

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Petn. 19 of 2023

Sri Dilip Saha and Another**Petitioner(s)**

Versus

Sri Soumen Saha and Another**Respondent(s)**

For Petitioner(s) : Mr. Samar Das, Advocate
Mr. S. Talapatra, Advocate

For Respondent(s) : Mr. S. M Chakraborty, Sr. Advocate
Mr. S. Saha, Advocate
Mr. S. Debnath, Addl. PP

HON'BLE MR. JUSTICE T. AMARNATH GOUD

ORDER

20.09.2023

This is a petition filed under section 482 of the Code of Criminal Procedure, 1973 seeking the following the reliefs :-

"i. Admit this petition

ii. call for records

iii. issue notice

iv. after hearing the parties setting aside/quash the Criminal proceeding pending before the Addl. Chief Judicial Magistrate, West Tripura Agartala Vide Case no- CR 216 Of 2021 and proceeded against the present petitioners under section 418,419 and 420 of the Indian Penal Code and pass such other order or orders as the Hon'ble Court may deem fit and proper for the ends of justice."

The brief facts of the case is that respondent no-1 expressed his intention to purchase a flat at Kolkata having metro facility. Petitioner Nos.1 and 2 are the nephews of the respondent no. 1. Then the petitioner No.1 told the respondent No.1 that he is doing promoting business and he will construct another floor over the existing

G+3 building under the name and style of "Rajmahal". The petitioner no. 1 stated to respondent No. 1 that if he pays Rs. 5,00,000/- as advance then he will execute an agreement with the respondent no. 1 agreeing to sell a flat at 4th floor of "Rajmahal" after completion of construction within 06 months. Accordingly, on 01.04.2017 an unregistered agreement was executed by the respondent no-1 at Kolkata. The respondent no.1 again paid Rs.1,00,000/- to the petitioner no.1. After elapsing of two years from the execution of agreement, respondent no. 1 made an enquiry and came to learn that everything is false. Thereafter, the respondent No.1 herein filed the impugned criminal proceeding before the Court below. Hence the petitioner filed this petition for quashing the said criminal proceeding.

Mr. Samar Das, learned counsel appears for the petitioner as well as Mr. S.M. Chakraborty, learned Sr. counsel assisted by Ms. S. Saha, learned counsel appears for respondent No.1 and Mr. S. Debnath, learned Addl. P.P., appears for the State-respondent.

Mr. Samar Das, learned counsel appearing for the petitioner submits that an agreement has been executed between the petitioners and the respondents and by dint of that agreement, the said flat is to be delivered to respondent No.1 herein. In pursuant of that agreement, the said Rs.5 lakhs has been paid by the respondent No.1. The construction of the said flat is yet to be made so no flat has been handed over to the respondent No.1. Due to such reason, the impugned criminal proceeding has been initiated before the Court below. During, the said period, some amount has been paid back to the

respondent No.1, by the petitioners. The respondent No.1 and petitioners are close relatives and in pursuance of the relation, respondent No.1 paid the said amount. The petitioners herein are not the owner or developer of the said flat, one of the petitioner has only put signature only as an attorney of the developer/land owner and other petitioner put his signature as a witness as such they are not liable to pay this whole amount.

On the other hand Mr. S.M. Chakraborty, learned Sr. counsel appearing for the respondent No.1 submits that respondent no.1 paid the money to the petitioners and they subsequently received the money and the proof of the same have been submitted before the Trial Court. Learned Sr. counsel further argued that the petitioners deceived the respondent No.1 of his money.

Heard and perused the evidence on record.

Notice has been made out for interference on the impugned criminal proceeding. However, it is seen from the record and well as heard from the learned counsel appearing for the parties that there was a transaction on the promise of construction and handing over the flat between the petitioners and the respondent No.1 herein. Accordingly, an amount of Rs.5 lakhs has been received for handing over flat in "RAJMAHAL" construction Kolkata.

Without entering into the disputed question of facts, since the matter requires an adjudication by conducting a proper trial by the learned Court below, this Court is not inclined to quash impugned proceeding before the Addl. Chief Judicial Magistrate, West Tripura

Agartala vide case No.CR 216 of 2021 and the present criminal petition is dismissed.

As a sequel, stay if any, stands vacated. Pending application(s), if any also stands closed.

JUDGE

Paritosh

**SABYASACHI
GHOSH**

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