

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 3987 of 2016
CRAN 9 of 2019

SANJAY KUMAR SRIVASTAVA @ S. K. SRIVASTAVA
VS.
THE STATE OF WEST BENGAL & ORS.

For the Petitioner : Mr. Sourav Chatterjee, Adv.
Mr. Soumya Nag, Adv.
Mr. Bimalendu Das, Adv.
Ms. Shomrita Das, Adv.
Mr. Shomrik Das, Adv.

For the State : Mr. Abhisekh Sinha, Adv.

Hearing concluded on : 16th June, 2023

Judgement on : 16th June, 2023

Siddhartha Roy Chowdhury, J.:

1. By filing this revisional application the petitioner, Sanjay Kumar Srivastava @ S. K. Srivastava is seeking an order of quashment of the proceeding being G.R. Case No. 107 of 2014 corresponding to Matigara P.S. Case No. 24 of 2014 dated 13th January, 2014 pending before the learned Additional Chief Judicial Magistrate, Siliguri, Darjeeling.
2. Briefly stated, the petitioner is working for gain as Chief Manager, Industrial Business Development of Bharat Petroleum Corporation Limited and previously he was posted as Regional Manager (Lubes) of Bharat Petroleum Corporation Limited in the Eastern Region. One

Rabi Sankar Dalai on 25th October, 2011 represented B.P.C.L. while entering into an agreement for lease with company under style 'Hill View Investment Private Limited' in respect to a piece of land measuring about 7761.60 square feet, classified as petrol pump recorded in Khatian No. 1932 within Mouza-Thiknikata, Police Station – Matigara which was duly registered on 31st October, 2011. The opposite party no. 2 along with three others, claiming right title interest over the aforesaid property, filed a suit for declaration and recovery of Khas possession against Hill View Investment Private Limited and others including the B.P.C.L., before the learned Civil Judge (Senior Division), Siliguri, Darjeeling, registered as Title Suit No. 119 of 2011. An order of injunction was passed in the said suit directing the parties to maintain status quo till the disposal of the suit.

3. During pendency of the said suit Nikhil Debnath one of the plaintiffs filed a petition before the learned Additional Chief Judicial Magistrate, Siliguri alleging, *inter alia*, that he along with his three brothers purchased a piece of land by registered deed on 4th August, 2015 from Arati Devi. They have been possessing the said property jointly since after purchase by mutating their names in the revenue record and by paying taxes etc. In the month October, 2009, the accused nos. 1 and 2 who are two full blood brothers got their name recorded and claimed ownership over the property taking advantage of erroneous recording by concerned B.L. & L.R.O. However, after following proper procedure the errors were removed but during such

process of correction of record of rights the accused no. 2 in collusion with others sold 18 decimal of land out the said property in dispute. The accused no. 6, the B.L. & L.R.O. having jurisdiction again published R.O.R. in the name of the said company. Based on the said deed of sale Hill View Investment Private Limited and B.P.C.L. in collusion with each other and in furtherance of their common intention entered into a lease agreement with Bharat Petroleum Corporation Limited ignoring the representation made by him.

4. Learned Additional Chief Judicial Magistrate, Siliguri forwarded the said petition of complaint to the jurisdictional police station under Section 156 (3) of the Code of Criminal Procedure and Matigara P.S. Case No. 24 of 2014 was registered on 13th January, 2014 under Section 167/169/181/341/418/467/471/474/506/120B of the Indian Penal Code.
5. Mr. Sourav Chatterjee, learned Counsel for the petitioner submits that from the attending facts of the case it is admitted that a deed of lease was executed by and between Hill View Investment Private Limited and Bharat Petroleum Corporation Limited on 25th October, 2011. Hill View Investment Private Limited, prima facie could establish its title in respect of property leased out to B.P.C.L. and B.P.C.L. considering the deed no. 251 of 2011 entered into an agreement for lease with the said company. Title of the lessor, however, has been challenged by the opposite party no. 2 in civil proceeding. The petitioner did not represent B.P.C.L. in the lease agreement. He did not play any role in the entire transaction even the

FIR is silent about any overact committed by the petitioner. According Mr. Chatterjee, if the FIR is accepted on its face value then also there will be nothing to indicate the culpability of the petitioner in the whole transaction.

6. Mr. Abhisekh Sinha, learned Counsel, representing the State with all fairness submits that there is nothing to demonstrate the involvement of the petitioner in the alleged transaction.

7. In State of **HARYANA VS. BHAJAN LAL** reported in **1992 Supp (1) SSC 335** Hon'ble Apex Court held as following:-

"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 CrPC can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the*

same do not disclose the commission of any offence and make out a case against the accused.

- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

8. Since, there is nothing to indicate the role of the petitioner in the whole alleged transaction, particularly after considering the averment made in paragraph 18 of the petition of complaint which has been treated as part of FIR it appears that the petitioner has been arrayed as an accused and has been implicated with a malafide intention.

9. Under such circumstances, having found the criminal proceeding being G.R. Case No. 107 of 2014 corresponding to Matigara P.S. Case

No. 24 of 2014 pending before the learned Additional Chief Judicial Magistrate, Siliguri is attended with malafide, I am of the view that the said proceeding should be quashed, qua the petitioner to avert the abuse of process of law, which I accordingly do. Thus the criminal revision is thus disposed of. With the disposal of this revisional application pending application, if any, stands disposed of.

10. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary compliance.
11. Urgent photostat 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.)