

16.11.2021

Item No.6
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 361 of 2021
(Via Video Conference)

Subhranil Pramanik
versus
The State of West Bengal & Anr.

In Re: An Application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

Mr. Gouranga Kumar Das,
Mr. Sandip Kumar Mondal ... For the Petitioner.

Mr. Amitabha Karmakar,
Mr. Arup Kumar Bhowmick ... For the State.

The present revisional application has been preferred for quashing of the proceedings arising out of C.R. Case No. 377 of 2019 (CIS) pending before the learned Judicial Magistrate, 4th Court, Hooghly (Sadar). The petitioner on receipt of summons appeared before the learned court and was granted bail.

The factual matrix of the case relates to an agreement being entered between the present petitioner and the opposite party no.2/complainant wherein for a sum of Rs.11,25,000/-, a property was decided to be sold by the present petitioner. An advance of Rs.3,00,000/- was accepted by the petitioner from the opposite party no.2/complainant. The grievance of the complainant is that after she was able to organise a sum of Rs.8,25,000/-, when she approached the accused, by that time, the accused had sold out the property to a different person. It has further been contended that from the very inception, the accused did not have the intention to sell the

property and has also misappropriated the advance sum of Rs.3,00,000/-. On receipt of such complaint, by an order dated 25.09.2019, the learned Chief Judicial Magistrate, Hooghly was pleased to take cognizance of the offence and transferred the case to the learned Judicial Magistrate, 4th Court, Hooghly. The learned Magistrate on examination of the complainant under Section 200 of the Code of Criminal Procedure issued process under the aforesaid Section.

Learned advocate appearing for the petitioner contends that primarily return of money, which is a civil dispute, has been given a cloak of a criminal proceeding and the complainant has invoked the jurisdiction of criminal court to recover her money which was given by way of an agreement for sale. The learned advocate further submits that an advance sum, which was paid under the clauses of the agreement entered by and between the parties, cannot under any circumstances come within the ambit of Section 420 or Section 406 of the Indian Penal Code as it has been settled that breach of terms of contract or an agreement would not attract the provisions of either Section 420 or Section 406 of the Indian Penal Code. To that effect, learned advocate relies on a judgment of the Hon'ble Supreme Court in ***Dalip Kaur & Ors. Vs. Jagnar Singh & Anr.*** reported in **(2009) 14 SCC 696**.

Learned advocate appearing for the opposite party no.2/complainant submits that complainant has been deprived as the land was never handed over to her or for a better price, the petitioner has sold it to a different person

and as such, the provision of Section 420 of the Indian Penal Code is attracted, apart from the money which by way of advance has been retained by the accused/petitioner.

I have considered the submissions advanced by both the parties as also the petition of complaint. On a close scrutiny of the averments made in the petition of complaint, I am of the view that the present case fails to satisfy the ingredients of an offence to invoke the jurisdiction of the criminal court as the same through out reflects breach of terms of agreement and as such, has been instituted for recovery of the advance money of Rs.3,00,000/-. The case lacks the essential requisites for commission of offence either under Section 420 or under Section 406 of the Indian Penal Code. In short, a civil dispute has been given the cloak of a criminal proceeding which cannot be allowed to continue.

Having regard to the observations made above, I am of the considered opinion that the allegations made in the petition of complaint fail to make out any offence. As such, further continuance of the same would be an abuse of the process of law and is required to be quashed. Accordingly, C.R. Case No. 377 of 2019 (CIS) pending before the learned Judicial Magistrate, 4th Court, Hooghly (Sadar) including the orders passed therein are hereby quashed.

The revisional application being CRR 361 of 2021 is, thus, allowed.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

(Tirthankar Ghosh, J.)