

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 1012 of 2016

With

CRAN 3 of 2016

(Old No. CRAN 4106 of 2016)

Tapas Mukherjee

Vs.

The State of West Bengal & Anr.

For the Petitioner

:Mr. Pradip Ray, Adv.

Mr. Ujjal Ray, Adv.

For the Opposite party no. 2 :Mr. Jayanta Narayan Chatterjee, Adv.

Ms. Moumita Pandit, Adv.

Ms. Ritushree Banerjee, Adv.

Mr. Bhaskar Mondal, Adv.

For the State

:Mr. Debasish Roy, Ld. P.P.

Mr. Ananda Keshari, Adv.

Heard on :08.01.2024,20.03.2024,01.05.2024,
09.05.2024, 15.05.2024

Judgment on :14.06.2024

Bibhas Ranjan De, J.

1. Challenge is a proceeding initiated on a complaint to the effect that one Ram Chandra Halder, the opposite party no. 2 herein, entered into an agreement with one Tapas Mukherjee, the petitioner herein, in respect with the properties corresponding to L.R. Dag No. 2108, 2109 and 2011 at Mouja Gorjee, Chanadannagar, Hooghly for selling those properties to others and to deposit sale proceedings in favour of the opposite party herein. Accordingly, two General Power of Attorneys were executed in favour of the petitioner herein being deed no. 235/ 13 & 236/13 dated 12.08.2013. But said Tapas Mukherjee, petitioner herein made misrepresentation and fraudulently incorporated the Dag Nos. 2101, 2103, 2104, 2015, 2016 & 2018 by making two forged documents and tried to sell those properties along with Dag Nos. 2108,2109 & 2011.

2. Said Ram Chandra Halder lodged the complaint before the Bhadreswar Police Station where a case was registered as Bhadreswar PS Case no. 392/13 dated 07.11.2013 under Sections 467/468/471/420/120B of the Indian Penal Code (for short IPC). The case was investigated and ended with charge sheet against the petitioner for the offences under the provisions mentioned hereinabove.
3. Petitioner filed instant revision application under Section 482 of the Code of Criminal Procedure (for short Cr.P.C.) with a prayer for quashing the aforesaid charge sheet culminating to the proceeding of G.R. Case no. 1330/2013, presently pending before the Court of Ld. Judicial Magistrate, 3rd Court, Chandannagar.

Argument Advanced:-

4. Ld. Counsel, Mr. Pradip Ray appearing on behalf of the petitioner argued that the petitioner never made any transaction in respect of properties in Dag Nos. 2101, 2103, 2104, 2015, 2016 & 2098.
5. It is further submitted that the only civil remedy available to the opposite party no. 2 was to revoke the power of

attorneys. It is further added that opposite party no. 2 already revoked those power of attorneys.

6. In support of his contention, Mr. Ray has relied on the following cases:

- ***Paramjeet Batra vs. State of Uttarakhand and Ors***, reported in ***(2013) 11 SCC 673***.
- ***Naresh Kumar and another vs. State of Karnataka and another*** reported in ***2024 SCC OnLine SC 268***.

7. By taking assistance of the above mentioned cases, Mr. Ray has highlighted certain ratios in order to swing the attention of this Court in his favour.

8. In ***Paramjeet Batra*** (supra) Hon'ble Apex Court has observed that where a dispute which is essentially of a civil nature is given a cloak of criminal offence, in such a situation, if a civil remedy is available and is, in fact, adopted, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the Court.

9. In ***Naresh Kumar*** (supra) the Hon'ble Apex Court by mainly relying on the ratio of ***Paramjeet Batra*** (supra) has held

that criminal proceedings cannot be taken recourse to as a weapon of harassment.

10. Ld. Counsel, Mr. Jayanta Narayan Chatterjee, appearing on behalf of the opposite party no. 2 has submitted that the deed of Power of Attorney executed between petitioner and opposite party no. 2 on 12.08.2013 was only in respect of Dag Nos. 2108, 2109 & 2111 and no other Dag number, which was duly admitted and accepted by the petitioner. Mr. Chatterjee has further adduced a sworn affidavit before a First Class Magistrate dated 14.12.2013 annexed as 'A' wherein the petitioner has admitted and accepted that Dag Nos. other than 2108, 2109 & 2111 were added subsequent to the execution of the deed of Power of Attorney.

11. Mr. Chatterjee has further submitted that after execution of the aforementioned Power of Attorneys, the opposite party no. 2 subsequently came to know that several other properties pertaining to Dag Nos. 2101, 2103, 2104, 2105, 2106 & 2098 have been included in the executed Power of Attorney, by tampering an already executed deed. Apprehending foul play, the opposite party no. 2 obtained a certified copy wherein it clearly showed that the

abovementioned Dag numbers were fraudulently and subsequently added by the petitioner to defraud the opposite party no. 2 and other land owners from the proceeds of sale of their lands.

- 12.** Ld. Counsel, Mr. Ananda Keshari, appearing on behalf of the State relied on the evidence collected during investigation. It is further submitted that all relevant Power of Attorneys were collected during investigation to show a prima facie case of forgery against the petitioner.

Analysis

- 13.** Before delving into the merit of this case it would be profitable to refer the principle laid down by the Hon'ble Apex Court in the case of ***Haji Iqbal alias Bala through S.P.O.A vs. State of Uttar Pradesh & ors.*** reported in **2023 SCC OnLine SC 946** .

- 14.** In paragraph 15 of ***Haji Iqbal*** (supra) Hon'ble Apex Court handed down the following observation:-

"15. ... Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, 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 under Section 482 of the CrPC 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 the course of investigation. ...”

15. Therefore, in exercising jurisdiction under Section 482 of Cr.P.C, this Court has to look into the overall circumstances other than the FIR and evidence collected during investigation.

16. The FIR of this case clearly disclosed a cognizable offence of forgery punishable under Section 468 of IPC. In support of the allegation made in the FIR, the investigating officer of this case collected not only the general power of attorneys in respect to Dag Nos. 2108, 2109 & 2111 but also the power of attorneys pertaining to Dag nos. 2101, 2103, 2104, 2105, 2106 & 2098 alleged to have been forged and subsequently added by the petitioner.

17. Not only that, the petitioner in a sworn affidavit dated 14.12.2013 declared that he incorporated all the other lands pertaining to Dag nos. except 2108, 2109 & 2111 subsequently to execution of the original deed of power of

attorney but he did not make any transaction in respect to those lands.

18. After careful perusal of the necessary requirements to constitute an offence of forgery as described under Section 463 of the IPC it appears that the key element of this offence is '**intent**'. If someone deliberately forges a document (such as altering, fabricating or falsifying) **with the intention of deceiving others** then it will attract the offence of forgery.

19. Notably, there is no requirement for the accused to make any wrongful gain from the forgery. The mere act of forgery with the intent to cheat is sufficient to attract legal consequences.

20. In the present case, it appears that FIR discloses cognizable offence and it is not a mere civil dispute. Certain criminal overtones are there to attract appropriate penal provisions.

21. In the aforesaid view of the matter, I am unable to quash the proceeding as prayed for with respect to CRR No. 1012 of 2016.

22. Accordingly, the revision application being no. CRR 1012 of 2016 stands dismissed.

- 23.** However, I make it abundantly clear that the Ld. Trial Court should not be influenced in any manner whatsoever with the observation made hereinabove while dealing with this case on merit.
- 24.** All connected applications, if there be any, stand disposed of accordingly.
- 25.** Case diary be returned.
- 26.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 27.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]