

Circuit Bench of Calcutta High Court
At Jalpaiguri

CRR 295 of 2022

In the matter of : Smt. Anju Saha

Mr. Sandip Mandal
Mr. Abhilash Mittar ... for the petitioner

Ms. R. Bhattacharyya ... for the de facto complainant No.1

Affidavit of service is taken on record.

Heard Mr. Mondal, learned counsel representing the petitioner.

By filing this criminal revision the petitioner has challenged the legality of the order dated 28.9.2022 passed by the learned Additional Chief Judicial Magistrate, Siliguri by dismissing the application under Section 156(3) of the Cr.P.C. for want of ingredient of offence cognizable in nature.

Mr. Mondal submits that the petitioner being the mother has been duped by his son who inducted tenant in the joint property by depicting himself as the absolute owner of the same and thereby mopped up a sum of Rs. 1,50,00,00/- from the tenants. Thereby the son has not only duped his mother but also the other co-owners.

In order to buttress his point Mr. Mondal relied upon a judgement of Hon'ble Apex Court in the case of Lalmuni Devi vs. State of Bihar & Ors. dated 15.12.2000. Wherein the Hon'ble Apex Court held that ;-

"However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained."

From the attending facts of the case it is admitted that the petitioner as well as the opposite party no. 1 stepped into the shoes of

Jagadish Chandra Saha's (since deceased) who acquired the property along with his brothers constructed multistoried building. It is alleged that Dipankar Saha, the opposite party no. 1 though is a co-owner, depicting himself as the absolute owner mopped up huge amount by inducting tenants over the property. The petitioner being one of the co-sharers has right to have her shares realized from her son. She has not been duped in any way by the alleged illegal action of her son. If Dipankar Saha can be said to have duped anybody or made himself culpable for any offence they are the tenants from whom he received money as absolute owner of the building.

In my opinion, learned Additional Chief Judicial Magistrate, Siliguri, was absolutely correct in passing the impugned order having found no offence made therein, the petition filed by Smt. Anju Saha to invoke jurisdiction conferred upon him under Section 190 of Cr.P.C.

The judgement of Lalmuni Devi (supra) is of no consequence in the given facts of the case.

The Criminal Revision is bereft of merit and is not admitted.

With this observation, the revisional application is dismissed without any order as to costs.

(Siddhartha Roy Chowdhury, J.)