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16.08.2022
Ct.21
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CRR 4297 of 2008
With
CRAN 4/2022 and CRAN 5/2022

In Re: - An application under Section 482 of the Code of Criminal Procedure, 1973

And

In the matter of: Aruna Bhandari & Anr.

.... Petitioners

Mr. Satadru Lahiri,
Mr. Safdar Azam

...for the Petitioners

Mr. Sandipto Bose

...for the Respondent No. 2

Mr. Joydeep Roy,
Ms. Sujata Das

...for the State

CRAN 5 of 2022

This is an application for condonation of delay in preferring the application for restoration. It appears that there has been a delay of 202 days in preferring the application.

Having regard to the averments made in this application for condonation of delay, I am of the view that the petitioners have shown sufficient cause for such delay.

Accordingly, CRAN 5 of 2022 is allowed.

CRAN 4 of 2022

This is an application for restoration. I am of the view that the petitioners were prevented by sufficient cause for not appearing before this Court on August 16, 2022.

Accordingly, CRAN 4 of 2022 is allowed.

CRR 4297 of 2008

This is an application for quashing of an F.I.R. registered as Liluah Police Station Case No. 197 of 2008 dated September 10, 2008, under Sections 420/406/34 of the Indian Penal Code, 1860 against the petitioners.

During the pendency of the revisional application, the investigating agency, upon conclusion of the investigation, has filed a charge sheet under Sections 420/406/34 of the Indian Penal Code, 1860. The petitioners have also challenged the said charge sheet by filing a supplementary affidavit.

The opposite party no. 2 in his written complaint before the Liluah Police Station made out a case that one Shanti Devi Bhatta (mother-in-law of petitioner no. 2) since deceased was the owner of a landed property measuring about 4.96 acres in Mouza Liluah, District Howrah. Shanti Devi approached the opposite party no. 2 for the purchase of the said land against consideration of Rs. 19 lakh.

Following an agreement dated January 16, 1997, opposite party no. 2 paid a sum of Rs. 9 lakh in tranches to Shanti Devi Bhatta. The sale deed, however, was not executed.

Shanti Devi Bhatta died on October 13, 2000, leaving behind petitioner no.1 as her only legal heir.

After the death of Shanti Devi Bhatta, petitioner nos. 1 and 2 assured opposite party no.2 that petitioner no.1 would take the liability of the payment received by her mother and also sell the land in question against the payment made by opposite party no.2.

The opposite party no.2 subsequently, found that petitioner no.1 published a notice in a newspaper on April 14, 2007, to sell a portion of land which was already under the agreement for sale dated January 16, 1997. Opposite party no. 2 through his lawyer sent a notice to petitioner no.1, and after receiving the notice petitioner no.1 & 2 assured that they would execute the sale deed in his favour and shall accept the remaining consideration money from him.

Thereafter, petitioner no. 1 became ill and went to Bangalore for her treatment. Petitioner no.2 received 2 lakh by an account payee cheque drawn on Liluah Co-operative Bank Limited. Later, opposite party no.2 came to know that petitioner no. 1 had already sold some portions of the land which was under the agreement for sale on January 16, 1997, and received huge consideration for the same. Thus, petitioner nos. 1 and 2 cheated him and dishonestly induced him to deliver the property to other persons suppressing the fact of an agreement for sale.

Mr. Satadru Lahiri, learned advocate, appearing on behalf of the petitioners has drawn the attention of this Court that the opposite party no.2 filed a Title Suit being T.S. 159 of 2010 for the specific performance of the agreement dated January 16, 1997, before the learned Civil Judge (Sr. Division), 2nd Court, Howrah, and the said suit was dismissed on February 3, 2022, on the ground of limitation. A revisional application against the said judgment and decree dated February 3, 2022, is pending before this Court at the instance of opposite party no.2.

Mr. Lahiri further submits that sum of Rs. 2 lakh was deposited by the opposite no. 2 on his own. As soon as the petitioners noticed the same, he filed an application under the Right to Information Act before the relevant bank and the bank intimated to the petitioners that the said sum of Rs. 2 lakh was kept as a lien by the bank.

Mr. Lahiri submits that a plain reading of the plaint of the title suit being T.S. 159 of 2010 makes it clear that the nature of disputes between the parties is absolutely civil in nature. There was no allegation whatsoever against the petitioner no. 2 in the plaint. He was not even a party in the said title suit. The alleged nature of the transaction as involved in this case, clearly suggests that the disputes between the parties are purely civil in nature.

Mr. Lahiri argues that though initially the present petition was filed challenging the F.I.R. in this Court in the exercise of the power conferred under Section 482 of the Code of Criminal Procedure, 1973, can quash the charge-sheet as well which has been filed during pendency of this revisional application. In support of his submission, he relies upon the following judgments reported at **(2019) 11 SCC 706 (*Anand Kumar Mohatta Vs. State (NCT OF DELHI)*)**.

Mr. Lahiri further submits that a time-barred claim arising out of a civil dispute cannot be reopened by a criminal prosecution. In this regard, he relies upon the judgments reported at **(2011) 13 SCC 412 (*Thermax Limited – Vs.- K. M. Johny*)** *and* **(2005) 3 SCC 670 (*Suresh –Vs.- Mahadevappa Shivappa Danannava*)**.

