. Accordingly, this revision application being CRR no. 1027 of 2023 stands dismissed.

64. Pending applications, if any, stand disposed of accordingly.

65. All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.

66. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.