

Item No.5

**In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Siddhartha Roy Chowdhury

C.R.R. No. 1287 of 2011

**Pabitra Kumar Das and another
Vs.
The State and another**

For the petitioners	:	Mr. Sayan De, Mr. Asoke Basu, Mr. Sayan Kanjilal, Mr. Koustav Shome
For the State	:	Mr. Binay Kumar Panda, Mr. Subham Kanti Bera
Heard on	:	17.01.2023
Judgment on	:	17.01.2023

Siddhartha Roy Chowdhury, J:-

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioners seeking an order of quashment of the proceeding being G.R. Case No. 2497 of 2009 arose out of Khardah Police Station Case No. 407 of 2009 dated 2nd September, 2009.

Briefly stated, the opposite party no.2 Ahsoke Kumar Dey set the criminal administration justice into a motion by taking out an application

before the learned Chief Judicial Magistrate at Barasat which was registered as Complaint Case No. 1962 of 2009.

It was alleged that Sri Ashoke Kumar Dey acquired ownership in respect of 17 decimal of land by virtue of a deed of gift executed by his grandmother on 8th October, 1974 and in the wake of a settlement arrived at by and between Sri Dey and his grandmother in Title Suit No.211 of 1976, he acquired 17 decimal of land and, thus, he became owner of 34 decimal of land. He was possessing the property peacefully till 12th March, 2009 when his sister and her husband along with her men and agents trespassed into his property and claimed to have acquired ownership in respect of 11 decimal of land by virtue of a registered deed of gift allegedly executed by Sri Dey.

It was further disclosed that upon enquiry, Sri Dey came to know that on 5th January, 1983, a forged deed of gift was prepared and executed depicting him as donor in favour of the accused no.2, Kalyani Das, but at the relevant point of time, he was undergoing treatment for mental unfitness and was under the supervision of a Psychiatrist. He never executed any deed of gift in favour of the accused no.2, Kalyani Das, who happens to be his full-blood sister. The said petition of complaint was forwarded to Khardah Police Station under Section 156(3) of the Code of Criminal Procedure and Khardah P.S. Case No. 407 dated 2nd September, 2009 was registered.

Mr. Sayan De, learned counsel for the petitioners draws my attention to the averment made in the plaint of Title Suit No.216 of 2009 filed by Sri Ashoke Kumar Dey, the *de facto* complainant against Kalyani Das, the accused-petitioner no.2, seeking declaration and permanent injunction. In support of his pleading, Sri Dey affirmed an affidavit on 29th April, 2009 while the First Information Report (FIR) was lodged on 2nd September, 2009. I am made to go through the averment of plaint made in paragraph no.7, wherein the *de facto* complainant, as plaintiff, stated that the defendant and her husband, taking advantage of his mental illness, took him into the office and asked the plaintiff to put his signature on some papers for the purpose of his better treatment and on good faith, the plaintiff obliged his “sister and his sister-in-law” without giving a second thought to what was proposed. According to Mr. Dey, the averment made in the plaint and the allegation made in the petition of complaint, which was subsequently treated as FIR by the order of the learned Chief Judicial Magistrate, North 24 Parganas if considered it contradistinction to each other, it would transpire that they are mutually contradictory and the criminal proceeding is manifestly attending with *mala fide*. Civil dispute has been imbibed with the colour of criminality which amounts to abuse of process of law.

True it is in his averment made in the plaint of Title Suit No. 216 of 2009, the plaintiff admitted to have executed or to have put his signatures on certain papers while in his petition under Section 156(3), the said Mr. Ashoke Kumar Dey stated that his signature was forged and a document

was purportedly manufactured to be used as genuine to grab the property he owns. This fact unerringly indicates that the criminal proceeding registered as G.R. Case No. 2497 of 2009 has been initiated with a *mala fide* intention to saddle the petitioners with criminal liability.

Admittedly, two civil suits are pending – one being Title Suit No. 216 of 2009 filed by Sri Ashoke Kumar Dey, the private opposite party herein – and the other one being Title Suit No. 414 of 2009 filed by Kalyani Das, the petitioner no.2 herein against his brother Ashoke Kumar Dey, prior to filing of the petition of complaint.

Under such circumstances, relying on a judgment of the Hon'ble Supreme Court pronounced in the case of *State Haryana and others vs. Vajanlal and others*, reported in (1992) Supp.(1) 335, I consider it expedient to invoke the jurisdiction of Section 482 of the Criminal Procedure Code to quash the proceeding being G.R. Case No. 2497 of 2009 pending before the learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas to avert the abuse of process of law.

This criminal revision is disposed of.

Application, if any, stands disposed of. Interim order of stay, if any, stands vacated.

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

(Siddhartha Roy Chowdhury, J.)

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