

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 4013 of 2009

with

CRAN 1 of 2010

CRAN 7 of 2013

Sudeb Kumar Banerjee & Ors.

VS.

The State of West Bengal & Anr.

For the Petitioner	: Mr. Saubhik Mitter, Adv. Mr. Karan Bapuli, Adv. Mr. Chanchal Kumar Dutta, Adv. Ms. K. Mullick, Adv.
For the State	: Mr. B.K. Roy, Adv. Ms. Rita Dutta, Adv.
Hearing concluded on	: 8 th February, 2023
Judgement on	: 8 th February, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 of the Cr.P.C. challenges the proceeding being G.R. Case No. 128/2009 arising out of Raiganj P.S. Case No. 345/2009 dated 25th October, 2009 and order dated 16th October, 2009 passed by learned Chief Judicial Magistrate, Raiganj, Uttar Dinajpur while deciding an application under Section 156 (3) of Cr.P.C.
2. Briefly stated, Smt. Atashi Banerjee set the criminal proceeding into motion by taking out a petition before the learned Chief Judicial Magistrate, Uttar Dinajpur contending, *inter alia*, that her predecessor in interest Tapan Banerjee was one of the partners in M/s Sudip Kumar Banerjee having 16% share, after his demise his

widow Lila Banerjee was inducted as partner. No share of profit, however, was given to her mother Smt. Lila Banerjee. Legal notice was served upon the partners through advocate on 31st March, 2009 claiming the share of profit but it was of no avail. The bank account maintained with Allahabad Bank, Mohanbati Branch, Raiganj opened in the year 2005 is being controlled by four Banerjee brothers who hatched a conspiracy and by putting false signature in the cheque no. 146746 on 24th January, 2009 withdrew a sum of Rs. 10,32,000/-. She lodged a complaint on 18th July, 2009 but no action was taken by the Inspector-in-charge of Raiganj P.S. which prompted her to take out an application before learned Chief Judicial Magistrate, Uttar Dinajpur who forwarded the petition of complaint to the Jurisdictional Police Station under Section 156 (3) of the Cr.P.C. and Raiganj P.S. Case No. 345 of 2009 was registered. Police took up the investigation. The criminal proceeding was challenged by the persons arrayed as accused in the said proceeding.

3. Mr. Saubhik Mitter, learned Counsel representing the petitioners assails the said proceeding by indicating that no forgery was ever committed as alleged. A sum of Rs. 10,40,455/- was taken as loan and it was duly repaid with interest and the complainant has acknowledged the settlement of Rs. 10,32,461/- which was paid vide a cheque no. 540508 dated 24th January, 2009. The photocopy of the acknowledgement is annexed to the petition. Mr. Mitter, however, makes me go through copy of the statement of account standing in the name of Mr. Sudeb Kumar Banerjee which demonstrates the fact that by cheque no. 540558 dated 24th January, 2009, a sum of Rs.

10,32,461/- was debited from the account of Mr. Banerjee. Therefore, according to Mr. Mitter, the opposite party no. 2 had no reason to initiate criminal proceeding having received the said amount, 8 months thereafter. It is further argued that the opposite party no. 2 initiated a civil proceeding claiming partition of properties which is pending before the Competent Court being Suit No. 150 of 2009. It is rightly submitted that share of profit is a civil dispute and that issue cannot be said to have any nexus with the alleged offence under Penal Code. At the time of admission of criminal revision direction was given to the police authority to proceed with the investigation but without taking any coercive action. It can be presumed that by this time police has submitted final report. In any event the criminal proceeding before learned Trial Court stands quashed. However, this order shall have no impact over the claim of money or any other claim civil in nature.

4. With this observation the criminal revision is allowed. Pending applications, if any, stands disposed of.
5. Let a copy of this judgement along with lower Court record be sent down to the learned Trial Court for information and necessary compliance.
6. 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.)