IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1770 of 2023

Chanowar Ali @ Chhaneyar Ali.

Vs

The State of West Bengal & Ors.

For the Petitioner	: Mr. Bratin Kumar Dey, Mr. Joydeep Das.
For the State	: Ms. Rita Dutta.
For the Opposite Party No. 2	: None.
Hearing concluded on	: 12.11.2024
Judgment on	: 14.11.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 11.03.2022 passed by the learned Additional District and Sessions Judge, Gangarampur at Buniadpur, Dakshin Dinajpur in Criminal Revision no. 16 of 2021 arising out of an Order dated 29.09.2021 passed by the learned Additional Chief Judicial Magistrate, Gangarampur Buniadpur in Misc. Petition No. 163 of 2021 rejecting the complainant's petition under Section 156(3) of the Code of Criminal Procedure, 1973.

2. By the said order dated 11.03.2022, the learned Additional District and Sessions Judge held as follows:-

"***Criminal Revision No. 16 of 2021.***
CNR No. WBDD05-000794-2021

Dated:11.03.2022

*........Needless to say that the nature of allegation appears to be **purely civil in nature** and the facts and circumstances of the case in no way attracts the penal laws as punishable under Section 420 of the Indian Penal Code.*

Further, assuming that any offence punishable under section 193 of 196 both inclusive, 199, 200 and under section 205 to 211 of the Indian Penal Code was allegedly committed before the Sub-Registrar at Kaliyaganj, in course of the registration of the deed bearing No. 3332 of 1984, by way of alleged impersonating Khater Mohammad and minor Anwar Ali and also relating to the alleged false declaration to the extend of referring that Khater Mohammed and Anwar Ali got the property in plot No. 868, by dint of a deed of sale bearing No. 11174 of 1964 dated 26.08.1964, even in that case the law is well settled.

According to the provision of section 195(1) (b) (i) of the Code of Criminal Procedure read with 195 (3) of the Code of Criminal Procedure, the penal laws of *property in plot No. 868, by dint of a deed of sale bearing No. 11174 of 1964 dated 26.08.1964 , even in that case the law is well settled.*

According to the provision of section 195(1) (b) (i) of the Code of Criminal Procedure read with 195(3) of the Code of Criminal Procedure, the penal laws of land will be set in motion by presenting a complaint within the meaning of section 2(d) of the Code of Criminal Procedure, to be made by public servant and any other authority as referred in section 195(2) of the Code of Criminal Procedure.

In other words, the investigation into those offences , by the Police under Section 154 of the Code of Criminal Procedure and thereby taking cognizance within the meaning of section 190 (1) (b) of the Code of Criminal Procedure, upon a police report is barred under section 195 of the Code of Criminal Procedure.

In view of the discussion as recorded above, this Court does not find any reason to allow the instant revision or to cause for an investigation by the police.

The impugned order passed by the learned Additional Chief Judicial Magistrate, Gangarampur rejecting the prayer of the revisionist for an order under section 156(3) of the Code of Criminal Procedure, does not call for any interference.

No illegality or impropriety is found in the said impugned order dated 29.9.2021, passed by the Learned Additional Chief Judicial Magistrate, Gangarampur, Buniadpur, in M.P. No. 163 of 2021, under section 156(3) of the Code of Criminal Procedure.

Accordingly, it is,

ORDERED

That the instant criminal Revision being No. 16 of 2021, be and the same is rejected on contest.

The impugned order dated 29.9.2021 , passed by the Learned Additional Chief Judicial Magistrate, Gangarampur at Buniadpur, in M.P. No. 163 of 2021 , *under Section 156(3) of the Code of Criminal Procedure, stands affirmed.*

Sd/-
Addl. Dist and Sess. Judge,
Gangarampur at Buniadpur,
Dist-Dakshin Dinajpur….."

3. Petitioner's/complainant's case in the application under **Section 156(3) CrPC** is that:-

> *"…….the opposite party no. 4 in connivance with the Deed Writer and the witness, managed to register one forged sale deed vide no. 3332 of 1984 on 27.3.1984, before the Sub-Registrar of Kaliyaganj, by impersonating someone as Khater Mohammad, the father of the petitioner as Vendor and also stating one Anwar Ali as minor. The petitioner states that Khater Mohammad did never execute the deed and registered the said deed by presenting himself before the Office of Sub-Registrar of Kaliyaganj. The said application was registered as Misc. Petition no. 163 of 2021………"*

4. The said application on hearing was rejected by the learned Additional Chief Judicial Magistrate, and the said order was affirmed by the appellate Court. **Both the Courts held that the dispute in the present case is clearly civil in nature.**

