

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2031 of 2018

Pradeep Kundalia and Others

Versus

The State of West Bengal and Another

For the Petitioners : Ms. Kumkum Mukherjee, Adv.

For the Opposite Party No. 2

: Mr. Tapas Kr. Dey, Adv.
Mr. Rakesh Ray, Adv.

For the State : Ms. Faria Hossain, Ld. APP
Ms. Suparna Chatterjee, Adv.

Heard on : 28.03.2024

Judgment on : 07.05.2024

Ajay Kumar Gupta, J:

1. This instant revisional application has been filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the Charge Sheet being Charge Sheet No. 13/18 dated 27th February, 2018 in connection with Ballygunge Police Station FIR No. 139 dated 11th October, 2017 under Sections 448/188/34 of the Indian Penal Code, 1860 against the petitioners pending before the Learned Chief Judicial Magistrate, Alipore.

2. The factual matrix of the instant case is that the opposite party no. 2 has lodged a written complaint on 11th October, 2017 with the Officer-in-Charge, Ballygunge Police Station alleging therein that the opposite party no. 2 is a resident of 13/1, Chakraberia Road, North (now known as Pandit Madan Mohan Malaviya Sarani), P.S. Ballygunge, Kolkata – 700 020 which is an undivided property of the father of the opposite party no. 2 and her aunt.

2a. One Subhas Maitra was a bachelor and used to live alone in the first floor of the said premises. On 25th April, 2015, he was found lying unconscious by the opposite party no. 2, who took the assistance of the local police to force open the main door of his flat. The police removed the said Subhas Maitra to SSKM Hospital where

he was declared dead. The Police put a padlock in his flat to restrict access of individuals to such flat.

2b. It is alleged that on 11th October, 2017, the petitioner no. 1 with his associates broke open the said padlock despite protest being made by the opposite party no. 2 who also informed the petitioners that the flat had been locked by the police and keys were under the custody of the police. In return, the petitioner no. 1 informed the opposite party no. 2 that the police authorities themselves handed over the keys to him. As such, opposite party no. 2 called the local police who intervened in the matter and removed the petitioners from the flat and put a fresh padlock at the door of the said flat and an FIR was lodged at the instance of the opposite party no. 2. The same was registered as Ballygunge Police Station FIR No. 139 dated 11th October, 2017 against all the three petitioners including the petitioner no. 1 under Sections 448/188/34 of the IPC and subsequently, a purported Charge Sheet No. 13/18 dated 27th February, 2018 under Sections 448/188/34 of the IPC has been submitted against the present petitioners contending therein that on 11.10.2017 at about 12.30 hrs., the present petitioners in furtherance of their committing intentionally criminally trespassed into the flat of deceased Subhas Maitra situated on the 1st Floor of 13/1, Chakraberia Road, (North) Kolkata- 700 020 by breaking open

the padlock. Actually, the said deceased Subhas Maitra was a bachelor and he had inherited the said property being the eastern portion of premises No. 13/1, Chakraberia Road (North), Kolkata – 700 020 comprising of two flats, one in the mezzanine floor and the other on the first floor measuring more or less 1040 square feet from his mother, Gouri Devi (since deceased). The said Subhas Maitra had no kith and kin and/or legal heirs etc. upon whom the said property could have devolved by operation of law under the Hindu Succession Act, 1956 in case of intestacy. Prior to the death of Subhas Maitra, he made publish of his last will and testament on 27th June, 2013 in English language and character. By the said will, the deceased appointed the petitioner no. 1 as his sole executor. The execution of the said will was witnessed by one Mr. Prakash Chand Jain and one Mr. Vinod Roy. After his death, the petitioner no. 1 filed a probate petition being PLA 293/2016 in the Testamentary and Intestate Jurisdiction of this Hon'ble Court praying for reliefs as prayed for in the said petition.

