

(2014) 04 CAL CK 0088
In the Calcutta High Court
Case No : C.R.R. 3137 of 2012

Soumya Ghosh and Others

APPELLANT

Vs

Smt. Sayantani Ghosh (Basu) and Another

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 34, 406

Citation : (2014) 04 CAL CK 0088

Hon'ble Judges : Ranjit Kumar Bag, J

Bench : Single Bench

Advocate : Pushpal Satpati and Mr. Suman Das Adhikary, Advocate for the Appellant; Moinak Bakshi for O.P. 1 and Ms. Rituparna De, for State, Advocate for the Respondent

Judgement

R.K. Bag, J.—This criminal revision is preferred by the petitioners for quashing the proceeding being C.R. Case No. 921 of 2010 under Sections 406/120B/34 of the Indian Penal Code pending before the court of learned Judicial Magistrate, 2nd Court at Siliguri. It appears from the materials on record that the opposite party no. 1 filed a petition of complaint against the petitioners in the court of learned Additional Chief Judicial Magistrate, Siliguri and the said petition of complaint was registered as C.R. Case No. 921 of 2010.

2. By pointing out Paragraph-8 of the petition of complaint Mr. Pushpal Satpati, learned counsel for the petitioners submits that the opposite party no. 2 has only stated about the entrustment of the property to the petitioners but there is no averment in the petition of complaint that the said property is misappropriated and as such no offence u/s 406 of the Indian Penal Code is made out and as such the criminal proceeding may be quashed.

3. On the other hand, Mr. Moinak Bakshi, learned counsel for the opposite party no. 1 submits that the opposite party no. 1 has specifically mentioned in Paragraph-3 of the petition of complaint that the property in question was

entrusted to the petitioners at Siliguri and petitioners have illegally kept those properties in their custody for wrongful gain and have been using the same and trying to misappropriate the same and as such the offence u/s 406 of the Indian Penal Code is clearly made out.

4. The Hon"ble Supreme Court has laid down the guidelines for exercise of inherent power u/s 482 of the Code of Criminal Procedure for quashing the F.I.R. or complaint during the stage of investigation in the case of Union of India (UOI) Vs. Prakash P. Hinduja and Another, , which are as follows:-

(i) where the allegations made in the FIR or complaint even if they are taken at their face value and accepted in entirety do not prima facie constitute any offence against the accused, (ii) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence against the accused and (iii) where there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the Act concerned to the institution and continuance of the proceedings.

5. In view of the above proposition of law laid down by the Apex Court, the criminal proceeding may be quashed only if the contents of the petition of complaint do not disclose any offence. On close scrutiny of the averments made in the petition of complaint filed by the opposite party no. 1, I find that the properties entrusted to the petitioners by the opposite party no. 1 at the time of marriage at Siliguri are being used by the petitioners and that they have been trying to misappropriate the same for wrongful gain. Accordingly, the contents of the petition of complaint, prima facie, disclose commission of offence u/s 406 of the Indian Penal Code.

6. In view of above proposition of law laid down by the Apex Court I cannot persuade myself to quash the instant criminal proceeding as contended on behalf of the petitioners. Accordingly, this criminal revision is dismissed.

7. Department is directed to send down a copy of this judgment to the learned Judicial Magistrate, 2nd Court at Siliguri for favour of information and necessary action. Criminal Section is directed to deliver urgent photostat certified copy of this order to the learned advocate of the parties, if applied for, as early as possible.