

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

Present : The Hon'ble Mr Justice Siddhartha Roy Chowdhury

CRR No.2398 of 2009

Smt. Anita Tamang

-vs-

The State of West Bengal & Anr.

with

CRAN No.1 of 2009

(Old CRAN No.2975 of 2009)

and

CRAN No.2 of 2010

(Old CRAN No.331 of 2010)

with

CRR No.2542 of 2009

Sri Pijush Roy & Ors.

-vs-

The State of West Bengal & Anr.

with

CRAN No.1 of 2009

(Old CRAN No.2976 of 2009)

and

CRAN No.2 of 2009

(Old CRAN No.33 of 2010)

Mr. Debapratim Guha

Ms. Anchita Sarkar

....for the petitioners

Mr. Arijit Ganguly

Mr. Sandip Chakraborty

...for the State

(in CRR 2398 of 2009)

Md. Anwar Hossain

Ms. Sreyashee Biswas

...for the State

(in CRR 2542 of 2009)

Mr. Nabankur Paul

Mr. Tanmoy Chowdhury

Ms. Ritoprita Ghosh

...for opposite party no.2

Heard on : March 1, 2023

Judgment on : March 1, 2023

Siddhartha Roy Chowdhury, J: This criminal revisional application has been filed with a prayer for quashment of the proceeding being GR No.818 of 2009 under sections 467/468/471/420/120B/34 IPC read with sections 3(1)(iv)(v)(viii)(x)(x1)/3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 corresponding to Pradhan Nagar P.S. Case No.140/09 dated June 16, 2009.

Briefly stated that opposite party no.2, Smt. Malati Oraon, informed the inspector in-charge of Pradhan Nagar police station in writing that her husband, Tulu Oraon, acquired the property in question by way of inheritance after the demise of his father. He and his brothers got the property partitioned amicably by executing a deed of partition. While Tulu Oraon was in possession of 1.39 acres of land on July 26, 2001, he passed away leaving behind him surviving his widow and minor son Karan Oraon. Pijush Roy Chowdhury, petitioner no.1 in CRR No.2542 of 2009, who died during pendency of the present application, was a moneylender by profession and he used to lend money to Smt. Malati Oraon's husband and his brothers after obtaining their signature or thumb impression on blank paper. Thus, he took the original deed of partition in his custody and made them understand that they need to execute certain documents in order to enter into an agreement with the bank and thus he obtained signature or left thumb impression of Tulu Oraon and his brothers on blank papers. Subsequently, he used those papers to prepare a deed of agreement in connivance with his son and other accomplices. Thereafter, he filed a suit in a competent court of law at Siliguri. Notice were served upon the petitioners who entered into appearance along with other parties to that proceeding, but she did not know the subject-matter of the litigation. However, on May 13, 2009 she entrusted a senior lawyer to defend their case and only then she came to know that the accused persons had manufactured deed of agreement on the basis of some forged receipts acknowledging payment of money. The accused persons then made an attempt to construct a boundary wall. The informant and her

brothers-in-law and their sons with the help of their neighbour resisted such move. On May 8, 2009 the accused persons again intruded into the property of the informant and 2-3 families started residing over the same property constructing their houses. Pijush Roy Chowdhury and other accused persons inducted them over the said land. As an information disclosed, the offence was cognizable in nature and Pradhan Nagar P.S. Case No.140/09 was registered on June 16, 2009.

Challenging the legality of the aforesaid proceeding, the accused persons filed this revisional application under consideration.

It is contended that Tulu Oraon, the husband of opposite party no.2, entered into an agreement for sale with petitioner no.4, Pradip Saha, to sell a piece of land measuring about 0.63 acres on a consideration of Rs.4,25,000/-. After the death of Tulu Oraon, his widow being opposite party no.2, and the minor son also entered into an agreement for sale of land with petitioner no.1 against consideration. Rajesh, nephew of opposite party no.2, and his two brothers, Rabi and Raju along with their sisters, Mamata Oraon, also executed an agreement for sale with Prasenjit Roy, Avijit Roy and Anita Tamang. Consequent upon such agreement, the aforesaid persons executed a deed of conveyance in favour of Anita Tamang and sold a portion of a land at a consideration of Rs.4,40,000/- by virtue of a registered deed of sale dated July 23, 2004. Thereafter, there was a hike in the price of land, and opposite party no.2 along with Rajesh, Rabi, Raju and Mamata tried to sell the remaining portion of their land to some other person who goaded the petitioner to file civil suits being Title Suit No.96 of 2005, 99 of 2005, 101 of 2005, 122 of 2005 and 123 of 2005 before the learned Civil Judge (Junior Division), Siliguri for declaration and permanent injunction. Soon thereafter, Rajesh, Rabi, Raju and Mamata decided to call off the transactions by filing various cases and for that purpose opposite party no.2 lodged a criminal contempt being CR No.234 of 2005 before learned Sub-Divisional Judicial Magistrate, Siliguri on June 8, 2005. Subsequent thereto, Rajesh, Rabi, Raju and Mamata filed the civil

