

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 2635 of 2008

AVEEK SARKAR & ANR.

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioners	: Mr. Sandipan Ganguly, Sr. Adv. Mr. Sabyasachi Banerjee, Adv. Mr. Somopriyo Roychowdhury, Adv. Mr. S. Dutta, Adv.
For the O.P. No. 2	: Mr. Apalak Basu, Adv. Ms. Pritha Bhaumik, Adv. Mr. Nazir Ahmed, Adv. Mr. Samirul Hassan, Adv.
For the State	: Mr. N.P. Agarwala, Adv. Mr. P. Bose, Adv.
Hearing concluded on	: 16 th March, 2023
Judgement on	: 13 th April, 2023

Siddhartha Roy Chowdhury, J.:

1. This criminal revisional application impeaches the criminal proceeding in connection with Complaint Case No. 4459 of 2006, pending before the learned 9th Court of Judicial Magistrate, Alipore under Section 341/290/448 of the Indian Penal Code and the orders passed therein, including the orders dated 1st August, 2006, 10th August, 2006 and 26th March, 2008.
2. Briefly stated, the opposite parties nos. 2 and 3 filed a petition of complaint before the learned Chief Judicial Magistrate, 24 Parganas

South, depicting themselves as the residents of localities situated by the sides of public roads named and known as Mina Para Road, Prince Golam Mahammad road and Basir Sardar lane which are being used by the local residents as well as public at large since more than a hundred years. After partition of India, in the year 1947, displaced persons from East Pakistan came and settled themselves by forming several colonies namely Baghajatin, Ajadgarh, Aswininagar, Bejoygarh, Netaji Nagar, Asoke Nagar, Regent Colony etc. The residents of the colonies have been using the roads to go to hospitals, schools, colleges or other workplaces. That apart the roads are being used for the evening and morning walks of the local residents. In the municipal records of Tollygunge Municipality, these two roads have been delineated as Kachha road and CS Records of Right also demonstrate the existence of the roads. Tollygunge Municipality, considering the fact that the roads are being used by the local people and general public at large, had taken charge of those roads. Subsequently with the merger of Tollygunge Municipality with Kolkata Municipal Corporation the said roads have been vested in the hands of the authorities of Kolkata Municipal Corporation. The roads passing through golf playground are known as Mina Para Road and Prince Golam Mohammad Road.

3. It is contended further that Royal Calcutta Golf Club had no boundary wall surrounding its playgrounds but subsequently the club authority raised a boundary wall surrounding its outer limit, keeping the said roads or ways accessible the local residents as well

as public at large who had been using the said road. On 14th May, 2006 the accused persons, who are managing the affairs of Royal Calcutta Golf Club closed and blocked the said openings raising cemented wall and thereby committed public nuisance within the meaning of Section 268 and 283 of the I.P.C. The accused persons also committed offence within the meaning of Section 339 of the I.P.C. and the offence of criminal trespass punishable under Section 447 of the I.P.C.

4. Attempt was made to inform jurisdictional police authority but Jadavpur Police Station refused to entertain the complaint. The complainants, thereafter, filed the petition of complaint before the learned Chief Judicial Magistrate under Section 268/290/269/83/341/447/295/295A/296 of the Indian Penal Code.
5. Learned Chief Judicial Magistrate took cognizance of the case so made out and transferred the case to the learned 9th Court of Judicial Magistrate who was pleased to issue process under Section 341/290/448 of the Indian Penal Code. The accused Manmohan Singh surrendered to the jurisdiction of learned Trial Court and was admitted on bail. Both the accused persons filed application under Section 205 of the Code of Criminal Procedure and the learned Trial Court fixed a date for orders.
6. Seeking an order of quashment, Mr. Sandipan Ganguly, learned Senior Counsel representing the petitioners submits that the petition of complaint is attended with malafide, there was suppression of

material fact on the part of the complainants. It is adverted that Royal Calcutta Golf club is a non-profit company established in 1829.