Mr. Lahiri further suggests that while dealing with a quashing of an F.I.R., in order to examine the veracity of the allegations in the F.I.R, the Court can take into consideration the admitted documents used in a different proceeding. To buttress his argument, Mr. Lahiri has placed reliance upon the judgment reported at **(2007) 14 SCC**

776 (All Cargo Movers (India), Pvt. Ltd. –Vs.-Dhanesh Badarmal Jain),* (2008) 4 SCC 541 *(K.L.E. Society –Vs.- Siddalingesh) *and* **(2013) 3 C Cr. LR (Cal) 732 *(Sanat Karar –Vs.- State of West Bengal)*.**

By placing reliance upon the judgment reported at **(2009) 14 SCC 696 (*Dalip Kaur v. Jagnar Singh*)** and **(2006) 6 SCC 669 *(Ram Biraji Devi–Vs.-Umesh Kumar Singh)***, Mr. Lahiri submits that even if the averments made in the F.I.R. and the materials collected during the investigation are taken to be correct, yet the case for prosecution under Sections 420/406 of the Indian Penal Code, 1860 is not made out. The allegations in the F.I.R. may give rise to civil liability but not criminal liability.

Finally, it has been submitted by Mr. Lahiri that permitting the present criminal case to go on will be an abuse of process of law and this Court should quash the same in the exercise of the power conferred under Section 482 of the Code of Criminal Procedure, 1973. He places reliance in this regard in the judgments reported at **(2020) 13 SCC 435 (*Ahmed Ali Qurashi –Vs.- State of Uttar Pradesh*)** and **(2017) 13 SCC 369 (*Vineet Kumar –Vs.- State of Uttar Pradesh*)**.

On the other hand, it has been submitted by Mr. Sandipto Bose, learned advocate appearing on behalf of opposite party no.2 that the criminality of petitioner no. 2 arises by accepting Rs. 2 lakh and not executing the sale deed in favour of the opposite party no. 2. The liability to execute the sale deed had passed on to him being the legal heir of the Shanti Devi Bhatta. He also submits that the civil case and criminal case can run together. In support of his submission, he relies upon a judgment, reported at **(2009) 4 SCC 439 (*Mahesh Chaudhary v. State of Rajasthan*)**.

He further submits that the F.I.R. as well as the charge sheet, *prima facie,* discloses the commission of cognizable offences and therefore, a full-fledged trial is called for.

I am of the opinion that the allegation in this case basically revolved around petitioner no.1. Petitioner no.1 died on August 17, 2017, during pendency of this application. Therefore, the only issue that requires to be gone into by this Court as to whether there was any criminal liability on the part of the petitioner no. 2 in the present case.

Allegations in the F.I.R. as well as the plaint suggest that the alleged agreement for sale dated January 16, 1997, was entered into by and between Shanti Devi Bhatta and the opposite party no. 2. The said agreement was in force for two years.

During the lifetime of Shanti Devi Bhatta, no legal proceedings were initiated by the petitioner against Shanti Devi Bhatta for completion of the sale.

After the death of Shanti Devi Bhatta on October 13, 2000, the property devolved upon her only legal heir, petitioner no. 1. The alleged subsequent agreements for sale also were entered into by the petitioner no. 1, since deceased and there was no role of petitioner no.2. The advertisement in the newspaper was published by petitioner no.1. The notice from opposite party no.2 was also addressed to petitioner no.1 making no allegation against petitioner no. 2.

There is, in fact, nothing in the charge sheet to implicate petitioner no.2. The mere fact that a sum of Rs. 2 lakh was deposited in the joint account of the petitioner nos.1 and 2 *ipso facto* does not attach any criminal liability to petitioner no.2.

The opposite party no. 2 had his remedy in Civil Court for specific performance of the agreement dated January 16, 1997. He availed the said remedy by filing a suit against petitioner no. 2, which ultimately, resulted in dismissal on the ground of limitation.

I find substance in the submission of Mr. Lahiri that a civil dispute cannot be converted into a criminal case as a mode of execution of a time-barred claim. Whether the claim of opposite party no.2 is time-barred or not is now the subject matter of the revisional application pending before this Court. Insofar as petitioner no.2 is concerned, no criminal liability is found from the materials gathered by the investigation officer. The entire dispute is purely civil in nature.

In view of the discussion above, it is not necessary to separately discuss the judgments relied upon by the respective parties. There cannot be quarrel with the abstract propositions of law as laid down in the said judgments.

Having regard to the aforesaid aspects of the matter, I am of the opinion that the continuation of the criminal case against petitioner no. 2 is an abuse of process of law and accordingly, G.R. Case No. 2620/2008, pending before the learned Chief Judicial Magistrate, Howrah under Sections 420/406/34 of the Indian Penal Code, 1860 stands quashed.

Urgent photostat certified copy of this order, if applied for, be made available to the petitioners upon compliance with all requisite formalities.

(Kausik Chanda, J.)