

10.5.2023
Sl.13
Ct. No.3
SD

CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri

CRR 223 of 2022

In re: Gunkeshari @ Gunkesari @ Gunkeshri Pradhan

... petitioner.

Mr. Vinod Agarwal
Mr. Debanjan Das

... for the petitioner.

Mr. Aditi Shankar Chakraborty
Mr. Nilay Chakraborty
Mr. Ujjwal Luksom

... for the State.

Affidavit of service filed by the petitioners in court today be taken on record.

Opposite party no.2 is not represented in spite of service.

This is an application under Section 482 of the Code of Criminal Procedure with a prayer for quashing the proceeding being Darjeeling Sadar P.S. Case No.70 of 2022 dated 01.6.2022 under Section 468/471/420/34 of the Indian Penal Code corresponding to G.R. Case No.136 of 2022 pending before the learned Chief Judicial Magistrate, Darjeeling.

The petitioner contended that the defacto complainant/opposite party no.2 has lodged a complaint on 01.6.2022 to the effect that the petitioner herein had filed one suit being O.C. Suit No.1 of 2022 against the defacto complainant/opposite party no.2 and after going through the plaint, the opposite party no.2 came to know that the present petitioner along with another have illegally procured one forged deed in the year 1985 and the vendor who is the maternal grandfather of the defacto complainant has been shown to be an illiterate person in the deed because it contains thumb impression of the vendor, though said vendor put signature in two previous deeds of agreement for sale in connection with said impugned deed.

It is further alleged that the petitioner has procured illegal khatian in order to misappropriate the property of the grandfather of the defacto complainant. The defacto complainant accordingly contended that the petitioner had never purchased the property from her maternal grandfather and it has been illegally partitioned by dint of another fraudulent deed in the year 2012. His further allegation is petitioner along with one Bishnu Kumari Pradhan being armed with two deeds i.e. said purchase deed and partition deed are illegally trying to grab her property for illegal purpose. Her further case in the FIR is that the said purchase deed in the name of the petitioner is a forged deed and by that deed the petitioner never acquired any title in the property.

Learned counsel appearing on behalf of the petitioner submits that the petitioner along with one Bishnu Kumari Pradhan (the step mother of the petitioner) on 04.11.1984 entered into an agreement for sale with the maternal grandfather of the defacto complainant for purchasing the property at a consideration price of Rs.1,95,000/-. As per said agreement the deed of sale was to be executed by 28.02.1985 but as the vendor could not get the tenant evicted from the property, the terms of agreement dated 04.11.1984 was further extended by another 37 days, that is, by 07.4.1985 vide agreement dated 27.02.1985. The vendor became seriously ill at the time of deed of conveyance on 17.6.1985 and was not in a position to put his signature on the conveyance deed and as such, put his LTI on the deed. In fact, said vendor, Sundar Das Sharma died few days after the execution of the deed. However, the son of the vendor, Lalit Sharma (since deceased) was a witness of the said deed of conveyance and put his signature as a witness in the said deed. The widow of said Lalit Sharma has sworn affidavit stating that her husband was present while the deed was executed. Another son of late Sundar Das Sharma has also sworn affidavit to that effect that their father Sundar Das Sharma has sold the

landed property to the petitioner.

Learned counsel appearing on behalf of the petitioner further submits that on perusal of the two deeds of agreement dated 04.11.1984 and 27.02.1985 it appears that the vendor Sundar Das Sharma put his signature on those two agreements in great difficulties. He further submits that the mother of the present defacto complainant Smt. Mira Devi Sharma also sworn an affidavit to the effect that she has no objection if the property in question is sold and such affidavit was sworn on 30.4.1985. The defacto complainant happens to be the neighbour of the petitioner, was aged about 8/9 years when the impugned sale deed was executed in the year 1985 and has filed the present complaint almost after 37 years. Beside the civil suit, other proceedings including proceedings under Section 144 are pending between the parties.

The petitioner further contended that as no efficacious remedy is available to the petitioner due to long lapse of time, she has lodged the present FIR in order to criminalise a civil dispute. In fact, as there is a boundary dispute, so the aforesaid civil suit has been filed before the appropriate forum which is pending for disposal. It is absolutely absurd to conclude that the deed of sale in favour of the petitioner is forged and fabricated since vendor Sundar Das Sharma instead of putting his signature, put his LTI on the deed. Such complaint is based on speculation, conjecture and surmise. Accordingly, if the present proceeding is allowed to be continued, it would be a pure abuse of process of law. In fact, the present proceeding is a counter-blast of the proceeding already initiated by the petitioner and as such, it is liable to be quashed.

Learned counsel appearing on behalf of the State has produced the case diary and submits that it is fact that civil suit is pending between the parties and he leaves the prayer of the petitioner to the discretion of the court.

I have considered the submissions made by both the parties.

It appears from the FIR that the allegation leveled against the petitioner solely based upon the contention that the two impugned deeds i.e. petitioner's purchase deed for the year 1985 and petitioner's partition deed for the year 2012 are manufactured, forged and false. On perusal of the materials of the case diary, I find that during investigation which is continuing for last one year, Investing Officer has only recorded statements of two witnesses. In the said statement, witnesses have only stated that the petitioner has taken possession of the said land by practicing fraud. In support of allegation of fraud, I do not find any material in the record. The dispute as it appears from the complaint as well as from the materials available in the case diary is purely civil in nature. In the FIR as well as materials available in case diary there is no iota of evidence to constitute offence either under Section 420 or 468 or 471 of the Code. This is apart from the fact that opposite party no.2/defacto complainant in spite of service of notice had preferred not to appear before the court to substantiate her case of forgery or cheating against the petitioner. The opposite party no.2 has thus made a futile attempt to criminalise the civil dispute, as due to long lapse of time, she might have lost appropriate redress before a civil court of law.

In view of above and in view of materials collected so far, the contents does not disclose any cognizable offence against the petitioner far from offence punishable either under Section 468 or under Section 471 or under Section 420 of the Code and continuance of further proceeding will be mere abuse of process of law and I find that this is a fit case to invoke the power under Section 482 of the Code of Criminal Procedure in order to quash the said proceeding.

In view of the above, CRR 223 of 2022 is allowed.

The proceeding being Darjeeling Sadar P.S. Case No.70 of 2022 dated 01.6.2022 under Section 468/471/420/34 of the Indian Penal Code

corresponding to G.R. Case No.136 of 2022 pending before the learned Chief Judicial Magistrate, Darjeeling is hereby quashed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)