IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay.

CRR 2011 of 2013

Mahananda Samaddar & Ors.
Vs.
The State of West Bengal & Anr.

For the petitioner	:	Mr. Sujan Chatterjee Mr. Sanant Kumar Das
For the State	:	Mr. Narayan Prasad Agarwala Mr. Pratick Bose.
Heard on	:	06.01.2023 and 10.01.2023
Judgement on	:	17.03.2023

ANANYA BANDYOPADHYAY, J.:

1. The instant revisional application under Section 482 of the Criminal Procedure Code has been filed to quash the proceedings being G.R. Case No. 253 of 2010 arising out of Chinsurah P.S. Case No. 64 of 2010 dated 03.03.2010 under Sections 406/420/467/468/471/120B/34 of the Indian Penal Code pending before the Court of the Learned Chief Judicial Magistrate, Hooghly.

2. During the pendency of the hearing of the instant criminal revisional application petitioner no. 3 i.e. Satyendra Nath Sarkar has expired on 23.01.2019. The adjudication of the instant case will bind petitioner no. 1, 2 and 4 accordingly. The dispute between the parties arise out of the money earned from pisciculture in two large ponds known as Nabab Bagan pukur and Jhile pukur situated within the jurisdiction of Chinsurah Police Station, Mouza- Kulihanda, R.S. Dag No.2321, L.R. Dag No.4965, R.S. Dag No. 2362, 4931 lay out plot 610,722 in the district of Hooghly. The usufruct of the pisciculture was meant to serve the purpose of Durga puja, Kali puja, Shitala puja. A temple was also constructed in the year 2002 at Nabab Bagan. According to the respondent, Sujoy Chakraborty the committee constituted by the petitioners and other members misappropriated the dividends since the year 2008 and submitted a forged audit report from 03.04.2008 to 07.04.2009 which was forged with discrepancy in date.

3. Based on the complaint by the respondent against the petitioner, G.R. Case No. 253 of 2010 arising out of Chinsurah Police Station Case No. 64/2010 dated 03.03.2010 under section 406/420/467/468/471/120B/34 of the Indian Penal Code was initiated. On completion of investigation Charge Sheet No. 202 of 2010 dated 20.07.2010 under section

406/420/467/468/471/120B/34 of the Indian Penal Code was submitted against the petitioner.

4. The Learned advocate for the petitioners submitted that the Charge Sheet filed by the investigating agency was devoid of materials to constitute the offences charged. The dispute between the parties was civil in nature involving commercial transaction and the respondent with an ulterior motive of vengeance filed the complaint to falsely indict the petitioners in absence of dishonest intention on the part of the petitioners from the very inception. The Learned advocate for the petitioners submitted that two proceedings of self same allegations are pending before the Learned Civil Judge (Junior Division) 1st Court, Hooghly Sadar being T.S. No. 228 of 2009 (Biswajit Samaddar & Others- versus- Mahananda Samaddar & Others) and another case is pending before the Learned 3rd Judicial Magistrate , Hooghly Sadar being G.R. No 253 of 2010(State- versus- Mahananda Samaddar & Others) i.e. present case. It was further submitted that the Chartered Accountant to have prepared the audit report appeared before the concerned police station and submitted an affidavit stating an inadvertent typographical error to have occurred in the earlier audit report and thereafter substituted the same with a rectified audit report. The Ld. Advocate petitioner prayed for quashing of the criminal proceeding which would otherwise cause detriment to the petitioners.

5. The Ld. Advocate for the state submitted sufficient materials present in the case diary to implicate the petitioners pending trial without evidence of oath the revisional application should not be allowed.

6. The case diary submitted by the Ld. Advocate on behalf of the State revealed the statements recorded under section 161 Cr.P.C. with regard to an incorrect audit report to have been submitted by the petitioners in order to misappropriate the profit incurred out of the pisciculture. A Civil case concerning the same dispute has been filed before Civil Judge Junior Division Hooghly Sadar being T.S. Number 228 of 2009. Challans subscribing deposit of money in the treasury by the committee is present on record. There is no specific allegation indicating individual miscreancy of the distinct petitioner in order to deceive the local public. The ingredients to constitute the offence charged against the petitioners are not vividly described. The petitioners themselves did not prepare the audit report. The chartered accountant being the primary concern stated before the police on affidavit that the audit report submitted earlier was rectified subsequently. The dispute between the parties is in civil nature which is subject to determination pending before a civil court of competent jurisdiction. To allow to continue with the instant criminal proceedings shall amount to abuse of process of law.

7. Accordingly, the criminal revisional application being CRR 2011 of 2013 is allowed.

8. Proceedings being G.R. Case No. 253 of 2010 arising out of Chinsurah P.S. Case No. 64 of 2010 dated 03.03.2010 under Sections 406/420/467/468/471/120B/34 of the Indian Penal Code pending before the Court of the learned Chief Judicial Magistrate, Hooghly is accordingly quashed.

9. Connected application if any is also disposed of accordingly.

10. Case diary be returned to the learned advocate for the State.

11. There is no order as to cost.

12. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

13. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(**ANANYA BANDYOPADHYAY, J.**)