

CRR 2785 of 2012

In the matter of : Sanatan Pal

Mr. Bratin Kr. Dey
Mr. Suman Rai ... for the petitioner

Mr. B. K. Panda
Ms. Sima Biswas ... for the State

Heard learned counsel representing the petitioner.

This revisional application challenges the order dated 17.3.2012 passed by the learned Trial Court in G.R. Case No.732 of 2007 arising out of Salar P.S. Case No. 89/2007 dated 10.12.2007 under Sections 147,194,420,465,467,471 and 34 of the Indian Penal Code.

Mr. Dey, learned counsel representing the petitioner makes me go through the order impugned by which the learned Trial Court recorded an order of discharge under Section 239 of the Cr.P.C. on the ground that the I.O. in course of investigation did not seize the Deed No. 612 of 1974 dated 12.11.1974.

Briefly stated, the petitioner as a complainant filed a petition of complaint under Section 156(3) of the Cr.P.C. before the learned Additional Chief Judicial Magistrate, Kandi alleging inter alia that accused Rahamat Unnesa Bibi executed a Deed No. 612 of 1974 and thereby transferred the property owned by the complainant to Dr. Kaji Sayyed Masood. The transferee Rahamat Unnesa Bibi did not have any right, title and interest to transfer the property owned by the complainant. She practised fraud. The

petition of complaint was forwarded to the jurisdictional Police Station by learned Additional Chief Judicial Magistrate, Kandi under Section 156(3) of the Cr.P.C. and Kandi P.S. Case No. 89 of 2007 dated 10.12.2007 was registered. Police took up investigation which culminated into submission of charge sheet against eight accused persons. At the time of framing of charge, learned Trial Court observed that the Deed No. 612 of 1974 was not seized by the I.O. Thus the learned Trial Court was pleased to discharge the accused persons.

From the attending facts of the case, it appears that the accused Rahamat Unnesa Bibi transferred the property owned by the petitioner claiming herself to be the owner of the same but not using the name of the petitioner or forging her signature in any manner. Therefore, the accused person can be said to have duped the purchaser of the property but not the original owner.

In my opinion, by filing this complaint the petitioner has tried to imbibe the same with the colour of criminality. It is a well settled principle of law that a person cannot transfer more than what the said person is entitled to. Therefore, by transferring the property owned by the petitioner, claiming the same to be her own, the accused person cannot be said to have caused any offence within the meaning of Indian Penal Code as against the petitioner though such action of the accused person cast cloud upon the title of the complainant over the property in question.

. Though the impugned order discharging the accused persons on the ground that the I.O. did not seize the document is bad in law, learned Trial Court in such an event could have

directed the I.O. for reinvestigation, but I am of the view that this criminal proceeding is manifestation of abuse of process of law particularly, when a civil dispute has been given the flavor of criminal offence.

Under such circumstances, I am inclined to quash the entire proceeding pending before the learned Trial Court. However, this order will not stand in the way of the petitioner to have civil remedy available under the law.

It is submitted by Mr. Dey that a civil suit being T.S. No. 121 of 2008 is pending for declaration and injunction and cancellation of deed.

This order will not affect the proceeding pending before the Civil Court in any manner whatsoever.

With this observation, the revisional application is disposed of along with application, if any.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)