(2016) 02 CAL CK 0090

In the Calcutta High Court

Case No : Criminal Revision No. 2362 of 2014

Sutapa Banerjee APPELLANT

Vs

The State of West Bengal and Others RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), Section 482
Penal Code, 1860 (IPC) — Section 120B, Section 34, Section 406, Section 420, Section 464, Section 467, Section 468, Section 471, Section 504

Citation : (2016) 2 AICLR 190 : (2016) 2 CalCriLR 384 : (2016) 2 CalHCN 379

Hon'ble Judges : R.K. Bag, J.

Bench : Single Bench

Advocate : Somopriya Choudhury and Arnab Sinha, for the Appellant;

Final Decision : Allowed

Judgement

R.K. Bag, J.—1. The petitioner has challenged the order dated June 30, 2014 passed by learned Judicial Magistrate, 5th Court, Howrah, in G.R. No. 1676 of 2011 by filing this revision under Section 482 of the Code of Criminal Procedure, 1973.

2. It appears from the materials on record that, on April 7, 2011, the opposite party No. 2 filed a petition of complaint before the court of learned Magistrate which was forwarded to the Officer-in-Charge of Shibpur Police Station under Section 156(3) of the Code of Criminal Procedure for registration of FIR and causing investigation. Accordingly, Shibpur Police Station Case No. 247 of 2011 dated April 7, 2011 under Sections 406/420/467/468/471/120B and 34 of the Indian Penal Code came into existence. The police investigated the criminal case and submitted charge-sheet before the court of learned Magistrate on May 16, 2011. Learned Magistrate took cognizance of the offence and proceeded with the hearing of the case. The petitioner filed an application before the court of learned Magistrate praying for discharge. On June 30, 2014, learned Magistrate rejected the prayer of the petitioner for discharge from the said criminal case and

proceeded with the hearing of the case. The said order dated June 30, 2014 passed by learned Magistrate is under challenge in this revision.

3. By referring to the averments made in the petition of complaint filed by the opposite party No. 2, Mr. Choudhuri, learned counsel for the petitioner contends that by registered deed of settlement executed by the mother of the petitioner and the opposite party No. 2, the petitioner acquired the property described in Scheduled ''C'' of the said deed of settlement and the petitioner acquired the property described in Scheduled ''B'' of the said deed of settlement. It is alleged in the petition of complaint that the petitioner not only sold out the property acquired by her by virtue of the said deed of settlement, but also sold out some portion of the property falling in the share of opposite party No. 2. Mr. Choudhury further submits that the opposite party No. 2 has already instituted the Title Suit No. 144 of 2011 against the petitioner and the transferee of the said property before the civil court praying for pre-emption of the property falling in the share of opposite party No. 2 as per terms of deed of settlement executed by the mother of the petitioner and the opposite party No. 2. Relying on the decision of the Supreme Court reported in "Mohammed Ibrahim V. State of Bihar" reported in , (2009) 8 SCC 751, Mr. Choudhuri has urged this Court to consider that the averments made by the opposite party No. 2 in the petition of complaint do not disclose any offence of cheating, forgery and criminal breach of trust and as such continuation of the criminal proceeding against the petitioner will be an abuse of the process of the court.

4. Mr. Sanjib Seth, learned counsel for the opposite party No. 2 submits that the police has submitted charge-sheet against the petitioner and other co-accused persons after investigation and as such the petitioner should face the charges before the trial court. According to Mr. Seth, this Court cannot intervene for quashing the criminal proceeding when the Investigating Officer has submitted charge-sheet against the petitioner and other co-accused persons disclosing the offence under Sections 406/420/467/468/471/120B/34 of the Indian Penal Code.

5. None appears on behalf of the opposite party/State in spite of service of notice and copy of the application on the opposite party/State through learned Public Prosecutor of this Court.

