

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2911 of 2011

Sk. Md. Jahangir

-Vs-

Mst. Abeda Khatun and Anr.

For the Petitioner : Mr. Asimesh Goswami
Sk. Abdus Salam
Mr. Minhaz S. Islam

For the State : Mr. Narayan Prasad Agarwal

Heard on : 11.08.2023, 09.10.2023

Judgment on : 31.01.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner praying for quashing of the impugned proceeding being Uluberia Police Station Case No. 221 of 2011, dated 05.03.2011, under Sections 468 / 471 / 406 / 474/ 467/ 466 /417 and 420 of the Indian Penal Code, G.R. No. 546 of 2011, pending in the Court of the Learned Additional Chief Judicial Magistrate, Uluberia.

2. The petitioner contended as follows:-

- i. Opposite party no. 1 filed a written complaint on 25.02.2011 before the Learned Additional Chief Judicial Magistrate, Uluberia, under

Section 156 of the Code of Criminal Procedure, for directing Officer-in-Charge, Uluberia Police Station to investigate the matter by treating the complaint as F.I.R.

ii. The facts and circumstances for which the complaint was filed are stated herein below:

(a) A property measuring more or less 20 decimal of land appertaining to L.R. Khatian No. 199, L.R. Plot No. 322, Mouza-Uluberia, Police Station-Uluberia, District- Howrah, was owned by the Complaint/Opposite Party No.1.

(b) The accused/petitioner was her son in law and as such she allowed the accused/petitioner and her daughter to reside in one room in the said property.

(c) In 2000 the complainant/opposite party received the summons of Title Suit No. 217 of 2000, filed by the accused/petitioner herein, wherefrom it transpired that he had got a deed of gift executed in his favour from the complainant/opposite party in respect of the property in question. The complainant entered appearance and challenged the deed. However the said suit was dismissed for non-compliance of the order of the Learned Court.

(d) The complainant/opposite party instructed her lawyer to file a criminal case against the accused/petitioner herein on the ground of fraud and cheating. The lawyer did not file the case on the ground that after production of the deed the same would be sent to Forensic

Department and appropriate action under Section 340 of the Code of Criminal Procedure could be taken.

(e) The accused/petitioner executed the deed by forging L.T.I. of the complainant/opposite party no.1 impersonated her.

(f) In 2007 the complainant/opposite party No.1 instructed her lawyer to file a Criminal Case but the same was again not complied with rather the lawyer advised her not to initiate any criminal case as there was enough scope to invoke Section 340 of the Code of Criminal Procedure.

(g) The accused/petitioner was trying to sell the property in question to a third person misrepresenting the forged deed as genuine one and hence the complaint was filed.

3. After hearing the Learned Advocate of the Complainant/ Opposite Party No.1 the Learned Magistrate was pleased to allow the prayer of the complainant/opposite party No.1 and the complaint was sent to the Police Station. On receipt of the complaint, police initiated the impugned proceeding.

4. It was further submitted that:-

a. In 1987 the complainant/opposite party no.1 gifted 8 decimal of vacant land in the property in question to the petitioner for providing accommodation to the petitioner and his wife who happened to be the daughter of the complainant/ opposite party.

b. After getting the property in question by virtue of the deed of gift the petitioner mutated his name in respect of the property in question, paid

rent regularly; constructed two rooms, dining and the privy; got the electric connection in his name. All these acts were well within the knowledge of the complainant/opposite party no.1 who never raised any objection against the said act of the petitioner herein.

- c. In 2008 the complainant/opposite party no.1 all of sudden filed a suit being Title Suit no. 217 of 2008 in the Court of the Learned Civil Judge, Junior Division, 1st Court, Uluberia, praying for recovery of possession and injunction restraining the petitioner from changing the nature and character of the suit property. It had been contended in the plaint that the petitioner herein was a licensee in the property in question and the said licence had been cancelled and the petitioner was directed to vacate the suit premises which the petitioner did not comply and as such the suit had been filed.
- d. The complainant/opposite party No.1 filed an application in the said suit praying for local inspection. The said prayer was allowed and local inspection was held. It appeared from the report that complainant/opposite party no.1 failed to identify the property and also failed to prove new construction by the petitioner.

5. The Learned Advocate for the appellant submitted as follows:-

- (i) The complainant/opposite party no.1 came to know about the deed in 2000 but did not file any case, either civil or criminal, challenging the deed in question and also for committing forgery rather she waived her right to file the criminal case as per advise of her lawyer.

(ii) In spite of knowing about the deed the complainant/opposite party did not challenge the said deed.

(iii) The complaint has been filed after eleven (11) years from the date of her knowledge about the existence of the deed and as such the same is time barred.

6. The impugned proceeding is hopelessly time barred and as such the same is un-maintainable in law and accordingly further proceeding in impugned proceeding is bad in law and will be an abuse of process of law and as such the same should be quashed.

7. The complainant came to know about the deed in question in the year 2000 but as per advise of her Learned Advocate waived her right to file any complaint and as such the complainant is not entitled to initiate the impugned proceeding and accordingly the impugned proceeding is void and not maintainable in law and accordingly the impugned proceeding should be quashed.

8. The complainant had filed the title suit being Title Suit No. 217 of 2008, praying for recovery of possession of the property in question on the ground of termination of licence. In the said suit nowhere she raised any doubt about the deed in question nor she challenged the deed and as such question of forgery and cheating, as stated in the complaint, did not and could not arise at all and accordingly the impugned proceeding was baseless and the same should be set aside.

9. The complainant came to know about the deed in question in the year 2000 but as per advise of her Learned Advocate waived her right to file any complainant and as such the complainant is not entitled to initiate the impugned proceeding and accordingly the impugned proceeding is void and not maintainable in law and accordingly the impugned proceeding should be quashed.
10. The complainant had filed the title suit being Title Suit No. 217 of 2008, praying for recovery of possession of the property in question on the ground of termination of licence. In the said suit no where she raised any doubt about the deed in question nor she challenged the deed and as such question of forgery and cheating, as stated in the complaint, did not and could not arise at all and accordingly the impugned proceeding is baseless and the same should be quashed.
11. The impugned proceeding is otherwise bad in law and as such the same should be quashed.
12. The Learned Advocate for the State submitted that there are serious allegations against the petitioner and at the nascent stage the proceedings shall not be quashed.
13. The perusal of the contentions of the petitioner in conjunction with the materials on the case diary submitted by the Learned Advocate for the State, it appears that the disputed deed of gift and other land related documents along with the observation of the Trial Court in the Title Suit as aforesaid require to be authenticated on the basis of oral as well as documentary

evidence. The status of the petitioner as to whether a beneficiary of an executed gift deed or a licensee cannot be determined by this Court at this stage in his favour to exonerate him of the charges accused of.

14. The petitioner is at liberty to agitate all his grievances and rights before the Trial Court at relevant times of proceedings.

15. In the above premise the revisional application is dismissed.

16. There is no order as to cost.

17. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

18. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)