

07.11.2022
Item no.20.
Court No.35.
I.T

C.R.R 3252 of 2016

Avinash Shukla
-Vs.-
State of West Bengal & Ors.

Mr. Biswajet Manna
.....For the petitioner

Mr. Swapan Banerjee,
Mr. Suman De.
..... For the State.

Mr. Dipankar Aditya
..... For the respondent No.4

Ms. Tina Biswas
..... For the respondent no.5

Petitioner is aggrieved of the order passed by the ACJM, Serampore rejecting his prayer for further investigation into the case, which was earlier lodged by him. Impugned order is dated 30th May, 2014 and relates to Uttarpara Police Station Case No.336 of 2011 dated 15.11.2011 under Sections 451/454/120B of IPC.

The factual background in a nutshell may be narrated down as follows:-

Petitioner claims himself to be the owner of the property at 8, Dr. T.N. Mitra Lane, Konnagar, P.S. Uttarpara, Dist: Hooghly and in support he has relied on the deed of conveyance executed on 22nd July, 2008. However, he has never habitated at the said premises. According to him to his surprise he found some strangers to be in occupation of the

said premises after breaking the locks thereof and also some valuable articles to have been stolen. The incident is said to have happened on 31st August, 2011. This has prompted the petitioner to approach the police. But since allegedly the police did not act to redress his grievance he filed an application under Section 156 (3) Cr.P.C before ACJM, Serampore. He could secure order from the ACJM, Serampore, directing the police to start a specific case, i.e, Uttara Para Police Station Case No. 336/2011 dated 15.11.2011 under Sections 451/454/120B of IPC. Investigation was done and police submitted final report dated 31st August, 2012, discharging all the accused persons in the case. Petitioner was aggrieved and preferred to file an application under Section 173 (8) Cr.P.C in the trial court.

By dint of the impugned dated 31st May, 2014, ACJM, Serampore has dismissed petitioner's prayer under Section 173 (8) Cr.P.C finding inter alia that:-

"On simultaneous perusal of both documents it is found that previous owners have transferred the disputed property to defacto-complt by way of sale while power of attorney is in force & behind their back;

C.D. even shows that on the basis of power of attorney these accds even inducted several tenants. From materials in case diary it is learnt that defacto- complt on the very went to the property but failed to obtain physical possession of land due to occupancy of all rooms by various tenants.

On the basis of these facts and circumstances at transferred from C.D there is no impediment to accept FRT submitted by I.O. No. scope or ground is found requiring re-investigation by police. The matter is of Civil nature."

Being aggrieved and dissatisfied with the said impugned order, the petitioner has filed the present revision

case on various grounds and prays for setting aside of the impugned order.

It is submitted on behalf of the petitioner that the entire investigation in this case has only been perfunctory in so far as the previous owner of the premises and other related persons like the present opposite party have never been examined by police during investigation. According to the petitioner these persons as mentioned above, would have been very vital witness in view of the facts and circumstances of the present case and their non-examination during investigation has resulted into the investigation being only cursory and superficial and submission of the final report by police discharging all the accused persons. The petitioner submits that the same has caused immense prejudice to him who being bona fide purchaser of the concerned property has been deprived of his lawful possession thereof by the accused persons/opposite parties and also had to suffer offence committed by them like house breaking and theft etc. It is submitted further that further investigation in this case would have been imperative had the court duly considered the prejudice of the petitioner and the facts and circumstances of the case. According to him examination of these persons would have been the only way during investigation to unearth the truth and by not doing so the police has conducted an imperfect investigation for which further investigation should have been mandated. The other point of argument advanced is that the magistrate has erroneously proceeded to consider

petitioner's prayer, to be a prayer for re-investigation, though he filed his petition u/s 173 (8) Cr.P.C, 1973.

Opposite parties are represented in this case including the state. Their specific contention is that the deed of conveyance being relied on by the petitioner to claim his right over the property is an invalid document having being executed by the vendor unauthorizedly. Their version of the entire incident is that the opposite parties were granted power of attorney by the vendor of the petitioner with respect to the said property, before the same was transferred in favour of the petitioner, that too in lieu of loan advanced to the vendor of the petitioner by the opposite parties. It is their case that during subsistence of the power of attorney granted in their favour by the vendor of the petitioner, he could not have validly executed the sale deed in favour of the petitioner and the said sale is only non-est in the eyes of law. Therefore according to the private opposite parties the right to the property has never transmitted and shifted to the petitioner and his claim of being owner of the said property is only baseless.

State has by and large supported the other opposite parties and has produced the CD.

During hearing of the case the other fact revealed is of pendency of civil cases between the parties before the respective fora.

The submissions made on behalf of the opposite parties would find support from the final report of police, which has specifically mentioned about the power of attorney granted by the vendor of the petitioner to the opposite parties, with

respect to the property in question. Therefore the final report cannot be said to be based upon no cogent material. Under these circumstances, petitioner's claim that the investigation is only perfunctory in absence of examination of the persons as mentioned above, cannot be said to be a good or valid ground.

Petitioner/complainant alleges against the accused persons of the offences of house trespass in order to commit offence punishable with imprisonment, lurking house trespass or house breaking in order to commit offence punishable with imprisonment and of criminal conspiracy. Primary ingredient of such an offence would be petitioner's absolute title over the concerned house or property. Materials collected during investigation do not reveal such an absolute and undisputed position of the petitioner, so far as the said property is concerned. Facts emanating from documents collected during investigation would not have required witnesses to be examined any further during investigation and regarding this the police have sufficient power under Sections 156 and 157 Cr.P.C. Petitioner's plea of prejudice being an ignoring purchaser should not also save him from the consequence of being not aware, being a purchaser. In the backdrop of facts and circumstances of the present case, petitioner may at best be remedied in a civil court. His plea of short fall in conducting investigation which resulted into submission of erroneous final report causing him prejudice cannot be substantiated with sufficient reasons as the police has submitted the final report after considering the documents collected and the ingredients of offence alleged against the opposite parties.

Under these circumstances if the question as to whether an order for further investigation was warranted in this case, is to be considered, one may first delve upon the circumstances when a court should grant an order a further investigation.

Section 173 (8) Cr.P.C is a provision under which police can conduct or be directed to conduct further investigation in a case. It provides that even after completion of investigation and submission of police report to the Magistrate, the police is not denuded of the power to find facts and evidence of the case. And in doing so, if further fact reveals or further evidence is obtained, either oral or documentary, he shall send a further report to the Magistrate, over and above the previous one submitted by him under Section 173 (2) Cr.P.C. Court shall also have the power to grant an order under Section 173 (8) Cr.P.C, to arrive at the truth or to do real and substantial justice. [Hasanbhai Valibhai Qureshi vs. State of Gujrat, (2004) 5 SCC 347]

There may be no two opinions that scope of section 173 (8) Cr.P.C is categorically distinct to be applied to the case of the petitioner. Materials collected during investigation are sufficient and categorical to come to a finding, as enumerated in the police report.

Ld. Trial court has elaborately and sufficiently dealt with the facts and circumstances in the order impugned and come to a finding backed by sufficient reasons. It is therefore not found necessary, just and proper to interfere in to its finding decision in the impugned order.

Under such circumstances this revision case merits no success and same is liable to be dismissed.

On the discussion as above CRR 3252 of 2016 is dismissed.

Connected application, if any, also stands disposed of.

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

(Rai Chattopadhyay, J.)