IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 139 of 2023

KANTA AGARWAL & ANR.
VS.
STATE OF WEST BENGAL & ORS.

For the Petitioners	: Mr. Ranadeb Sengupta, Sr. Adv. Mr. Sachit Talukdar, Adv. Mr. Chandan Mansingka, Adv.
For the State	: Mr. Aditi Shankar Chakraborty, Ld. APP Mr. Arjun Chowdhury, Adv.
For the O.P. No. 2	: Mr. Ajay Singhal, Adv. Mr. Abhishek Singh, Adv.
Hearing concluded on	: 6th September, 2023
Judgement on	: 8th September, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 of the Code of Criminal Procedure filed by the petitioners seeking quashment of proceeding in G.R. 1352 of 2023 arising out of Matigara P.S. case no. 308 of 2023 dated 22.04.2023 registered under Section 465/468/471/420/120B of the Indian Penal Code, pending before the learned Additional Chief Judicial Magistrate, Siliguri.

2. Briefly stated, the opposite party no. 2 Basanta Singh @ Tinku Singha set the criminal proceeding into motion by informing the officer in charge of Matigara P.S. in writing that he purchased a plot

of land having total area of 4.09 acres by two separate deed vide no. 754 and 756 for the year 1985 comprising R.S. Plot No. 401 to 412 corresponding to LR. No. 601 and 602. He sold land measuring about 2.39 acres in the year 1990 to one Md. Nadim vide deed no. 4185 of 1990 and also he sold 0.62 acres to Jafar Iqbal by registered deed of sale vide no. 4184 for the year 1990. He did not sell any land measuring about 1.08 acres comprised in RS plot no. 401 to 412 to any persons but out of the said 1.08 acres of land 0.54 acres is unlawfully recorded in the LR Khatian No. 1635 under LR Plot No. 601 in the name of Suhani Sales Private Limited.

3. After searching the office of ADSR, Siliguri-II the complainant came to know about three purported, fabricated and forged registered deed of sale being no. 7257, 7258 and 7259 for the year 2014, executed by Sri Sujit Kumar Raha in favour Suhani Sales Private Limited, Smt. Kanta Agarwal wife of Suresh Agarwal is one of the directors of the said company. Suhani Sales Pvt. Ltd. through its directors, men, agents and associates committed the forgery and made an attempt to dispossess the informant and they have started repairing the boundary walls given by the informant over his property. When the informant on 13th April, 2023 voiced protest he was abused and assaulted. On the basis of such information Matigara P.S. Case no. 308 of 2023 was registered.

4. Heard Mr. Ranadip Sengupta, learned Counsel for the petitioner, and Mr. Ajay Singhal, learned Counsel for the opposite party no. 2, while Mr. Arjun Chowdhury represents the state.

5. It is submitted by Mr. Sengupta that the O.P. No. 2 being the lawful owner sold and transferred 0.62 acre of land out of 1.71 acres in favour of Zafar Iqbal who thereby acquired the right title interest in respect of the said land comprised in RS plot no. 406, 407, 408 and 410. The brother of opposite party no. 2 Rabin Kumar Singh @ Rinku Kumar Singh and Chunnilal Singh @ Chinku Kumar Singh sold and transferred 0.72 acres of land out of 3.38 acres to Jafar Iqbal vide deed no. 4186 dated 25th May, 1990. Zafar Iqbal thereafter, sold and transferred the entire property to Shelcon Properties Private Limited by executing deed no. 4276, 4277 and 4278 in the year 2008. The said purchaser Shelcon Properties Private Limited after acquiring the property by purchase recorded its name in the revenue record. Pursuant to deed of exchange dated 19th Novemer, 2010 between Shelcon Properties Private Limited and Mr. Sujit Kumar Raha, the ownership of 1.291 acres of land owned by Shelcon Properties Private Limited stood transferred to Sujit Kumar Raha who started possessing the property by mutating his name in the revenue record of rights. Said Sujit Kumar Raha again on 19th June, 2014 sold and transferred 1.291 acres of land in favour of Suhani Sales Private limited by executing three separate deeds vide no. 7257, 7258 and 7259 dated 19th June, 2014. Since purchase the company Suhani Sales Pvt. Ltd. is in possession of the property by mutating its name in the revenue record of rights. Drawing my attention to the copy of the plaint of title (partition) suit no. 46 of 2015, filed by opposite party no. 2 and his two brothers, Mr. Sengupta submits that in the said

suit Suhani Sales Pvt. Ltd. was impleaded as defendant no. 16. The plaintiffs thus acknowledged the status of the company defendant no. 16 as one of the co-owners in respect of land comprised in LR plot no. 601. It is further submitted that having acknowledged the company as co-owners in respect of the property in suit the opposite party no. 2 had no reason to implicate the company or its directors in a criminal proceeding for allegedly committing offence of forgery and cheating in respect of their title deeds.

6. Nowhere in the FIR the de-facto complainant disclosed the fact that suit for partition was filed which was dismissed by the competent Court of law for non-prosecution.

7. Mr. Sengupta adverted further that the FIR was filed with an oblique motive to squeeze undue benefit. If the informant opposite party no. 2 finds that a record of right was prepared erroneously as has been disclosed in the written information, the proper remedy would have been to approach the competent authority under the WBLR Act, 1955 and draw proceeding to get the record corrected. A civil dispute has been imbibed with colour of criminality which is but an abuse of process of law.

