
(2010) 02 CAL CK 0099
In the Calcutta High Court
Case No : C.R.R. No. 4303 of 2009

Swapan Kumar Roy

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (2010) 02 CAL CK 0099

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Sunirmal Nag, for the Appellant; Debabrata Roy, for the Respondent

Judgement

Ashim Kumar Roy, J.—Invoking Section 482 of the Code of Criminal Procedure, the petitioner has moved this Court for quashing of a FIR under Sections 420/120B of the Indian Penal Code. It was contended before this Court that on the allegations made in the impugned FIR, no offence has been made out and the case is absolutely harassing in nature. It was further contended that the present petitioner had no locus standi. Admittedly, the land in question belonging to the Habra Municipality and the petitioner has no right, title and interest over the said land.

On the other hand, the learned advocate appearing on behalf of the State vehemently opposed the prayer for quashing and submitted that from the Case Diary sufficient materials have been disclosed showing the complicity of the petitioner in the commission of the offences.

2. Now, having regards to the allegations made in the F.I.R. and the materials collected during preliminary investigation, I find that this is the prosecution case that the accused No. 1 claiming himself to be the lawful owner in respect of land in question which according to him, he obtained by way of gift, has sold out the said land to the present petitioner, the second accused. It is the further case of the prosecution that the land in question belonged to the Habra Municipality and

none of the accused has any right, title and interest over the said plot of land. According to the defacto complainant, after obtaining the possession of the land in question by practicing fraud, the present petitioner started constructing shop rooms thereon and took an advance of Rs. 15,000/-from the defacto complainant on the assurance to let out the said shop room to him. The locus standi of the complainant is a concept foreign to criminal jurisprudence and anyone can set or put the criminal law into motion, unless the statutes creating the offence indicates to the contrary. In this connection, the reliance may very well be placed on the Constitution Bench decision of the Hon'ble Apex Court in the case of A.R. Antulay Vs. Ramdas Srinivas Nayak and Another, . So far as the allegations made in the First Information Report and the materials collected by the police during preliminary investigation, it cannot be said that no case has been made out. Whether the proceeding is harassing or not and the petitioner is a bona fide purchaser of the land in question are purely question of facts and cannot be gone into at this stage, when the High Court is posed with a question of quashing of a FIR. It is the only thing that has to be seen whether the offence has been made out or not on the materials collected by the police and not whether the allegations are true or false. In this case the investigation has still not been completed and if at the end it is found that the allegations against the petitioner are false, then in that case final report may be submitted, but it is not permissible for the Court at this stage to go into the merits of the allegations and to determine which version of the case is true, whether the prosecution's version or that of the defence. The contentions of the learned advocate for the petitioner that the dispute is purely civil in nature, is also no ground for quashing. It is also well settled that merely because an act has a civil profile, is not sufficient to denude it from its criminal outfit unless the allegations falls short in making out a criminal case. It is also well settled that the accused cannot pray for quashing of a criminal prosecution merely because a civil remedy is available.

For the reasons stated above, this criminal revision stands, dismissed.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.