

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 601 of 2019

With

CRAN 2 of 2021

Deepa Sharma @ Neopane & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Debapratim Guha,
Ms. Anchita Sarkar.

For the State : Mr. Md. Kutubuddin.

For the Opposite Party No. 2 : None.

Heard on : 16.03.2023

Judgment on : 27.04.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings being G.R. No. 3606/2018 pending before the Learned Additional Chief Judicial Magistrate, Siliguri arising out of Matigara Police Station Case No.658/2018 dated 16.12.2018 under Sections 447/323/354/506/34 of the Indian Penal Code and under Sections 3(iv)(v)(x)(xii)(xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989).
2. The petitioner's case is that the Opposite Party No. 2 herein in gross abuse and/or misuse of the process of criminal law filed an application under Section 156(3) of the Code of Criminal Procedure before the Learned Additional Chief Judicial Magistrate, Siliguri against the petitioners herein and others. Pursuant to the direction of the Learned Additional Chief Judicial Magistrate, Siliguri to treat such application as the first information report, the instant case being Matigara Police Station Case No. 658/2018 dated 16.12.2018 under Sections 447/323/354/506/34 of the Indian Penal Code and under Sections 3(iv)(v)(x)(xii)(xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered for investigation.
3. **The allegations in the first information report** are inter alia as follows:-

“That the father of the Opposite Party No. 2 purchased 5 Kathas or 8.25 Decimals of homestead vacant land comprising under R.S. Plot No. 242 and 243 recorded under Khaitan No. 1329 and 1339 under Mouza – Khaoplashi J.L. No. 29, Police Station: Matigara, District: Darjeeling through registered deed of conveyance being Deed No. 07591 for the year 2000, registered in Book No. 1, C.D. Vol. No. - 29 pages from 3469 to 3482, of ADSR, Bagdogra. The said Deed was executed by Sri Khagendra Kumar Sharma and the petitioner no. 1. That one Hari Om Prasad (hereinafter referred to as the “Amin”) at the time of purchase identified the plots and demarcated the land with/by boundary pillars on each corner of the said plot. On 19.03.2018 the Opposite Party No. 2 along with his old and sick mother went to the spot where his land is located at about 2 P.M. and stayed there for half an hour. Suddenly the petitioners and other 3 accused persons along with 4-5 antisocial goons/land mafia came to the spot with wooden battam and started misbehaving violently with the Opposite Party No. 2 and his mother and also used slang words and at that time the said “Amin” disclosed that there is no such Plot in existence. The accused persons threatened the Opposite Party No. 2 and his mother with dire consequences and also beat him and they told the Opposite Party No. 2 and his mother **“You go to Jungle and live your family with animals, do not come here jungle aadmi”**. That the Opposite Party No. 2 raised his voice and the

accused persons left the place with a threat that they will kill him and his family members and will come again to attach the land.

4. It is submitted by the petitioners that the allegations of commission of offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have no manner of application in the instant case. That in the event the complainant is incidentally a member of such schedule caste/schedule tribe, the provisions of aforesaid legislation are not attracted.
5. The instant case has been instituted by the Opposite Party No.2 to cover his misdeeds and the same has being maliciously instituted to wreak vengeance upon the petitioners and to spite them in the eye of the society. That the dispute relates to a registered deed and instead of approaching the appropriate forum, the instant case has been instituted only in order to wreck vengeance upon the present petitioners and others.
6. **Mr. Debapratim Guha, learned counsel for the petitioners** has submitted that for application of the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, an offence must have been committed against a person on the ground that such person is a member of the Scheduled Castes and Scheduled Tribes. In the instant case there is no material on record to establish this requirement. It is not the case of the prosecution that the alleged illegal acts were committed since they were members of a Scheduled

Caste. In the absence of materials to that effect, the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have no application.

7. The petitioners state that to constitute the basic ingredients of Section 3(1)(x) of the Act, the Opposite Party No.2 ought to have alleged that the petitioners were not members of the Scheduled Caste or a Scheduled Tribe and the Opposite Party no. 2 was intentionally insulted or intimidated by the petitioners with intent to humiliate in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the petitioners to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.
8. The petitioners are absolutely innocent and had no role to play with regard to the commission of the offences as alleged or at all. The continuation of the impugned proceedings shall result into an abuse of the process of law and shall cause miscarriage of justice.
9. That the impugned proceeding is otherwise bad in law and is liable to be set aside and/or quashed.
10. **The following judgments have been relied upon by the petitioners:-**

- I. **Gorige Pentaiah vs State of Andhra Pradesh and Ors., (2008) 12 SCC 531, Criminal Appeal No. 1311 of 2008, on August 20, 2008.**

“According to Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law. Further, respondent 3 was not even in possession of the suit property on the date of incident which fact had not been disputed. In such circumstances allegation made in the complaint, that the appellant demolished the wall are totally baseless and without any foundation.”