2c. The said last will and testament of the said deceased Subhas Maitra was probated on 1st September, 2017 in favour of the petitioner no. 1/executor vide PLA No. 293/2016. In view of the said probate, the petitioner no. 1 being an executor was under a statutory obligation to exhibit before the Hon'ble High Court and inventory

containing a full and true estimate of all the property in possession of the credits and all the debts owing by person to which the executor is entitled within six months from the grant of probate. In like manner, the executor is also under an obligation to exhibit and account of the estate of the deceased showing the estates which have come to his hands and the manner in which they have been applied or disposed of before the Hon'ble High Court at Calcutta within one year from the grant.

2d. In furtherance of the aforesaid obligation, the petitioners visited the said property on 11th October, 2017 at about 11.15 am as the petitioners had in possession of the said keys for lock that was put in entrance gate of the said property. When they entered into the gate, the opposite party no. 2 raised hue and cry and reasoned best known to them and subsequently, the aforesaid illegal case was started against the present petitioners though they are innocent. The charge sheet submitted by the police is only on mechanical manner and without proper investigation. Hence, this instant criminal revisional application has come up before this Bench for disposal.

SUBMISSION ON BEHALF OF THE PETITIONERS:

3. Learned counsel appearing on behalf of the Petitioners submitted that the petitioners are innocent and they have been

falsely implicated into this case without knowing the actual facts. Actually, a probate was granted by the Hon'ble High Court at Calcutta on 01.09.2017 in the goods of Subhas Maitra, son of Late Manindra Prasad Maitra residing at 13/1, Chakraberia Road, (North) Kolkata- 700 020 against the last will and testament of late Subhas Maitra in PLA No. 293/2016. He also complied with the directions of the Hon'ble High Court. So, question of accusation against the present petitioners in furtherance to their committing intentionally criminally trespass into the flat of deceased Subhas Maitra situated at 13/1, Chakraberia Road, (North) Kolkata- 700 020 by breaking open the pad lock does not arise at all. In fact, the lock at the gate was the same lock, a set of keys was already in possession of petitioner no. 1. Petitioners were dragged to Ballygunge Police Station and detained there for about 10 hours and subsequently on personal bond, they were released and forwarded the keys to the learned Chief Judicial Magistrate at Alipore. As such, the petitioner no. 1 has filed an interlocutory application being G.A. No. 344/2018 in PLA No. 293/2016 narrating the entire incident. In the said G.A. No. 344/2018, the Hon'ble High Court passed an order on 8th February, 2018 and directed, inter alia, to the police authority to open the padlock and hand over the possession of the said property to the petitioner no. 1 by 9th February, 2018 before 12 noon. Pursuant to

the said order, possession has already been handed over to the petitioner no. 1 by the Ballygunge Police Authorities by removing the padlock on 9th February, 2018. So all these facts have clearly indicates the allegations levelled against the present petitioners are out and out false as such the proceeding is deserved to be quashed.

SUBMISSION ON BEHALF OF THE STATE:

4. Learned counsels appearing on behalf of the State produced the case diary and on his usual fairness candidly submitted that as per the annexure of the revisional application, the case is very crystal clear as such she left the matter to the discretion of this Court.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY No. 2:

5. Learned counsels appearing on behalf of the opposite party no. 2 submitted that the de-facto complainant/opposite party no. 2 has raised objection when she found some unknown persons came to the flat and broke upon the padlock to occupy the same because the owner of the flat, Subhas Maitra was a bachelor and no one present there to look after his property. As such, she lodged a complaint before the Ballygunge police station resulting an FIR No. 139 dated 11th October, 2017 under Sections 448/188/34 of the Indian Penal Code was registered and subsequently charge sheet has been submitted against the present petitioners. During investigation,

investigating officer established a prima facie case against the present petitioners. Accordingly, this criminal revisional application has no merit and liable to be dismissed.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

