

05-04-2022
Subha
Item no.58
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 1372 of 2018

In the matter of : **Smt. Bharati Singh & Anr.**

.....petitioners.

In Re : An application under Section 482 of the Code of Criminal Procedure.

Mr. Anwar Hossain
Ms. Debjani Sahu

....for the State.

Report dated 27th March, 2022 submitted by the Inspector-in-Charge, Kharagpur Town PS, Paschim Medinipore through the learned advocate for the State be kept with the record.

The subject matter of the revisional application related to the proceedings pending before the learned Judicial Magistrate, 4th court, Paschim Medinipore in connection with Kharagpur (Town) P. S. Case No. 138 of 2008 dated 28.07.2008 under Sections 403/406/420/34 of the Indian Penal Code.

The record reflects that the grievance of the petitioner relate to an application for discharge being rejected by the learned Magistrate at the stage of the consideration of charge.

Learned trial court categorically observed the following:-

From the F.I.R and the charge-sheet as well as from the materials on record it is prima facie established that the accused persons made a false representation about the fact of death of the Suresh Prasad singh. There has been a

culpable suppression of fact as regards the pendency of the civil suit in respect of the self-same property. Suffice it is to say that there was prima facie misrepresentation/false representation about the ownership of the property also. Because after the death of her husband the accused person no.01 cannot claim herself to be the exclusive owner of the property in presence of her son. The term "fraud" is not defined in the Code. The dictionary definition of "fraud" is "deliberate deception, treachery or cheating intended to gain advantage". Therefore in this case at least prima facie it is evident that there was deception from the very inception of the transaction. Injury and wrongful gain is also prima facie established because handing over of money is an admitted proposition. Therefore at this stage from the materials on record and on basis of the police report, existence of some short of culpable intent to defraud is forth coming. The 'Bainanama' is one of those materials which prima facie shows that there was some short of criminal intent or why a deceased person would be shown as alive. It is worthwhile to mention here that deceit and/or intention to defraud are mental phenomenon which cannot be pin pointed but has to assumed and assessed by overt acts and/or omissions. Thus by unfurling the prosecution case and the materials on record there is strong suspicion that the accused persons with a dishonest intention indeed had distorted/misrepresented the facts and thereby caused injury to the complainant. Whether this suspicion will ultimately be proved or not by evidence can only be said after completion of trial but at this stage there are adequate materials to infer that the required ingredients to constitute the offence of cheating are present and the prosecution case cannot be brushed aside holding it to be groundless."

The said order was challenged in criminal revision no. 199 of

2013 and the learned revisional court by its order dated 27th February, 2018 was pleased to dismiss the revisional application.

Having considered the reasons assigned by the learned Magistrate and that of the learned revisional court, I am of the opinion that both the courts scrutinized the records, analyzed the facts and thereafter arrived at the finding, I do not find any reason to interfere with the orders under challenge.

Accordingly, the present revisional application being CRR 1372 of 2018 is disposed of.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

Interim order, if any, is hereby vacated.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]