7. State of West Bengal transferred 2.63 acres of land to Royal Calcutta Golf Club, and against such transfer RCGC on its part transferred 4.73 acres of Khas land to the Government of West Bengal for construction of road and other public purposes and to that effect a tripartite agreement was executed among the parties being Government of West Bengal, Royal Calcutta Club and Calcutta Metropolitan Development Authority. A certificate of possession was accordingly given by the Calcutta Metropolitan Development Authority on 30 May, 1986 and RCGC has been possessing the said land measuring about 2.63 acres.
8. The map annexed to the said agreement delineates the roads within the premises of Royal Calcutta Golf club. It is further contended by Mr. Ganguly that the complainants of the said Complaint Case No. 4459 of 2006, along with others challenged the acquisition of 2.63 acres of land, by filing a Writ Petition being W.P. No. 27160 (W) of 2006. However, the writ petition was not pursued and was dismissed vide order dated 18th June, 2013.
9. Therefore, the transfer of land measuring about 2.63 acres, in favour of RCGC including the public roads and drains attained its finality. The opposite party nos. 2 and 3 in the petition of complaint falsely alleged that petitioners had forcibly taken possession of the said land including public thoroughfare and thus wrongfully restrained the members of the public including the complainant.

10. According to Mr. Ganguly on the acquisition of the land by the paramount title holder, and its subsequent transfer by the Governor of West Bengal to Royal Calcutta Golf Club, the said land along with everything situated thereat lost its public character and Royal Calcutta Golf Club has acquired the exclusive title over the said land. It is further submitted that Royal Calcutta Golf Club, the company, within the meaning of Section 25 of the Companies Act, 1956 and Section 8 of the Companies Act, 2013, since has not been arraigned as accused person, the petition of complaint is not at all maintainable.
11. Refuting such contention of Mr. Ganguly, Mr. Apalak Basu learned Counsel representing the opposite party nos. 2 and 3, submits that the petition of complaint filed before the learned Jurisdictional Magistrate, discloses offence punishable under Section 341/290/448 of the I.P.C. Under such circumstances this Court may not venture into the truthfulness of the allegations on the strength of defence version which is a dispute on factual aspect. It is only when no offence is disclosed in the petition of complaint, the Court may examine the question of fact. According to Mr. Basu, a public road cannot be acquired by any authority. Whether the acquisition was valid or not so far public roads are concerned, is a disputed question of fact and this Court may not exercise the inherent power conferred under Section 482 of the Code of Criminal Procedure and thereby assume the role of an Appellate Court, to adjudicate such dispute. It is contended further that (i) Admissions are on facts and not on law.

(ii) Title cannot be conferred on the basis of admission. (iii) Conviction cannot be based or title cannot be decided only on the basis of admission when the record speaks otherwise. (iv) Opportunity can be afforded to be confronted with the admission. (v) Admission cannot be seen in a piecemeal manner. (vi) Admissions are not conclusive and can be tested by the learned trial court. (vii) Estoppel applies only when one party intentionally causes and permits another party to believe something to be true and the other party must have acted on such belief. (viii) There is no estoppel or admission on fundamental rights.

12. To buttress his point Mr. Basu relied upon the decisions of Hon'ble Apex Court pronounced in the cases of:-

(i) **KAPTAN SINGH VS. STATE OF UTTAR PRADESH** reported in **(2021) 9 SCC 35** wherein it is held:-

“9.1....However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial....”

(ii) **NAGUBAI AMMAL & ORS. VS. V. B. SHAMA RAO & ORS.** reported in **AIR 1956 SC 593** which deals with issues not relevant to the facts of this case.

(iii) **AMBIKA PRASAD THAKUR & ORS. ETC. VS. RAM EKBAL RAI (DEAD) BY HIS LEGAL REPRESENTATIVES & ORS. ETC.**

reported in **AIR 1966 SC 605** where in it is held:-

“Title cannot pass by mere admission.”

(iv) **CHHAGANLAL KESHAVLAL MEHTA VS. PATEL NARANDAS HARIBHAI** reported in **(1982) 1 SCC 121** wherein it is held:-

“22. It may be pointed out that estoppel deals with questions of facts and not of rights. A man is not estopped from asserting a right which he had said that he will not assert. It is also a well-known principle that there can be no estoppel against a statute. After the death of Motibhai his son Chimmanrai succeeded in law.