5. The Supreme Court in ***Randheer Singh Vs. State of Uttar Pradesh & Ors., (2021) 14 SCC 626,*** held:-

> *"**18.** The only question is whether there is any criminal offence disclosed in the FIR so far as the Appellant is concerned. When the High Court passed its order dated 5th October, 2017, Rajan Kumar (since deceased), the executant of the sale deed and the Power of Attorney holder was also an applicant before the Court. Today, there has been a change in situation, in that, criminal proceedings against Rajan Kumar have abated since Rajan*

Kumar is no longer alive. It is the case of the private respondent that the private respondent purchased property. In the meantime, Rajan Kumar, who is no longer alive, on the basis of a false Power of Attorney of Bela Rani, executed a sale deed in favour of Randheer Singh, i.e., the Appellant herein. There is only a vague averment "by connivance". The next part of the sentence reads "Bela Rani had no right to sell the aforesaid plot."

23. *Even though an FIR need not contain every detail, an offence has to be made out in the FIR itself. It is the case of the Private Respondents that Bela Rani has no title. Bela Rani executed a false Power of Attorney in favour of Rajan Kumar (since deceased). Alternatively, the Power of Attorney, in itself, was a forged document.*

24. *A fraudulent, fabricated or forged deed could mean a deed which was not actually executed, but a deed which had fraudulently been manufactured by forging the signature of the ostensible executants. It is one thing to say that Bela Rani fraudulently executed a Power of Attorney authorising the sale of property knowing that she had no title to convey the property. It is another thing to say that the Power of Attorney itself was a forged, fraudulent, fabricated or manufactured one, meaning thereby that it had never been executed by Bela Rani. Her signature had been forged. It is impossible to fathom how the investigating authorities could even have been prima facie satisfied that the deed had been forged or fabricated or was fraudulent without even examining the apparent executant Bela Rani, who has not even been cited as a witness."*

On noting several precedents the Court finally held:-

*"**33.** In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is*

> *concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.*
>
> ***34.** The given set of facts may make out a civil wrong as also a criminal offence. Only because a civil remedy is available may not be a ground to quash criminal proceedings. But as observed above, in this case, no criminal offence has been made out in the FIR read with the Charge-Sheet so far as this Appellant is concerned. The other accused Rajan Kumar has died."*

6. The Supreme Court in ***R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022,*** held:-

> *"**17.** While exercising its jurisdiction under Section 482 of the CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a*

> *criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court."*

7. The Supreme Court in ***Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023,*** held:-

> *"**21.** We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by respondent no. 2 - complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420, and 471 of the IPC, as the allegations pertain to alleged breach of contractual obligations.* ***Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not be entertained and should be dismissed at the threshold.*** *To avoid prolixity, we would only like to refer to the judgment of this Court in* ***Thermax Limited and Others v. K.M. Johny (2011) 13 SCC 412****, as it refers to earlier case laws in copious detail. In* ***Thermax Limited and Others*** *(Supra), it was pointed that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process*

to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

24. *We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private or personal grudge. Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in entirety, do not constitute the offence alleged. The inherent powers of the court can and should be exercised in such circumstances. When the allegations in the complaint are so absurd or inherently improbable, on the basis of which no prudent person can ever reach a just conclusion that*

> *there is sufficient wrong for proceeding against the accused, summons should not be issued."*

8. On perusal of the materials on record and the order under revision it appears that the petitioner herein has never approached the appropriate Government authorities or the department with the relief claimed for in the present case.

9. The petitioner case rests on the allegation that there is a forged sale deed and that no such deed was executed as claimed. It is further submitted by the learned Counsel for the petitioner that the recording and the mutation made before the concerned department is erroneous and as such the present case has been filed, praying for police investigation.

10. Admittedly, the appropriate authorities being the BL and LRO or the appropriate Government department has not been approached with the grievance of the petitioner.

11. The findings of the learned Magistrate and the learned Additional District and Sessions Judge are well founded with proper reasons and prima facie the Courts have correctly held that the dispute in the present case is civil in nature.

12. As such this Court finds no reason to interfere with the said order, the same being in accordance with law.

13. Permitting such a case to proceed shall be an abuse of process of law and will also be against the interest of justice.

14. Accordingly, considering the nature of relief prayed for, the criminal revision is disposed of with the direction that the petitioner shall be at liberty to approach the appropriate Government departments who shall dispose of the applications, if any, in accordance with law within a reasonable period.

15. Petitioner shall be at liberty to approach the Civil Court for appropriate reliefs thereafter or as and when deem fit and proper.

16. CRR 1770 of 2023 is accordingly disposed of.

17. All applications connected thereto stand disposed of.

18. Interim order, if any, stands vacated.

19. Let a copy of this judgment be sent to the learned trial Court for information and necessary action.

20. Urgent Xerox certified copies of this judgment, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)