

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

CRR 1490 of 2019

Palan Krishna Mondal & Ors.

-vs-

The State of West Bengal & Anr.

For the petitioners	:	Mr. Sudipto Maitra Mr. Vijay Verma Mr. Dwaipayan Biswas
For the State	:	Mr. Swapan Banerjee Mr. Suman De
Heard on	:	16.06.2022
Judgement on	:	25.07.2022

Ajoy Kumar Mukherjee, J.

1. Present revisional application has been directed for quashing of the proceeding being Maheshtala Police Station Case No. 211 of 2019 dated 13.04.2019 under Sections 420/465/467/468/120B of the Indian Penal Code corresponding to BGR No. 2215 of 2019 pending before the learned Additional Chief Judicial Magistrate at Alipore, South 24 Parganas.

2. Opposite party no. 2, being Managing Director of Metropolitan Real Estate Private Limited, and as constituted attorney holder of Mr. Ashok

Chakraborty, lodged an First Information Report (FIR) with Maheshtala Police Station alleging that Sri Manik Lal Santra, Smt. Geeta Santra and Smt. Nirmala Paramanick alias Mangla Paramanick executed an agreement for sale with regard to land measuring 3 Acre 48.75 decimals at Mouza – Roypur, being R. S. No. 73 under Khatian No. 389 and possession of the said land was handed over to said Mr. Ashok Chakraborty. Further allegation is that though said agreement for sale was executed in the year 1997, after several requests, deed of conveyance was not executed by the aforesaid owners and for which a civil suit for specific performance was filed in the court of 7th Assistant District Judge, at Alipore, being Title Suit No. 14 of 1995 and thereafter a deed of conveyance was executed through court in favour of said Mr. Ashok Chakraborty. It was further alleged that de facto complainant and said Mr. Ashok Chakraborty got information that the petitioner nos. 1 to 6 herein, along with other FIR-named accused persons, sold the said land on 23.11.2010 measuring 8 Cottahs 13 Chittack 25 Sq. ft and land measuring 5 Cottahs 7 Chittack 9 sq. ft. and also land measuring 3 cottahs 6 chittack 16 sq. ft. and Mr. Palan Mondal, one of the FIR-named accused persons, signed in the said deed of conveyance as confirming party knowing well about the previous execution of the said sale deed thorough court, in favour of Mr. Ashok Chakraborty.

3. Mr. Maitra, learned advocate on behalf of the petitioners, submits that said Sri Manik Lal Santra and Smt. Geeta Santra after being apprised of the said conveyance of the deed of sale through court filed suit in the court of

learned 7th Civil Judge (Sr. Division) at Alipore with a prayer for setting aside the decree passed in the said suit for specific performance in the year 2011. The petitioners with utter surprise found aforesaid criminal case with the allegation that petitioner/accused persons by way of preparing alleged forged documents sold portion of the land in respect of which there is deed of conveyance executed by the court. Mr. Maitra submits that neither Sri Manik Lal Santra, nor Smt. Geeta Santra or anybody on their behalf were served with the summons of the aforesaid suit for specific performance of contract at any point of time and even they could not trace out the record of the said suit in the concerned court.

4. Opposite party no. 2 as constituted attorney subsequently filed two suits, being Title Suit No. 3482 of 2010 and 3481 of 2010 in the year 2010 with a prayer for declaration of the deed of conveyance executed in favour of some of the accused persons, is void and did not confer any right title interest upon the purchasers.

5. The present petitioners submit that they are bona fide purchasers of the land on valuable consideration and before deed of conveyance was executed, the petitioners caused inspection in the office of the District Registrar and the Settlement Office and nothing transpired that any deed of conveyance was executed earlier and further record of rights transpires the name of vendors of the petitioners and after being satisfied with the marketable title of the vendors in respect of the land in question, they purchased the property on valuable consideration.

