

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.R.R. 2984 of 2016

Samit Kumar Ghosal

Vs.

State of West Bengal & Anr.

For the Petitioner : Mr. Tapan Roy Chowdhry, Adv.

Mr. Kallol Mondal, Adv.

Mr. Krishan Roy, Adv.

For the State : Mr. Bidyut Kumar Roy, Adv.

Ms. Rita Dutta, Adv.

Mr. Santanu Seth, Adv.

For the opposite party No.2 : Mr. Milon Mukherjee, Adv.

Mr. Biswajit Manna, Adv.

Heard on : June 27, 2023

Judgment on : July 25, 2023

Bibhas Ranjan De, J.

1. Judgement and order dated 31.03.2016 passed by the Ld.

Additional Sessions Judge, 11th Court, Alipore, South 24

Parganas in Criminal Motion No. 105 of 2014 whereby the order dated 15.09.2014 passed by Learned Judicial Magistrate, 2nd Court, Alipore in connection with BGR no. 3057 of 2008 was set aside, is under challenged.

Background:-

2. On 16.08.2009 one Sumit Kumar Ghosal (complainant/petitioner) lodged a complaint before the Additional Chief Judicial Magistrate, Alipore under Section 156(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as CrPC) alleging, *inter alia* that Sanchay Kumar Samanta (opposite party/accused) was inducted as tenant in respect of his flat no. 2F, Ekta Height under an agreement on payment of rent of Rs. 20,000/- per month for the period of 11 months. All on a sudden one Learned Advocate on behalf of the accused/opposite party sent a letter asking him to inform the date of sale of the said flat as per agreement instead of vacating the flat after expiry of the leave and

license agreement. The petitioner/ complainant inform the matter Ekta Height Owners Association as well as officer in charge of Jadavpur Police Station, who recorded the same vide GDE No. 1535 of 2008 dated 16.08.2008. It was alleged that petitioner /complainant never entered into any agreement for sale and thereby opposite party/accused in connivance with others committed offence punishable under Section 420/406 read with Section 465/511 of the Indian Penal Code (hereinafter referred to as IPC).

- 3.** On receipt of that complaint, Jadavpur Police Station Case No. 476 dated 16.08.2008 was started. During investigation witnesses were examined and recorded their statement and also some documents were seized in respect of ownership of the flat, lease agreement, letter sent by opposite party/accused through his advocate etc. Notice was issued asking him to produce agreement between the parties regarding sale but the opposite party/accused replied by

advocate letter that original deed was deposited in the Learned Court of 5th Civil Judge, Senior Division, Alipore. But, during investigation it was revealed from information slip issued by the said court that no such agreement for sale was ever deposited with the court. Therefore, *prima facie* charge being established against the opposite party/accused Investigation Officer submitted charge sheet against the opposite party /accused under Section 420/406/465/120B of IPC.

- 4.** Opposite party /accused Sanchay Kumar Samanta, presented one application on 16.11.2011 for discharging him from the charge under Section 420/406/ 465/12B of IPC as there was no question of misappropriation. Learned Chief Judicial Magistrate, Second Court, Alipore returned his findings as under:-

“On careful scrutiny I find that the accused was admittedly a licensee of a flat of the de facto complaint. It appears from the C.D. that the I.O. collected the handwriting of the complaint for the purpose of

examination by the hand writing expert. I also find that the accused was asked by the I.O. to produce the original deed for that purpose. But the accused without producing the same, informed the I.O. by a latter of Ld. Advocate that the said document was submitted at the civil court. It also found that the I.O. collected information from the said civil court from which it appears that the said document was not laying at the aid court. Therefore, it is clear that the accused has not denied the existence of said alleged document, rather he will fully did not produce the said document before the I.O for investigation. Now, at this stage the accused cannot take the advantage of his non production of the alleged document. On the contrary adverse presumption can be drawn agisnt him for not producing said document for the purpose of investigation. This is not a state of scanning the avoidance collected by the prosecution. But on perusal of C.D. I find sufficient incriminating materials against the accused u/s 420/406/465/120B I.P.C against the accused. Considering the above discussion, the portion dated 16.1.11 of the accused is considered and rejected. To 24.12.14. for consideration of charge.”