- II. **B. Venkateswaran & Ors. vs P. Bakthavatchalam, 2022 LiveLaw (SC) 14, Criminal Appeal No. 1555 of 2022, on January 05, 2023.**

“Section 482 Private civil dispute between the parties is converted into criminal proceedings initiation of the criminal proceedings therefore, is nothing but an abuse of process of law and Court. Complaint and summoning order quashed.”

11. **In spite of due service there is no representation on behalf of the Opposite No. 2.**
12. **Mr. Md. Kutubuddin learned counsel for the State** has placed the case diary and submitted that there are sufficient materials in the case

diary to proceed towards trial against the petitioners and as such the revision is liable to be dismissed.

13. Heard the learned counsel for both sides. Perused the materials on record. Considered.

14. **From the materials on record and the Case Diary the following facts are before this Court:-**

- i. The Opposite Party No. 2 belongs to the Scheduled Tribe.
- ii. The Petitioners do not belong to the Scheduled Caste & Scheduled Tribe.
- iii. The Petitioners transferred some land to the Opposite Party No. 2 by a registered deed.
- iv. On Visit to the said land/property, the Opposite Party No. 2 found that no such land as transferred exists as told by the Petitioners and their 'Amin', who identified the land during sale and registration.
- v. **The Opposite Party No. 2 a member of the Scheduled Tribe was allegedly abused in filthy language in presence of about 10 people near the land which is in public view.**

15. The language allegedly used is **"you go to Jungle and live your family with animals, do not come here jungle aadmi"**. These ingredients prima facie make out a case under SC & ST Act as alleged against the petitioners.

16. **The Schedule of Land in the deed** is reproduced here:-

*"All that piece or parcel of a plot of raiyati land classified as per ROR Rupni area measuring = **8.25 decimals**, recorded in **Khatian No. 1329**, comprised in and forming part of Plot No. **R.S. - 242** area=3 decimals, of vendor No.1 and recorded in **Khatian No.1339**, comprised in and forming part of Plot No. **R.S.-243** area = **5.25 decimals** of vendor No. 2 in Mouza – Khopalashi. J.L.No. – 21, land proposed to be used as homestead is hereby sold, which is delineated in the sketch map annexed herewith along with the sheet of finger prints & identity proof documents of the parties forming part of these presents. The R.S. Plot No. **242** corresponds to L.R. Plot No. **409** area= 3 decimals and the R.S. Plot No. **243** corresponds to L.R. Plot No. **410** area = 5.2 decimals. The sold plot of land situates within the jurisdiction of Patharghatta G.P. Matigara Police Station, A.D.S.R. Office-Bagdogra, Sub-Division, Siliguri, Dist. – Darjeeling for which the prescribed annual rent is payable to its superior landlord, the Govt. of West Bengal, is butted and bounded by as follows :-*

NORTH	: 12 feet wide Kutcha road.
SOUTH	: Plot No. 411.
EAST	: Land of the vendor.
WEST	: Land of the Vendor.

IN WITNESS WHEREOF the vendors abovenamed having gone through the contents of these presents in sound mind and in good health have set and subscribed their respective hand on this the day, month and the year first written above."

17. **On a report called for by the Assistant Commissioner of Police, the BL & LRO, Matigara, submitted the following report:-**

"To
The Asst. Commissioner of Police,
Traffic West,
Siligurri Police Commissionerate, SMP.

Ref: Matigara Case No. 658/18 Dt. 16.12.18, U/s 447/323/354/506/34 IPC, R/W Sec-3(iv)(v)(x)(xi)(xv) of SC & ST (POA) Act.

Sub: Identification/demarcation of land of one Milan Subba s/o Lt. Krishna Bahadur Subba of Duptin No, Mirik, P.S. – Mirik, Dist. – Darjeeling.

Sir,

As per the above given reference it is to inform you that as per our Office CLR Khatian No. 1329 is found in the name of Khagendra Kumar Sharma in plot 422 with an area of 0.0045 ac of mouza Khopalasi JL No. 21. Whereas, **Khatian No. 1339 of the said mouza is not found at present.** As per our office scanned LR ROR khatian no. 1339 was in the name of Dipa Sharma d/o of Khagendra Kumar Sharma in plots 422, 436, 373, 401 and 409. As per the Letter issued from your office RS plot 242 which corresponds to LR Plot nos. 408 and **409** whereas RS plot No. **243** corresponds to LR plot Nos. 401 and 411 of the said mouza. For the reference of the recorded raiyats of LR plots No 408, 409, **410** and 411 plot information of the said plot is attached herewith.”

Sd/-
Block Land & Land Reforms Officer
Matigara, Darjeeling.