8. Refuting the contention of Mr. Sengupta, Mr. Ajay Singhal, learned Counsel representing the opposite party no. 2 submits that law permits the opposite party no. 2 to maintain both civil proceeding and a criminal proceeding. It is further submitted by Mr. Singhal that in all cases of cheating and fraud, there can be some element of civil nature however, in this case the allegations are regarding forging of

documents and acquiring gains on the basis of such forged document. The proceeding therefore cannot be quashed only on the ground that the opposite party no. 2 had filed a civil suit. It is submitted by Mr. Singhal that the investigating agency since registered the case, it should be presumed that prima facie commission of cognizable offence was made out and the investigation should be allowed to reach its logical conclusion. To buttress his case Mr. Singhal places his reliance on the judgement of Hon'ble Supreme Court in ***M. Krishnan vs. Vijay Singh & Anr.*** reported in **(2001) 8 SCC 465** and on the judgement in ***Priti Saraf & Anr. vs. State of NCT of Delhi & Anr.*** reported in **(2021) SCC Online SC 206**. It is adverted that investigating agency should be given the freedom to go into the whole gamut of allegation and reached to a conclusion of its own. Pre-emption of such allegation would be justified in very extreme cases.

9. In *M. Krishnan (supra)* it is held :-

> *"5. Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents*

were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of. The High Court was not, in any way, justified to observe :

> *"In my view, unless and until the civil court decides the question whether the document are genuine or forged, no criminal action can be initiated against the petitioners and in view of the same, the present criminal proceedings and taking cognizance and issue of process are clearly erroneous."*

6. Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash the criminal proceedings merely on the premise that one or two ingredients have not been stated in details or that facts narrated reveal the existence of commercial or money transaction between the parties."

10. In *Priti Saraf (supra) it is held :-*

"31. Be it noted that in the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total

> *abuse of the process of the Court. The Criminal Procedure Code contains a detailed procedure for investigation, framing of charge and trial, and in the event when the High Court is desirous of putting a halt to the known procedure of law, it must use proper circumspection with great care and caution to interfere in the complaint/FIR/charge-sheet in exercise of its inherent jurisdiction."*

11. Mr. Singhal makes me go through the content of the FIR precisely to paragraph 12 that contains the narrative of use of criminal force voluntary assault etc. Though the FIR was not registered on any of the sections laid down in IPC for the aforesaid offence as alleged. Mr. Singhal prays for dismissal of the revisional application.

12. Mr. Arjun Chowdhury, learned Counsel represents the state submits that in course of investigation the investigating officer collected the deed in question as well as report from BL & LRO and from the concerned authorities. The allegation of forgery cannot be said to have been made out so far.

13. Admittedly, the OP no. 2 filed a suit for partition impleading the petitioner as defendant no. 16, acknowledging thereby the status of the petitioner as co-sharer/ co-owner in respect of the suit land but suppressed this fact and initiated the criminal proceeding seven years after the dismissal of the suit for non-prosecution.

14. In such a situation Hon'ble Supreme Court in ***USHA CHAKRABORTY VS. STATE OF WEST BENGAL & ANR.*** reported in **2023 SCC Online SC 90** held that :-

> *"17 in the aforesaid circumstances, coupled with the fact that in respect of the issue involved which is of civil nature the*

respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceeding as weapon of harassment against the Appellants."

15. In a recent judgement in ***SALIB @ SHALU @ SALIM VS. STATE OF UP & ORS.*** reported in **2023 SCC online SC 947**, Hon'ble Supreme Court held :-

> *"28 ….. in frivolous or vexatious proceeding, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The court while exercising its jurisdiction u/s 482 of the Cr.P.C. or article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in course of investigation………"*

16. In the case of ***B. SURESH YADAV VS. SHARIFA BEE & ANR.*** reported in **(2007) 13 SCC 107** Hon'ble Supreme Court held :-

> *"13. For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In a case of this nature, it is permissible in law to consider the stand taken by a party in a pending civil litigation. We do not, however, mean to lay down a law that the liability of a person cannot be both civil and criminal at the same time. But when a stand has been taken in a complaint petition which is contrary to or inconsistent with the stand taken by him in a civil suit, it assumes significance……"*

17. The judgements so relied upon by Mr. Singhal in *M. Krishnan (supra)* and *Priti Saraf (supra)* are not applicable in this case because of difference in factual matrix.

18. Scope of exercise of power under Section 482 of the Code Criminal Procedure and the categories of case where such power could be exercise by the High Court relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice, were set out in the ***STATE OF HARYANA VS. BHAJAN LAL*** reported in **1992 Supp (1) SCC 335** wherein it is 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 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."*

19. Taking into consideration the suppression of fact that in a suit for partition, the accused person was impleaded as defendant and also the fact that the complainant is aggrieved by erroneous record of rights, I am of the view that the petition of complaint is not bonafide. The petitioner before this Court, purchased the land from his vendor

after it was transferred for couple of times, post sale of land by the complainant. Chain of title rules out the allegation of forgery.

20. The proceeding in question in G.R. Case No. 1352 of 2023 arising out of Matigara P.S. case no. 308 of 2023 dated 22.04.2023 since is attended with malafide and the evidence collected so far in course of investigation does not substantiate the allegation towards commission of any offence, in my humble opinion, to avert abuse of process of law, the same should be quashed, which I accordingly do.

21. Consequently, the revisional application is allowed in contest but without cost. The proceeding of G.R. Case No. 1352 of 2023 stands quashed. Pending application, if any, stands disposed off.

22. Let a copy of the judgment be sent down to Ld. Trial Court for information and necessary action.

23. 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.)