

04.9.2023
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SB
Ct. No.3

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRR 74 of 2023
CRAN 2 of 2023

(Through Video Conference)

In the matter of : Subrata Biswas & Ors.

Mr. Arjun Chowdhury,
Ms. Pratushya Dutta Chowdhury
Ms. Riya Agarwal ... for the petitioners

Mr. Aditi Shankar Chakraborty
Mr. Ujjwal Luksom
Mr. Sourav Ganguly ... for the State

Mr. Sayan De
Ms. Esha Acharya ... for the O.P. No. 2

Heard Mr. Arjun Chowdhury, learned counsel appearing on behalf of the petitioners, Mr. Sayan De, learned counsel ably assisted by Ms. Acharya, learned counsel appearing on behalf of the opposite party No. 2 and Mr. Ganguly, learned counsel representing the State.

This application under Section 482 of Code of Criminal Procedure is filed by the petitioners seeking an order of quashment of Matigara Police Station Case No. 1177 of 2021 dated 13.10.2021 under Sections 465/468/471/406/420/120B of the Indian Penal Code 1860 corresponding to G.R. Case No. 4847 of 2021 pending before the learned Additional Chief Judicial Magistrate, Siliguri, Darjeeling.

Briefly stated, that the petitioners are the partners of the firm under the name and style Devza Realtors who claimed to have

purchased the property in question from Dhirendra Das having an area of 21 decimal appertaining to R.S. Plot No. 64 corresponding to L.R. Plot Nos. 75 and 78 under the L.R. Khatian No. 53 classified as vastu by virtue of a registered deed of sale with pending number 5602 for the year 2018 which was later finalized being deed no. 6029 for the year 2021.

It is contended by Mr. Chowdhury, learned counsel, appearing on behalf of the petitioners that the petitioners purchase the property vide a deed no. 5602 for the year 2018 renumbered 6209 for the year 2021. It is further submitted by Mr. Chowdhury, that after the execution of the deed it was presented for registration and after registration the deed, original deed was also given to the purchasers. Subsequently, when they approached the office of A.D.S.R. for the certified copy of the instrument the petitioners or the firm was informed about deficit of registration fees amount to Rs.1,31,250/-.

The petitioners had to pay a sum of Rs.1,31,250/- favouring the office of A.D.S.R. Bagdogra and only upon such payment the registration was considered to have been completed by the registering authority. A new number was given being no. 6209 of 2021. In the meantime, the petitioners got the name of the firm mutated in the revenue records and after 18 months they came to know about the criminal proceeding.

According to Mr. Chowdhury, the complainant set the criminal proceeding into motion with an oblique motive to harass the petitioner.

The criminal proceeding is but an abuse of process of law and should be quashed.

Refuting such contention Mr. De, Learned Counsel for the O.P. submits that the complainant deals in land and he was given a sum of Rs.3,25,000 by two instalments as brokerage while the consideration for the sale of the land in question was Rs.16 lacs. Though it is claimed by the petitioners that consideration money was transferred to the account of the wife and son of the de facto complainant but that is also factually not correct. Persons to whom the alleged payment was made are not the son and wife of the de facto complainant.

I have gone through the petition of complaint filed before the Learned Jurisdictional Magistrate and in paragraph 6 of the petition of complainant the complaint candidly admitted the execution of deed by himself though with a different narrative. But as a matter of fact, there is no dispute that the complainant put his signature and thereby executed the deed in question. The copy of the deed as annexed to the petition demonstrates that the complainant was very much present before the registering authority on the date of registration, his photograph is appearing on the instrument with his signature. Evidence so far collected by the investigating agency, also supports the case of the petitioner regarding the execution of the deed and its registration.

The only issue that requires consideration is the non-payment of consideration money In absence of any allegation that deed was executed, without payment of consideration, and in absence of any

such statement in the recital of deed, there is hardly any room to hold otherwise when the presence of the complainant before registering authority stands proved coupled with admission regarding execution Section 54 of the Transfer of Property Act permits a sale to be concluded upon even promise of payment of consideration at a future point of time. If it is the contention of the de facto complainant that petitioner has not paid the consideration money, the appropriate action cannot be taken within the meaning of the Indian Penal Code.

This is in my humble opinion a civil dispute imbued with the colour of criminality which is attended with mala fide.

Hon'ble Supreme Court in ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) SCC 335*** held :-

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 F. I. R. 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 F.I.R. 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 F.I.R. 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.

109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary

or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

Considering the facts of the case taking from the aforesaid judgement, I am of the view that this is a fit case to invoke the provision of 482 of the Code of Criminal Procedure and to quash the proceeding which I accordingly do.

If the complainant prefers to take out an application the benefit under Section 14 of the Limitation Act may be extended to the complainant.

The criminal revision 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.)

