

22.06.2022
Item No. 02
Court No.32
Avijit Mitra

**FMA 823 of 2017
with
IA No. CAN 1 of 2017 (Old CAN 2189 of 2017)**

**Radha Nath Nandy
Versus
The State of West Bengal & ors.**

Mr. Radha Nath Nandy
...Appellant in-person
Mr. Jahar Lal De, Ld. A.G.P.,
Ms. Debarati Sen (Bose
....for the State
Mr. Abdul Masood,
Mr. Abdul Murshid,
Md. Mahfuz Takrim
....for the respondent nos. 2 to 5

The present appeal has been preferred challenging the order dated 9th January, 2017 passed in W.P. No.30023 (W) of 2016.

Records reveal that the appellant preferred the writ petition praying for the following reliefs :

“A) That it is a conspiracy by O.P. U/S-8 of The Evidence Act, it is well planned, organized crime executed by O.P. and there was no room to unfold by accepting from O.P. offer of a flat in “exchange of properties” and it’s full proof of evidence i.e. C.D., final deed of conveyance for a flat tendered by O.P. 2 to 5.

B) That the issue that emanates for consideration before Lordship that Ld. A.C.J.M. Alipore in the case of Purba Jadavpur P.S. Case no-291/13 dt. 02/09/2015 in order the accused persons forged the signature of petitioner. Present I.O. of Purba Jadavpur P.S. did not verify nor sent to signature expert for proper authentication of signature after expiry of 430 days.

C) I.O. Purbajadavpur P.S. had submitted perfunctory report before Ld. A.C.J.M., petitioner ardently make submission before Lordship that Addl. O.C. rank officer can replace or above can make the further investigation for that issue an Order/Direction in the nature of certiorari commanding to the concerned department as to your Lordship may deem fit and proper.

D) Issue a Order/Direction in the nature of certiorari commanding the concerned O.P. authorities to forth with call for the records of the case before this Hon'ble Court and render conscionable justice before this Hon'ble Court.

E) Issue Rule N I S I in terms of Prayer (A), (B), (C) and (D) above.

F) Make the rule absolute should the concerned O.P. authorities fail to give sufficient answer and/or return Pass such other or further Order or Orders as to your Lordship may deem fit and proper.”

It further appears that on the basis of a complaint lodged by the writ petitioner/appellant and his wife, Purba Jadavpur Police Station Case no.291 dated 14th December, 2013 under Sections 447/427/506/403 / 468/420/34/120B of the Indian Penal Code was registered. Initially, upon completion of investigation a final report was filed on 23rd June, 2014. Subsequent thereto, the learned Court below directed re-investigation on 2nd September, 2015. Upon re-investigation, a chargesheet was submitted on 19th August, 2017. In the midst thereof, the writ petition being W.P. No.30023 (W) of 2016 was preferred.

Mr. Nandy, appearing in-person, submits that the arguments advanced by him before the learned Single Judge were not taken into consideration while passing the impugned order. As the private respondents forcibly encroached upon the property belonging to the

appellant/writ petitioner and his wife, two title suits were preferred, one by the appellant being T.S. no.153 of 2012 and the other by the appellant's wife being T.S. No.154 of 2012. The private respondents are very powerful and they have also violated the *interim* order passed in the said title suits. They have practised fraud and valuable pieces of evidence, which were in the possession of the appellant, were not taken into consideration in course of re-investigation.

He further submits that for quashing the complaint lodged by the appellant and his wife, a revision application was filed being C.R.R. No.1153 of 2015. Drawing our attention to the order passed in the same on 15th May, 2017, Mr. Nandy submits that the accused persons have committed forgery. Referring to an order dated 7th March, 2016 passed in M.A.T. No.52 of 2016, Mr. Nandy argues that the appellant and his wife have been misled and their rights have been jeopardized.

He further submits that the criminal case pertaining to Purba Jadavpur Police Station Case no.291 dated 14th December, 2013 is long pending and in the same, charges have not yet been framed and as a consequence thereof, the appellant had been the worst sufferer.

Per contra, Mr. Masood, learned advocate appearing for the private respondent nos. 2 to 5 submits that there is no infirmity in the order impugned. The appellant

willingly sold the concerned property upon executing deeds of conveyance. All allegations levelled against the private respondents are absolutely unfounded. In the Purba Jadavpur Police Station Case no.291 dated 14th December, 2013, re-investigation was conducted and chargesheet has been filed. However, charges have not yet been framed.

Mr. De, learned Additional Government Pleader appearing for the State submits that the writ Court cannot take upon itself an investigative mantle to decide disputed questions of fact. The veracity of the allegations levelled by the appellant needs to be ascertained through a detailed enquiry by the competent forum. Upon considering the averments made in the writ petition and the prayers as sought for, the learned Single Judge had rightly passed the order dated 9th January, 2017. The said order is a reasoned one and as such question of any interference in the present appeal does not occasion.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears that there is long-standing dispute between the appellant and the private respondents. Pertaining to such dispute, two title suits are pending. Upon conducting re-investigation in Purba Jadavpur Police Station Case no.291 dated 14th December, 2013, a

chargesheet has already been filed. However, we have been informed that charges have not yet been framed.

We have perused the order impugned in the present appeal. By the said order, the Investigating Officer was directed to conduct investigation in a fair and impartial manner and to complete such investigation and file a report before the learned Magistrate. It was also observed in the said order that it would be open to the Investigating Officer to take into consideration the evidence including the electronic evidence which were annexed to the writ petition. The order, in our opinion, is a reasoned one. There is no patent error in the said order and as such no interference is called for in the present appeal.

However, Mr. Nandy has expressed his anguish and inconvenience, as regards the delay in the proceedings. We have been informed that charges have not yet been framed the criminal proceeding pertaining to Purba Jadavpur Police Station Case no.291 dated 14th December, 2013.

In view thereof, the learned Court below is directed to take up the question of framing of charges, without granting any unnecessary adjournments to either of the parties. In the event charges are framed, the learned Court below shall expeditiously conduct the trial so that logical conclusion of the case may be reached at the earliest.

With the above observations and directions, the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)