6. Mr. Maitra on behalf of the petitioners further submits that no specific role has been attributed to any of the petitioners in respect of commission of the alleged offence and even though property was purchased in the year 1997 but till date the opposite party no. 2 or Mr. Ashok Chakraborty or anybody on their behalf had exercised right of ownership in any manner whatsoever and vendors of the petitioners are still in possession of the suit property in question and paid taxes. Mr. Maitra further submits that the dispute is purely civil in nature and decision by the concerned civil court in session of the suits will determine the claim of de facto complainant and competence of the vendors of the petitioners to execute the deed of conveyance in respect to the respective portion of the land. But the First Information Report, even if taken on its face value, does not disclose any prima facie offence against the petitioners and dispute, as alleged, simply concerning right title and interest of Mr. Ashok Chakraborty and the vendors of the petitioners over the said land, which is purely civil in nature. Accordingly, Mr. Maitra contended that the continuance of the present proceeding will be a mere abuse of the process of the court and, as the present proceeding has been initiated with mala fide intention over a land dispute, so the entire proceeding is liable to be quashed.

7. Mr. Maitra in this context relied upon judgements reported in **(2015) 3 SCC (Cri) 724 (Robert John D'Souza and Ors. Vs. Stephen V. Gomes & Anr.); AIR 2020 SC 626 (Sardar Ali Khan Vs. State of Uttar Pradesh, through Principal Secretary Home Department & Anr.)** and also in **JT 2019 (10) SC 451 (M. Srikanth Vs. State of Telangana & Anr.)**.

8. Mr. Swapan Banerjee, learned counsel on behalf of the State, submits that investigation has already been ended in charge-sheet against FIR-named accused persons, noted in column no. 12 of the charge-sheet. Mr. Banerjee further submits that sufficient incriminating materials have been collected during investigation and the petitioners have made deep-rooted conspiracy in selling the property which has already been sold by way of a decree of specific performance of contract, inspite of knowledge of the petitioners and, accordingly, it would not be proper to quash the entire proceeding at this stage when the matter is pending for disposal before the trial court.

9. From the FIR it appears that Mr. Ashok Chakraborty made an agreement for sale with Sri Manik Lal Santra, Smt. Geeta Santra and Smt. Nirmala Paramanick, but after receiving money in terms of the agreement said owners tried to sell the land to third-party through local land broker, Palan Krishna Mondal, Baharali Mufty and Amal Kumar Khanra. In the said suit for specific performance of contract learned court issued notice to the land owner to make registration of the said land in favour of the said Mr. Ashok Chakraborty within one month but they did not obey the court's order and, accordingly, the deed was executed on 05.09.1997 by the executing court. The de facto complainant has made out a case that he informed the petitioners that they have purchased the property and also sent copy of purchase deed on 19.04.1999 and on getting the same Palan Krishna Mondal informed them that he has got no connection with the land. But subsequently Manik Lal Santra, Geeta Santra, Nirmala Paramanick, Baharali Mufty, Palan Krishna Mondal, Barun Mondal, Amal

Khanra and others prepared forged deeds and Palan Krishna Mondal signed as a confirming party knowing that it was purchased by the complainant in the year 1997. Even in the year 2009 when they got information that Indiana and Agro Machinery company, owner(s) Mahesh Maglani and Varsha Maglani, were going to purchase, the complainant met with them and showed deed and other papers but in spite of that information, they purchased the land as they were assured by Palan Krishna Mondal, Bahar Ali Mufty and Barun Mondal.

10. During investigation said Mr. Ashok Chakraborty made statement before police and alleged about cheating against the petitioners. Other two witnesses who made statement under Section 161 Cr.P.C., have only stated that in spite of knowledge, that property is owned by Ashok Chakraborty, the same was sold by the petitioners in order to defraud the original owner.

11. The sum and substance of the written complaint is that in spite of the knowledge that a deed has been executed by the Assistant District Judge himself in favour of Mr. Ashok Chakraborty by dint of a decree passed in a suit for specific performance of contract, Palan Krishna Mondal and others in collusion with Manik Lal Santra, Geeta Santra, Nirmala Paramanick, have sold the property to the purchaser/some of the accused persons where Palan Krishna Mondal signed as a confirming party knowing that it has already been transferred in the year 1997. It is also stated by the petitioner that the opposite party no. 2, being the constituted attorney of said Mr. Ashok Chakraborty, filed two suits in the year 2010 with a prayer for declaration of the deed of conveyance executed in favour of the some of the accused persons, was void

and did not confer any title and interest being Title Suit No. 3482 of 2010 and Title Suit No. 3481 of 2010.