6. The contents of the petition of complaint treated as FIR disclose that both the petitioner and the opposite party No. 2 acquired the property from their mother under registered deed of settlement executed in the year 1993. The averments made in the petition of complaint further disclose that specific portion of the joint property was acquired by the opposite party No. 2 and specific portion of the joint property was also acquired by the petitioner. It is alleged by the opposite party No. 2 that the petitioner sold out not only her own property acquired by virtue of deed of settlement, but also sold out some portion of the property acquired by the opposite party No. 2. It is further alleged that the petitioner was well aware of the specific property acquired by the petitioner and the specific property acquired by the opposite party No. 2 and as such the petitioner had the

intention to cheat the opposite party No. 2 from the inception and thereby the property falling within the share of the opposite party No. 2 was sold out to the co-accused person by the petitioner. It is also alleged that the witnesses to the deed executed by the petitioner in favour of Nirod Baran Mohanty were aware that the property sold out by the petitioner to Nirod Baran Mohanty does not exclusively belong to the petitioner and as such they are also involved in the fraudulent activities of the petitioner. It is a fact that the police investigated the criminal case and submitted charge-sheet before the court of learned Magistrate who has taken cognizance of the offence and rejected the prayer of the petitioner for discharge.

7. The question for consideration of the court is whether the allegation made by the opposite party No. 2 in the petition of complaint has disclosed any offence punishable under Sections 406/420/467/468/471/120B/34 of the Indian Penal Code. I would like to consider the allegation made by the opposite party No. 2 in its entirety for formation of opinion whether the offence is made out against the petitioner under Sections 406/420/467/468/471/120B/34 of the Indian Penal Code. There is no averment in the petition of complaint to indicate that the property sold out by the petitioner was entrusted to the petitioner by the opposite party No. 2 and as such no offence of criminal breach of trust is made out against the petitioner. So, the petitioner cannot be made liable for commission of the offence under Section 406 of the Indian Penal Code.

8. The condition precedent for forgery is to make a false document. A person is said to have made a false document, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses. In "Mohammed Ibrahim v. State of Bihar" reported in , (2009) 8 SCC 751 the Supreme Court quashed the criminal proceeding for offence under Sections 467/471/420/504 of the Indian Penal Code even when two sale deeds were executed by the appellants purporting to sell the property which did not belong to them. Those sale deeds were not branded as false documents by the Supreme Court. The reasons given by the Supreme Court in this regard in paragraphs 16 and 17 of the report may be quoted here in below for the purpose of this case:

"16. There is a fundamental difference between a person executed a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner''s behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

9. By applying the above test in the facts of the present case, I find that the petitioner executed the sale deed in favour of Nirod Baran Mohanty in her own capacity and not by way of false personification and not by suppressing her identity at the time of execution of sale deed. So, the execution of the sale deed by the petitioner in favour of the transferee Nirod Baran Mohanty cannot come within the ambit of false document defined under Section 464 of the Indian Penal Code. Since the sale deed executed by the petitioner cannot be branded as production of forgery, the petitioner cannot be prosecuted for the offence under Sections 467/468/471 of the Indian Penal Code.

10. In "Mohammed Ibrahim V. State of Bihar" (supra) the Supreme Court has observed in paragraph 19 as follows:

"19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security.)"

11. In the present case, there is no averment in the petition of complaint to indicate that the petitioner induced the opposite party No. 2. to deliver any property to any person or to alter or destroy any valuable security. Nirod Baran Mohanty, the co-accused of the instant case who purchased the property from the petitioner could have made this allegation against the petitioner. There is no iota of averment in the petition of complaint to indicate that the petitioner has committed the offence under Section 420 of the Indian Penal Code. I also do not find any averment in the petition of complaint about the criminal conspiracy for which the petitioner is liable to be prosecuted under Section 120B of the Indian Penal Code.

12. In view of my above findings, I have no hesitation to hold that by taking the entire allegation made against the petitioner in its entirety no offence is found to have been made out against the petitioner under Sections 406/420/467/468/471/120B/34 of the Indian Penal Code. As a result, the

continuation of the criminal proceeding against the petitioner will be an abuse of the process of the court. Accordingly, I am inclined to invoke my inherent power under Section 482 of the Code of Criminal Procedure to quash the criminal proceeding pending against the petitioner.

As a result, G.R. No. 1676 of 2011 pending before the court of learned Judicial Magistrate, 5th Court, Howrah, is quashed. Criminal revision is, thus, allowed.

The department is directed to send down a copy of the judgement to the learned court below for favour of information and necessary action.

Urgent photostat certified copies of this judgment, if applied for, be given to the learned counsel for the parties on priority basis upon compliance of all necessary formalities.