23. To bring the case within the scope of estoppel as defined in S. 115 of the Evidence Act: (1) there must be a representation by a person or his authorised agent to another in any form-a declaration, act or omission; (2) the representation must have been of the existence of a fact and not of promises de futuro or intention which might or might not be enforceable in contract: (3) the representation must have been meant to be relied upon; (4) there must have been belief on the part of the other party in its truth; (5) there must have been action on the faith of that declaration, act or omission, that is to say, the declaration, act or omission must have actually caused another to act on the faith of it, and to alter his former position to his prejudice or detriment; (6) the misrepresentation or conduct or omission must have been the proximate cause of leading the other party to act to his prejudice: (7) the person (claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of affairs or had means of knowledge, there can be no estoppel: (8) Only the person to whom representation was made or for whom it was designed

can avail himself of it. A person is entitled to plead estoppel in his own individual character and not as a representative of his assignee."

(v) SOURUJMULL & ORS. VS. GANGES MANUFACTURING CO.

reported in **(1880) ILR 5 Cal 669** wherein it is held:-

"15. The fallacy of the argument is in supposing that all rules of estoppel are also rules of evidence. The enactment in Section 115 is, no doubt, in one sense, a rule of evidence. It is founded upon the well-known doctrine laid down in Pickard v. Sears (6 Ad. & E., 469) and other cases, that where a man has made a representation to another of a particular fact or state of circumstances, and has thereby wilfully induced that other to act upon that representation and to alter his own previous position, he is estopped as against that person from proving that the fact or state of circumstances was not true. In such a case the rule of estoppel becomes so far a rule of evidence, that evidence is not admissible to disprove the fact or state of circumstances which was represented to exist. But "estoppels," in the sense in which the term is used in English legal phraseology, are matters of infinite variety, and are by no means confined to the subjects which are dealt with in Chap. VIII of the Evidence Act. A man may be estopped, not only from giving particular evidence, but from doing acts, or relying upon any particular arguments or contention, which the rules of equity and good conscience prevent his using as against his opponent."

(vi) R.S. MADDANAPPA (DECEASED) AFTER HIM BY HIS LEGAL REPRESENTATIVES VS. CHANDRAMMA & ANR. reported in **AIR 1965 SC 1812** wherein it is held:-

"11. It may further be mentioned that in Carr v. London and North Western Rly, Co., (1875) 10 CP 307 four propositions

concerning an estoppel by conduct were laid down by Brett, J. (afterwards Lord Esher) the third of which runs thus: "If a man either in express terms or by conduct makes a representation to another of the existence of a certain state of facts which he intends to be acted upon in a certain way, and it be acted upon in the belief of the existence of such a state of facts, to the damage of him who so believes and acts, the first is estopped from denying the existence of such a state of facts."

This also shows that the person claiming benefit of the doctrine must show that he has acted to his detriment on the faith of the representation made to him."

(vii) **OLGA TELLIS & ORS. VS. BOMBAY MUNICIPAL CORPORATION & ORS.** reported in **(1985) 3 SCC 545** wherein it is held:-

"28. It is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defence to the demolition of the huts put up by them on pavements or parts of public roads. There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs."

13. Mr. Basu strenuously argued that by no stretch of imagination it can be said that Kolkata Municipal Corporation has competence to transfer public roads to any private entity. According to Mr. Basu the writ petition was not decided on merit, therefore, the order of

dismissal on the ground of default cannot lead to the conclusion that the issue of acquisition of land including public roads had reached its finality. It is trite law to say that title cannot be conferred on the basis of incorrect admission and there cannot be an estoppel on the point of law or fundamental right.

14. I have the privilege to go through the tripartite agreement among the Governor of the State of West Bengal, the Calcutta Metropolitan Development Authority and the Royal Calcutta Golf Club, a company limited by guarantee, not having a share capital, executed on 8th May, 1986 the certificate of possession issued by Calcutta Metropolitan Development Authority in favour of Royal Calcutta Golf Club on 28th May, 1986, as well as the Writ Petition being W.P. 271609(W) of 2006 including the order passed on 18th June, 2013 by which the writ petition was dismissed as none appeared in support of the petition. The writ petition was filed by the petitioners for themselves as well as on behalf of local public at large who have been prejudiced and affected by the unlawful acquisition of some portion of public roads named and known as Prince Ghulam Mahammad Shah Road and Graham Road and transfer of the same in favour Royal Calcutta Golf Club. It is contended further that the agreement is void ab initio and not binding on the parties.