- 5.** Assailing the aforesaid order passed by the Ld. Judicial Magistrate, Second Court, Alipore opposite party/ accused preferred a criminal motion under Section 397/399 of CrPC before the Ld. Sessions Judge, Alipore, South 24 Parganas, which was taken up by the Additional Sessions Judge, 11th Court Alipore, south 24 Parganas for disposal, on transfer.

Ld. Judge observed that Ld. Magistrate could not take any presumption against the accused for non-production of any document on being asked by the I.O. in violation of Article 20(3) of the Constitution of India. At the same time, Ld.

Sessions Judge observed as follows:-

“Therefore, the Magistrate was not justified in drawing up an adverse presumption against the accused for non-production of the alleged document of agreement for sale. The case as made out by the complainant was that the accused was inducted as a licensee under the complainant in respect to his premises under an agreement only for a period of 11 months. But after expiry of 11 months the accused declined to vacate the flat on the contrary tried to grab the said flat by illegal means by putting a false story before others that he possess a document for ‘agreement for sale’ of the said flat in his favour bearing alleged signature of the petitioners which the petitioners/complainants suspect to be a forged one for which they are really concerned. Therefore, it was the prime duty of the prosecution to prima facie establish a case against the accused that an agreement for sale was forged by putting a signature of the complainant on the document. When the prosecution failed to prove such fact, it is the weakness of the prosecution case for which the accused cannot be made to suffer thereby shifting the burden upon the accused. The Magistrate ought to have been satisfied on the available materials as appeared in the CD to establish a prima facie case against the accused instead of drawing an adverse presumption against him

for non-production of any such document which the complainant suspects to be a 'forged one'. Mere suspicion cannot prima facie establish a guilt against the accused until and unless the investigating agency prima facie establishes a case thereon by cogent documentary proof as it requires in the instant case. The impugned order therefore being bad in law is hereby set aside.

Accordingly, the instant Criminal Motion preferred by the Revisionist stands allowed on contest but without any order as to cost and the impugned order dated 15.09.14 is hereby set aside with a direction upon the Learned Trial Court to dispose off the discharge petition afresh in accordance with law of Criminal Jurisprudence and in guideline to the observations made herein."

- 6.** Ld. Advocate, Mr. Kallol Mondal, appearing on behalf of the petitioner/ complainant referred to the petition under Section 156(3) of the CrPC containing the details of allegation of forgery against the opposite party/accused and submitted that in spite of requisition of investigating officer opposite party /accused did not produce the agreement for sale alleged to have executed between the parties to this revision application, though petitioner/complainant specifically denied execution of any such agreement for sale. In response to notice of the I.O for production of the

document i.e agreement or sale opposite party /accused informed by sending one advocates letter that the said documents was deposited with Civil Court. Mr. Mondal has further referred to the judgement passed by the Civil Judge, Senior Division, 5th Court, Alipore in connection with Title Suit No. 200 of 2008 and submitted that opposite party /accused filed a suit for declaration of title over the flat in question by dint of one agreement for sale executed in between the parties to this revision application. Mr. Mondal has further contended that such an act on the part of the opposite party/accused enticed an offence under Section 420/406/465/120B I.P.C.

7. In opposition to that, Mr. Milon Mukherjee, Ld. Senior Advocate, appearing on behalf of the opposite party no. 2 has referred to the application under Section 156(3) of CrPC and submitted that though petitioner/complainant informed Jadavpur Police Station where the information was entered

into the general diary in respect of cognizable offence but police did not investigate the same. Mr. Mukherjee has further submitted that opposite party / accused cannot be compelled to produce the document to prove the charge against him in violation of Article 20 of the Constitution of India. Mr. Mukherjee has further submitted the allegation made in the petition under Section 156(3) of the CrPC did not construe any offence under Section 420/406 of the IPC.

8. Before parting with Mr. Mukherjee relied on a case of ***Priyanka Srivastava and another Vs. State of Uttar Pradesh and another*** reported in ***(2015) 6 Supreme Court Cases 287*** and contended that application under Section 156(3) of CrPC cannot be acted upon because of non-compliance of Section 154(1)& (3) of CrPC.