12. In this connection it is to be noted that the petitioners purchased the property through sale deeds and the sale deed was executed by the erstwhile owners. There is no allegation of impersonation or forgery of signature in executing the subsequent deeds. Palan Krishna Mondal has been roped as he was one of the signatories of the deeds as witness. Though the opposite party no. 2 was aware about the sale in the year 2010, he has chosen to file the criminal complaint only in the year 2019. With regard to the validity of the sale deed, matter is pending before competent civil court and it is for the civil court to decide whether any fraud has been practised or not by the petitioners for obtaining the sale deed. When the very same issue regarding determination of title on the land is pending before the civil court, the opposite party no. 2 cannot pursue criminal proceeding against the appellant for alleged offence under Sections 420/465/467/468/120B of the Indian Penal Code. In this connection Learned counsel for the petitioners also taken the plea that present criminal case is barred by limitation.

13. In any event when the suit has already been filed by the de facto complainant for cancellation of sale deeds, which is pending for consideration before a competent court of law, they cannot pursue the present complaint in criminal proceeding by improving his case after 09 years. On perusal of the materials in the case diary, beside statement of de facto complainant Mr. Ashok Chakraborty and two of his men, Nirmal Das and Rafik Alam, no other

incriminating material could be collected by the investigating officer during investigation. In the above background, allowing the proceeding to go on against the petitioners in the above set of facts, is nothing but abuse of the process of the court.

14. In *Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre*, reported in (1988) 1 SCC 692, a three-Judge Bench of the apex court has laid down the law as to quashment of proceeding under Section 482 of the Cr.P.C. as follows:

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

15. The only role attributed to the petitioners in the FIR is that inspite of giving information that Ashok Chakraborty has purchased the land through decree of court, the petitioners/ accused person, in collusion with each other, got the property sold and thereby cheated, defrauded and committed criminal breach of trust. When the very same issue is admittedly taken up by the civil court as erstwhile owners have challenged the decree for specific performance of contract and on the contrary alleged purchaser Ashok Chakraborty has filed two suits for cancellation of deeds executed in favour

of some of the accused persons in 2010 said Ashok Chakraborty cannot pursue criminal proceedings against petitioners under section 420/465/467/468/120B of the Indian Code.

16. In view of the above discussion and the facts and circumstances of the case, I am of the view that none of the aforesaid offences, for which the appellants are roped is made out from the complaints or from materials in case diary. It is nothing but an abuse of process of court on the part of defacto complainant to implicate the petitioners after a period of nine years of execution of registered sale deed in question.,

17. Though in the FIR there is mention with regard to conspiracy, there is no material with regard to manner of such conspiracy. During investigation also police did not find any material to prove the case of conspiracy. On the contrary, it reveals that civil suits with regard to the ownership and possession of the property are pending involving civil disputes between the parties.

18. Having regard to the serious factual disputes which are of civil in nature between the parties and for which civil suits are pending, allowing the opposite party no. 2 to pursue his complaint in criminal proceeding is absurd and as such I am of the considered view that the present criminal proceeding is fit to be quashed by allowing this revisional application.

19. Accordingly, CRR 1490 of 2019 is allowed.

20. All further proceedings, being Maheshtala Police Station Case No. 211 of 2019 dated 13.04.2019 under Sections 420/465/467/468/120B of the Indian Penal Code, corresponding to BGR No. 2215 of 2019, pending before the learned Additional Chief Judicial Magistrate at Alipore, South 24 Parganas, is hereby quashed.

With the disposal of the main revisional application, connected application, if any, stands disposed of.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(AJOY KUMAR MUKHERJEE, J.)