6. Having heard the rival submissions of all the parties and on perusal of the application and annexure thereto as well as Case Diary, this Court finds the case is very crystal clear in favour of the petitioners. It is admitted facts that the said Subhas Maitra expired on 25th April, 2015 at SSKM Hospital, Calcutta and he was unmarried. The deceased prior to his death duly made publish his last will and testament dated 27th June, 2013 in English language and character appointing the petitioner no. 1 as his sole executor. In the said will, two witnesses were there, namely, one Mr. Prakash Chand Jain and one Mr. Vinod Roy. By the said last will and testament, the deceased allotted the said property in favour of one Shri Uday Dutta, Chartered Accountant residing at Budh Marg, Patna, Bihar being the sole executor of the last will of the deceased. A probate case was initiated and same was registered as PLA No. 293/2016. The same was probated on 1st September, 2017 in favour of the petitioner no. 1/executor vide PLA No. 293/2016. The said probate was granted in favour of the executor to administer the said

property and credits and to make full and true inventory thereof and to exhibit the same before the Hon'ble High Court at Calcutta within six months from the date of issuance of the grant or within such further time as the Hon'ble High Court may permit.

7. In terms of the probate granted on 1st September, 2017 and also in terms of Section 317 of the Hindu Succession Act, 1956, the executor was under the statutory obligation to exhibit before the Hon'ble High Court and inventory containing full and true estimate of all the properties in possession of all the credits and also all debts by the person to which the executor is entitled in that character within six months from the grant of probate. In like manner, the executor is also under an obligation to exhibit account of estate of the deceased, showing the estates which have come to his hands and the same manner in which they have been applied or disposed of before the Hon'ble High Court within one year from the date of grant.

8. It further reveals in furtherance of the aforesaid obligation, the executor visited the premises which was under the lock and key and when he opened the entrance gate of the said property by a key which was in possession, de-facto complainant and others raised objections and lodged the aforesaid case and subsequently a charge sheet has been submitted under Sections 448/188/34 of the IPC

against the executor i.e. petitioner no. 1 and other two i.e. petitioner nos. 2 and 3. Subsequently, petitioner no. 1 filed an interlocutory application being G.A. No. 344 of 2018 in PLA 293/2016 wherein the petitioner no. 1 narrated the entire incident and made prayers before the Hon'ble High Court as under:-

- a)** The Officer-in-Charge, Ballygunge Police Station be directed to immediately remove the padlock as they have put in the main gate towards entrance of the flats as per the affidavit of assets.
- b)** If required, necessary police protection be given to your petitioner to take peaceful entry to the said flats for its maintenance & inventory.
- c)** Cost/s of or pertaining to this application be paid by the respondent.
- d)** Such further order or orders direction or directions may be passed as your Lordship deems fit and proper."

9. The Hon'ble High Court vide order dated 8th February, 2018 passed a direction, inter alia, to the police authorities to open the padlock and hand over the possession of the said property to the petitioner no. 1 by 9th February, 2018 at 12 noon in G.A. No. 344/2018. In pursuant to the said order passed by the Hon'ble High Court, possession has already been handed over to the petitioner no.

1 by the Ballygunge police authorities by removing the padlock on 9th February, 2018.

10. In view of the above discussions and observations made by this Court, the case of the petitioners appears genuine and stands merit as such the instant criminal revisional application deserves to be allowed.

11. Accordingly, the Charge Sheet being Charge Sheet No. 13/18 dated 27th February, 2018 in connection with Ballygunge Police Station FIR No. 139 dated 11th October, 2017 under Sections 448/188/34 of the Indian Penal Code and all subsequent proceedings thereto are hereby quashed.

12. Accordingly, **CRR 2031 of 2018** is, thus, **allowed** without order as to costs. Connected applications, if any, are also, thus, disposed of.

13. Case Diary, if any, is to be returned to the learned Advocate for the State.

14. Let a copy of this judgment be sent to the learned Court below for information.

15. Interim Order, if any, stands vacated.

16. All parties shall act on the server copies of this order uploaded on the website of this Court.

17. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)