18. Section 406 of the Indian Penal Code, lays down:-

“406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ingredients of offence.— The essential ingredients of the offence under Sec. 406 are as follows:-

- (1) Mens rea is essential ingredient of offence.
- (2) There must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract.
- (3) The accused was entrusted with the property or domain over it.
- (4) He dishonestly misappropriated or converted to his own use such property;
- (5) He dishonestly used or disposed of that property or willfully suffered any other person to do so in failure of-
 - (a) Any direction of law prescribing the mode in which such trust is to be discharged, or

(b) Any legal contract made touching upon the discharge of such trust.”

19. **Section 420 of the Indian Penal Code, lays down:-**

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ingredients of offence.— The essential ingredients of the offence under Sec. 420 are as follows:-

(1) There should be fraudulent or dishonest inducement of a person by deceiving him;

(2) (a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(b) the person so induced to do anything which he would not do or omit if he were not so deceived, and

(c) in cases covered by second part of clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.

The two essential ingredients of the offence under this section are –

(A) Deceit, that is to say dishonest or fraudulent misrepresentation, and

(B) Inducing the person deceived to part with property.”

20. The Supreme Court in ***Rekha Jain Vs The State of Karnataka, Criminal Appeal no. 749 of 2022, on 10 May, 2022***, held:-

“8. At the outset, it is required to be noted that the offence alleged against the appellant – accused – Rekha Jain is for the offence under Section 420 of IPC. She has been now charged sheeted for the said offence. However, considering the allegations in FIR/complaint, it can be seen that the entire and all the allegations are against the accused Kamalesh Mulchand Jain. In the complaint/FIR, there are no allegations whatsoever to the effect that the accused Rekha Jain induced the complainant to part with the gold jewellery. Therefore, in the absence of any allegation of inducement by the accused Rekha Jain, she cannot be prosecuted for the offence under Section 420 of IPC. There must be a dishonest inducement by the accused. As per Section 420 of IPC, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, can be said to have committed the offence under Section 420 of IPC. Therefore, to make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person. In the present case, there is no allegation at all against accused – Rekha Jain of any inducement by her to deceive and to deliver the gold jewellery. The allegations of dishonest inducement and cheating are against her husband – accused – Kamalesh Mulchand Jain. Therefore, considering the allegations in the FIR/complaint as they are, and in the absence of any allegation of dishonest inducement by Rekha Jain, it cannot be said that she has committed any offence under Section 420 of IPC for which she is now charge sheeted. Therefore, the High Court has committed a grave error in not quashing the criminal proceedings against Rekha Jain for the offence under Section 420 of IPC. This is a fit case where the High Court could have exercised its powers under Section 482 of Cr.PC and to quash the criminal proceedings against Rekha Jain for the offence under Section 420 of IPC.”

21. **From the report of the BL & LRO, it is seen that Khatian No. 1339 of Mouza Khopalasi which is mentioned in the deed, is not found in records of the land department in the office of the BL & LRO. The extent of area which has been transferred by the petitioners**

also are not recorded to that extent in their respective names. The discrepancies in the Schedule of the land in the deed and the report of the BL & LRO clearly shows that the ingredients of cheating, dishonest inducement and dishonest misappropriation as required to constitute the offences under Section 420 and 406 IPC are present in this case against the petitioners to proceed towards trial and as such the proceedings should not be quashed in the interest of justice.

22. **Thus it prima facie appears from the materials in case diary that the petitioners have not only cheated (Section 420 IPC) the opposite party no. 2 but also committed breach of trust (Section 406 IPC). But the police authorities have left out the said Sections for reasons best known to them.**
23. **Prima Facie there has been cheating as the Opposite Party has been deceived to pay the price for a land which as of now does not exists (Report of the BL & LRO state that).**
24. **Executing a deed by misrepresentation is one thing, but Executing a deed in respect of a nonexistent land is a far greater offence.**
25. **In the first instance, one also has the option of revocation of the deed in a Civil Court. But in respect of the transfer of a land which is not in existence, there is no other option but to seek justice before a Criminal Court.**

26. **The said judgments relied upon by the petitioners are not applicable to the facts in the present case as the existence of the land is in question.**
27. Accordingly there appears to be a prima facie case against the petitioners in view of the discussion above and the materials on record to proceed towards trial and allowing the prayer for quashing in this case would lead to an abuse of the process of law/court and would be against the interest of Justice.
28. None of the guidelines of the Supreme Court regarding the exercise of the inherent powers of this court is applicable in favour of the petitioners in this case.
29. **CRR 601 of 2019 is dismissed.**
30. The proceedings being G.R. No. 3606/2018 pending before the Learned Additional Chief Judicial Magistrate, Siliguri arising out of Matigara Police Station Case No.658/2018 dated 16.12.2018 under Sections 447/323/354/506/34 of the Indian Penal Code and under Sections 3(iv)(v)(x)(xii)(xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989) **is to proceed in accordance with law expeditiously.**
31. As Charge Sheet has been submitted, the Trial court will take into consideration the observation of this Court along with the materials on record while framing of charge.
32. There will be no order as to costs.

33. All connected Applications stand disposed of.
34. Interim order if any stands vacated.
35. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
36. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)