9. In ***Priyanka Shrivastava*** (supra) it was observed that compliance of Section 154(1) CrPC & 154(3) CrPC have to be in existence at the time of filing petition under Section

156(3) of CrPC and information to police shall have to be embedded in the application under Section 156(3) of CrPC.

Hon'ble Court has further observed that the Provision of Section 156(3) of CrPC can only be invoked by a principled and really aggrieved citizen approaching the court with clean hands.

10. In our case, the application under Section 156(3) clearly spells out lodging of complaint before the police supported by document attached thereto. Not only that the application under Section 156(3) was duly supported by affidavit. Allegations made in this revision application cannot be said to have been filed by a person approaching court without clean hands.

11. From the record *prima facie* it is found that opposite party /accused was a licensee under an agreement of leave and license executed between the petitioner/complainant and the opposite party /accused in respect of flat no. 2F, Block No. 1, Ekta Heights, 57 Raja SC Mallick Road,

Kolkata -32, PS Jadavpur owned by licensor/petitioner .
Thereby, opposite party/accused became the licensee under the petitioner/complainant in respect of flat described above.

- 12.** From the documents on record *prima facie* it is found that petitioner/ complainant lodged a written complaint under Section 156(3) of CrPC against opposite party / accused alleging preparation of a forged agreement for sale of the aforementioned flat in favour of the opposite party /accused at the behest of petitioner/complainant with a view to grab the said flat attracting the offence under Section 420/406 read with Section 465/511 of the IPC. That complaint was treated as FIR No. 476 dated 16.08.2008 of Jadavpur Police Station. After investigation charge sheet was submitted agisnt the opposite party/accused under Section 420/406/465/120B of IPC. During investigation after collecting some other documents investigating officer sent a notice asking the opposite party /accused to submit alleged agreement for sale but that was refused on the plea of depositing the same before the Civil Court.

13. Copy of the judgement passed by Civil Judge (Senior Division), 5th Court, Alipore in Title Suit No. 200 of 2008 clearly shows that opposite party/accused filed a suit for declaration that the agreement dated 25.03.2008 (agreement of sale) was binding upon the parties to this revision application. Both from the plaint as well as judgement delivered in Title Suit No. 200 of 2008 it is clear about existence of an agreement of sale between the parties and petitioner/complainant is the owner of the flat in question. However, in course of trial opposite party/accused posing himself to be a party to the agreement for sale also could not produce the original agreement for sale before the Ld. Trial Judge in Title Suit No. 200 of 2008. Consequently, in response to counter claim of the petitioner/complainant in Title Suit No. 200 / 2008 Ld. Trial Judge dismissed the suit but allowed the counter claim directing the opposite party/accused to vacate the said flat within 60 days from the delivery of the judgement.

14. In the aforesaid admitted facts and circumstances, I am sorry to agree with Mr. Mukherjee that summoning the opposite party/accused to produce the agreement for sale

was a violation of right enshrined in Article 20 of the Constitution of India.

15. In the aforesaid view of the matter, *prima facie* it can safely be assumed that opposite party/accused made an attempt to convert his status of licensee over the flat in question to an owner of the said flat by preparing one agreement for sale deemed to have been executed by the petitioner/complainant.

16. Thus, I find sufficient reason to interfere with the order passed by the Ld. Additional Sessions Judge, 11th Court, Alipore, South 24 parganas on 31.03.2016 in connection with Criminal Motion No. 105 of 2014 which is liable to be set aside. The judgment dated 31.03.2016 passed by Ld. Additional Sessions Judge, 11th Court, Alipore, South 24 Parganas, in connection with Criminal Motion No. 105 of 2014 stands set aside. Consequently, the order dated 16.09.2014 passed by Ld. Judicial Magistrate, South 24 Parganas in connection with BGR 3057/2008 be restored.

17. Ld. Judicial Magistrate, 2nd Court, Alipore, South 24 paranags is requested to proceed with the case according to law prescribed therefore without being influenced by the order of this court, in any manner.

- 18.** The revision application being no. CRR 2984 of 2016 Stands disposed of. Let a copy of this order be communicated to the Ld. Judicial Magistrate 2nd Court, Alipore, South 24 Parganas for information.
- 19.** Interim order if there be any stands vacated. All Pending applications, if there be any, stand disposed of as well.
- 20.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]