suit being Title Suit No.32 of 2005 against Anita Tamang and one Hela Ruisebeck, before learned Civil Judge (Senior Division), Siliguri for cancellation of registered deed and agreement for sale.

After lapse of five years from the date of filing of the petition of complaint being CR No.234 of 2005 on May 30, 2009, Rajesh informed the inspector in-charge of Pradhan Nagar police station that the petitioners manufactured certain documents in order to acquire the property of the informant and thus Pradhan Nagar P.S. Case No.119 of 2009 was registered on May 30, 2009 corresponding to GR Case No.713 of 2009 against the petitioners and some other persons who surrendered to the jurisdiction of learned Judicial Magistrate and were admitted on bail by the court. Subsequently, Malati filed another complaint which gave birth to Pradhan Nagar P.S. Case No.140 of 2009.

Mr Guha, learned counsel appearing for the petitioners, and Ms Ghosh, learned counsel representing opposite party no.2, adverted their respective cases. From the attending facts of the case, I find that Pradhan Nagar P.S. Case No.140/2009 was registered on June 16, 2009. In the year 1995 the agreement for sale was made between Tulu Oraon and the petitioners. Anita Tamang filed Title Suit No.96 of 2005 on May 19, 2005; Prasenjit Roy Chowdhury, petitioner no.2, since deceased, filed Title Suit No.99 of 2005 on May 20, 2005; Avijit Roy, petitioners no.3, and Pradip Saha, petitioner no.4 filed Title Suit No.101 of 2005 and 122 of 2005 in the months of May and July respectively. Prasenjit, since deceased, filed Title Suit No.123 of 2005 on July 6, 2005 while Rajesh filed the complaint case on June 8, 2005 and Pradhan Nagar P.S. Case No.140 of 2009 was filed on May 30, 2009 after almost five years of filing of the civil suits.

It is rightly pointed out by Mr Guha that no explanation was given in the written information or petition of complaint as to the inordinate delay. Such unexplained delay would lead to the presumption that the criminal proceeding is attended with mala fide. Refuting such contention,

Ms. Ghosh, learned counsel representing opposite party no.2, submits that a complaint disclosing civil transaction can always have criminal texture in it, but for that reason the same cannot be quashed.

From the attending facts it is admitted that criminal proceeding was initiated after five years of initiation of civil disputes. But there was no explanation whatsoever regarding such inordinate delay. Therefore, it can safely be presumed that sole intention behind lodging of the FIR is to harass the petitioners, and in this regard I would further like to point out the averments made in the petition of complaint wherein it was contended by opposite party no.2 that the complainant asked the accused persons that being tribal, without permission of the revenue officer, they cannot alienate their land, but the accused persons assured them that they would take care of the issue. This submission shows that the complainant knew that process was initiated by the petitioners to purchase their plot of land.

Taking into consideration the attending circumstances coupled with unexplained delay, I am of the view that the FIR in question is but an abuse of process of law attended with mala fide in order to emashing the petitioners in a long criminal proceeding.

Under the circumstances, I consider it apt to invoke the provisions of section 482 CrPC and to quash proceedings being GR No.818 of 2009 under sections 467/468/471/420/120B/34 IPC read with sections 3(1)(iv)(v)(viii)(x)(x1)/3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 corresponding to Pradhan Nagar P.S. Case No.140/09 dated June 16, 2009 and Pradhan Nagar P.S. Case No.119 of 2009 registered on May 30, 2009 corresponding to GR Case No.713 of 2009.

The connected applications, if any, are disposed of consequently.

Let a copy of this order be sent to the learned trial court for information and necessary action.

[Siddhartha Roy Chowdhury, J]

Subrata