

20.01.2021
Item no.30
Ct. No.42
CHC

C.R.R. No.751 of 2018
(Physical Hearing)

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

In the matter of:-

Jayanta Chowdhury
.....petitioner

Mr. Jayanta Samanta,
Ms. Karunamoyee Samanta
...for the petitioner

Mr. Imran Ali,
Ms. Manasi Roy
... for the State

This is for quashing of a proceeding in connection with English Bazar Police Station Case No.309 of 2011 dated 21st May, 2011 under Sections 468/420/34 of the Indian Penal Code vide G.R. Case No.1609 of 2011, now pending before learned Chief Judicial Magistrate, Malda.

Learned advocate, Mr. Jayanta Samanta representing the petitioner submits that the petitioner is the promoter who is arrayed as co-accused in the instant case. It is submitted further that de facto complainant alleging violations of the terms of the

development agreement has attempted to make out a case alleging to have been cheated for the fraud practised upon the de facto complainant by the petitioner accused with another co-accused. It is also submitted that de-facto complainant to redress his grievance, independent of the criminal prosecution, invoked the jurisdiction of the Consumer Forum, and obtained relief, and in connection therewith, so as to ensure compliance of the direction of the Consumer Forum, flats had already been handed over to de facto complainant with keys and further paying money already agreed to be paid by the developers/promoters/petitioners to the de facto complainant. Thus with the liquidation of the money together with handing over of proposed flats to the de facto complainant, the grievance expressed in connection with the instant criminal prosecution appears to have been already redressed to.

Adverting to a judgement rendered by coordinate Bench of this Court in connection with C.R.R. No. 01 of 2016, learned advocate for the petitioner submits that another co-accused has already been favoured with quashment upon consideration of the facts referred to above.

According to petitioner he is equally circumstanced with co-accused namely Pankaj Adhikari, who is also developer/promoter as that of the petitioner himself, and claiming thus parity, petitioner has proposed for quashment of the pending proceeding.

Learned advocate Ms. Manasi Roy representing the State has supported the contention of the petitioner, and submits that

similar relief may be extended to the petitioner granting proposed quashment.

Having considered the submission of both the parties, it appears that while deciding C.R.R. No, 01 of 2016, the coordinate Bench of this Court had already taken care of the facts mentioned hereinabove by the petitioner, and accordingly granted order favouring quashment of the pending proceeding in the court below in respect of accused Pankaj Adhikari. The grievance expressed in the instant criminal prosecution having thus been duly redressed with the handing over of proposed flats to de facto complainant together with liquidation of money, agreed to be paid by the promoters to the de facto complainant, there lies no live issue requiring adjudication any more. There is hardly any materials placed to make any distinction with the facts narrated in C.R.R. No.01 of 2016 and the conclusion reached therefor. Nothing is shown by the learned advocate representing State that the State has challenged the order passed in C.R.R. No. 01 of 2016 before the Apex Court. The claim of parity thus sought to be obtained, while proposing quashment in the given circumstances of the case needs to be adequately taken care of. The lower court proceeding in connection with G.R. Case No.1609 of 2011 under Sections 468/420/34 of the Indian Penal Code stands quashed qua the petitioner, Jayanta Chowdhury.

With this direction/observation, the instant revisional application stands disposed of.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Subhasis Dasgupta, J.)