15. I have carefully perused the materials placed before this Court by way of pleadings and from the attending facts of the case it is admitted that the Government of West Bengal being the paramount title holder acquired 2.63 acres of land which was transferred to

Royal Calcutta Golf Club. Royal Calcutta Golf Club, the company, prior to that, transferred 4.70 acres of land in favour of Calcutta Metropolitan Development Authority to be used for public purposes. The complainant challenged the said acquisition by filing a Writ Application No. W.P. 27160 (W) of 2006 which ultimately was dismissed by the Competent Court. The averment made in the writ application unerringly indicates that by virtue of such acquisition and transfer of land in favour of Royal Calcutta Golf Club, the right title interest over the said piece of land has been acquired by the said company. Thus by no stretch of imagination, the company Royal Calcutta Golf Club can be prima facie held to be culpable for committing any offence within the meaning of penal code. Hon'ble Apex Court in ***ALL CARGO MOVERS (INDIA) PRIVATE LIMITED & ORS. VS. DHANESH BADARMAL JAIN & ANR.*** reported in **AIR 2008 SC 247** held:-

“16. We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, This Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of the plaintiff-respondent No.1 in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simplicitor does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the

purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice.”

16. Admittedly, Royal Calcutta Golf Club, the company has not been added as party to the criminal proceeding though the allegations are principally leveled against the said company. Hon’ble Apex Court in **SHARDA KUMAR SANGHI VS. SANGITA RANE** reported in **(2015) 12 SCC 78** Held:–

“11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the company, but the company has not been made arrayed as a party. Therefore, the allegations have to be restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened on certain statutes. It has been so held by a three-Judge Bench in [Aneeta Hada v. Godfather Travels and Tours Private Limited](#)⁶ in the context of [Negotiable Instruments Act, 1881](#).

12. At this juncture, it is interesting to note, as we have stated earlier, that the learned Magistrate while passing the order dated 22.10.2001, had opined, thus :-

“It appears prima-facie from the complaint filed by the complainant, documents, evidence and arguments that accused company has committed cheating with the complaint by delivering old and accidented vehicle to her at the cost of a new 5 (2013) 4 SCC 505 6 (2012) 5 SCC 661 truck. Accordingly, prima-facie sufficient grounds exist for registration of a complaint against the accused U/s. 420 of *I.P.C.* and is accordingly registered.”

13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant.”

17. In **Kaptan Singh (supra)** Hon’ble Apex Court held:-

“9.2 In the case of *Dhruvaram Murlidhar Sonar (Supra)* after considering the decisions of this Court in *Bhajan Lal (Supra)*, it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in

exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ (Supra), referred to hereinabove.”

This is now well settled principle of law.

18. It is rightly adverted by Mr. Basu that there cannot be estoppel on question of law. But the averments made in the Writ Petition No. 27160 (W) of 2006 when indicate the fact that the State acquired 2.63 acres of land including the roads situated there upon and transferred the same to the Royal Calcutta Golf Club, it should be held that Royal Calcutta Golf Club has acquired right title interest over the said property and thus has acquired the right to protect the property as well. This fact, of course, extends protective shield to the Royal Calcutta Golf Club from being prosecuted under Section 341/290/448 of I.P.C. or in other words the criminal proceeding becomes an abuse of process of law.
19. It is one thing to say that the Court could not consider the defence of the accused person while deciding an application under Section 482 of the Code of Criminal Procedure but it is another thing to say that for exercising the inherent jurisdiction of the Court it is impermissible to look to the admitted documents.
20. In **M.SARVANA PORSEVI VS. A.R. CHANDRASHEKHAR @ PARTHIBAN & ORS.** reported in **(2008) 11 SCC 520** Hon’ble Apex Court held:–

“If even for exercising its jurisdiction under section 482 of the code of criminal procedure, the High Court has taken into

consideration and admitted document, we do not see any legal infirmity therein”.

21. Under such facts and circumstances of the case, I am of the view that the petition of complaint is attended with malafide and if it is allowed to continue, it would amount to an abuse of process of law. Therefore, I am of the view that the criminal proceeding before the learned Trial Court should be quashed, which I accordingly do. Consequently the criminal revision is allowed. The proceeding being Complaint Case No. 4459 of 2006 pending before the learned 9th Court of Judicial Magistrate stands quashed. With the disposal of the criminal revision, pending application, if any, stands disposed of.
22. Let a copy of this judgement be sent down to learned Trial Court for information and necessary action.
23. Urgent certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)