

10.03. 2022
item No.
n.b.
ct. no. 34

CRR 1405 of 2017
Sri Ramesh Kumar Agarwal
Vs.
State of West Bengal & Anr.

Mr. Amales Roy,
Mr. Aman Gupta,

.....For the Petitioner

Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta

.....For the State

Mr. Sandipan Ganguly,
Ms. Jeenia Rudra,
Ms. Sahili De

.....For the Opposite Party

The present revisional application has been preferred challenging the proceeding relating to Siliguri Police Station Case No.285 of 2017 dated 16.4.2017 under Sections 420,468,471,406 and 120B of Indian Penal Code.

The aforesaid case was initiated on the basis of an application under Section 156 (3) of the Code of Criminal Procedure filed at the instance of one Sri Ashish Kumar Mittal against the present petitioner and another. The allegations made in the application under Section 156(3) of the Code of Criminal Procedure are as follows:-

It has been contended that one, Sri Sushil Mitruka represented the complainant that one of his relation is Director of Tirupati Vancom Pvt. Ltd. who are owning land measuring about 13 Kathas 8 Chittacks at Plot No.4/156, Mouza - Dabgram, Pargana- Baikunthapur, J.L. No.2, Sheet No.21, P.S. Bhaktinagar, District-

Jalpaiguri. When such representation was being made, the petitioner was present who represented that the adjacent land of Tirupati Vancom Private Limited belonged to him which was measuring 6½ Kathas and he also intended to sell the same. During such communication the petitioner and the other accused persons produced photocopies of Title Deeds relating to the property. Being impressed by such representation the complainant entered into an agreement for sale in the year 2010 which was signed by both the accused persons. At the time of agreement for sale, the complainant gave a sum of Rs.5,00,000/- to the accused persons out of which the present petitioner (Ramesh Kumar Agarwal) received Rs.2,00,000/- by way of account payee cheque drawn in favour of Vijaya Bank, Sevoke Road Branch, Siliguri and other accused received Rs.3,00,000/- in cash. The complainant in course of time took over physical possession and constructed a room inside the land with an Iron Gate fixed in front of the said land under proper lock and key. The accused persons were supposed to register the said property in favour of the complainant within a period of three months after receiving the balance consideration of Rs.30,00,000/-. However, inspite of repeated requests, they refused to do the same and on communicating with Tirupati Vancom Pvt. Ltd. the complainant received a reply contending that the accused, Sri Sushil Mitruka was neither a Director of the company nor any authorized representative for receiving the advance money. The accused persons, thereafter, avoided the complainant and started threatening him. Having no other alternative, the complainant informed the same to the Officer-in-Charge of the N.J.P. Outpost on 02.06.2014. In the year 2017, all

on a sudden he found that front gate lock and key was broken and with an oil tanker parked inside the land without the permission of the complainant and building materials were also stacked. The accused persons on being asked refused to remove the said materials. The complainant therefore, alleges that he has been cheated by the accused persons by way of conspiracy. In spite of reporting the incidents, the police authorities did not take any steps, as such, finding no other alternative, the instant case has been filed against two accused persons namely, Sri Ramesh Kumar Agarwal and Sri Sushil Mitruka.

Mr. Roy, learned advocate appearing for the petitioner submits that the petitioner happens to be the owner of the land and there is no allegation that he had intention to defraud the present petitioner. Further according to him it was an agreement for sale and the complainant purposely did not get the property registered which belonged to him. Additionally, he submitted that the complainant took it for granted by enjoying the land by paying a sum of Rs.2,00,000/- to the present petitioner and at no point of time, he showed any eagerness by communicating with the present petitioner for registering the 6½ Kathas of land which belonged to him.

Learned advocate in support of his contention relied upon the decisions of ***Murari Lal Gupta Vs. Gopi Singh***, reported in ***(2005) 13 SCC 699, Dalip Kaur & Ors. Vs. Jagnar Singh & Anr.*** reported in ***(2009) 14 SCC 696, M. Suresh & Ors. Vs. State of Andhra Pradesh & Anr.*** reported in ***(2018) 15 SCC 273, Nageshwar Prasad Singh Vs. Narayan Singh & Anr.***, reported in

(1998) 5 SCC 694, Joseph Salvaraja Vs. State of Gujarat & Ors., reported in **(2011) 7 SCC 59.**

Mr. Sandipan Ganguly, learned advocate appearing for the private opposite party disputes the contention so raised by the learned advocate appearing for the petitioner and submits that the petitioner was present at the time of representation being made and he by his conduct has influenced the decision taken by the complainant and the complainant had no intention to purchase the property of the petitioner if 13½ Kathas of land belonging to Tirupati Vancom Pvt. Ltd. was not available to him and that Sri Sushil Mitruka was not authorized to deal on behalf of the said company. The conduct of the accused-petitioner was deceptive in nature which allured the complainant to enter into the such agreement for sale.

Mr. Ranabir Roy Chowdhury, learned advocate appears for the State.

Mr. Ganguly, learned advocate for the opposite party relied upon the decisions of **Rajesh Bajaj Vs. State NCT of Delhi & Ors.** reported in **(1999)3 SCC 259, Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors., State of Karnataka & Anr. Vs. Pastor P. Raju,** reported in **(2006) 6 SCC 728, Ravindra Kumar Madhanlal Goenka & Anr. Vs. Rugmini Ram Raghav Spinners Pvt. Ltd.,** reported in **(2009) 11 SCC 529.**

I have assessed the allegations made in the petition of complaint and the submissions made by the learned advocate appearing for the petitioner as well as for the private opposite party. The allegations in the petition of complaint so far as the present petitioner is concerned relate to an agreement for sale being entered

by paying sum of Rs.2,00,000/- as advance to the present petitioner in respect of property within the jurisdiction of Bhaktinagar Police Station measuring about 6½ Kathas. The complete amount so far as the property is concerned was never paid to the present petitioner and the complainant's interest was in respect of the 13½ Kathas of land belonging to Tirupati Vancom Pvt. Ltd. There are no allegations that the present petitioner was not the owner of the property which he had represented, to that extent the submissions made by Mr. Ganguly, learned Advocate is an improvement and is duration from in respect of allegations that in the complaint.

The present is a case where the elements of cheating so far as the present petitioner is concerned is completely missing and a civil litigation has been converted into a criminal proceeding by way of filing an application under Section 156(3) of the Code of Criminal Procedure. From the allegation made in the petition of complaint as well as the conduct of the petitioner who before this Court at the first instance offered the sum of 2,00,000/- which was accepted by a Coordinate Bench and directed to be deposited with the Registrar General, High Court, Calcutta shows that the petitioner had no intention for not transferring the property. The allegations so far as the present petitioner is concerned do not make out any offence and more so no investigation is required to be conducted against him.

Accordingly, all further proceedings arising out Siliguri Police Station Case No.285 of 2017 dated 16.4.2017 under sections 420, 468, 471, 406, 120B of the Code of Criminal procedure corresponding to G.R. No.1129 of 2017 is quashed so far the present petitioner is concerned.

Needless to state that the same benefit is not extended to the other accused who filed a separate revisional application and withdrew the same.

Thus, CRR 1405 of 2017 is allowed.

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

Interim order, if any, is hereby made absolute.

The petitioner is at liberty to take out an appropriate application for withdrawing the amount which has been deposited with the Registrar General, High Court, Calcutta pursuant to the order dated 25.4.2017 passed by a Coordinate Bench in the instant revisional application.

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

(Tirthankar Ghosh, J.)