

CRR 3267 of 2022
With
CRAN 4 of 2024

Naresh Kumar Agarwal
Vs.
The State of West Bengal & Ors.

Mr. Sabyasachi Banerjee	
Mr. Syed Nurul Arefin	
Mr. Rahul Singh	...for the petitioner
Mr. Bidhayak Lahiri	
Ms. Bhaswati Lahiri	...for the O.P. no. 2
Mr. Ranabir Roy Chowdhury	
Ms. Poulami Bose	...for the State

This is an application which has been directed against the order dated 4th August, 2022 passed by learned Chief Judicial Magistrate, North 24 Parganas, Barasat in G.R. case no. 3377 of 2017.

The petitioner contended that the opposite party no. 2 herein filed an application before the court below with the allegation that the accused persons including the present petitioner in conspiracy with each other have forged a will and for which the proceeding under Section 120B /403 /406 /420 /411 /467/468/469/471/384 of the Indian Penal Code has been initiated against the accused persons. The police has not charge-sheeted him initially but by filing a supplementary charge sheet police has implicated the present petitioner/accused person.

It is submitted on behalf of the petitioner that the alleged will was executed in the year 2005 and even if any forgery was committed in the year 2005, the present petitioner must not have any knowledge, since he is a bona fide purchaser for value of the

said property, which he purchased in 2013, at a consideration of Rs. 1.5 crore. He further submits that the said property was sold by the co-accused persons after obtaining probate of the will of the testator. The charge under Section 120B of the Code which provides punishment for committing offence of conspiracy does not attract against the present petitioner.

He further submits that he preferred an application under Section 239 of the Code of Criminal Procedure before the court below for discharging him from the present proceeding. However, learned court below after hearing both the parties and considering their submissions, came to a finding that that there are materials on record and prima facie case against the present petitioner/accused person and as such, the court found grounds for presuming that the petitioner/accused has committed the offence punishable under the relevant provisions of Penal Code. The Court below had accordingly refused to discharge the present petitioner from the said proceeding.

Learned counsel for the opposite party no. 2 submits that the present petitioner is the main conspirator and if he is discharged from the present case then it will be very difficult for the prosecution to prove the case of forgery against other accused persons.

Learned counsel for the State placed the case diary and in his usual fairness submits that nothing transpires from the materials available in the case diary that can lead to the conclusion that there are sufficient ground for proceeding against present accused person. In this context, he had drawn my attention to the statements recorded under Section 161 of the Code at page 54,73, 244 to 246, and also statement recorded

under Section 164 at page 123 and also other materials in the case diary. From the said documents, it is palpably clear that no allegation has been attributed against the present petitioner and he has only been implicated as being a subsequent purchaser allegedly knowing everything about forgery.

The word “groundless” used in Section 239 of the Code signifies that no law knowing person can come to the conclusion that there is any ground whatsoever to sustain the charge against the petitioner/accused. When the materials available in the case diary reflects that only allegation leveled against the petitioner is that knowing everything about forgery he has purchased property, which not even remotely sufficient to raise strong suspicion against the petitioner/accused, the Magistrate ought to have held that such materials in the case diary renders the charge against the petitioner groundless and should be discharged.

The Judge/Magistrate cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effects of statement of witnesses made during investigation and documents produced before the Court. It is undoubtedly true that the Judge is not supposed to make a roving enquiry into the pros and cons of the matter like a trial but at the same time, he is to consider whether materials placed before the court makes out or are sufficient to make out a prima facie case against the petitioner/accused that he has committed an offence.

In such view of the matter, the observation of the court below that there are sufficient ground for proceeding against the present petitioner or that there are grounds for presuming that the accused has committed offence, appears to be perverse as such

finding is not based on the materials available in the case diary, which the investigating agency collected during investigation.

Thus, the order impugned dated 4th August, 2022 passed by learned Chief Judicial Magistrate, North 24 Parganas, Barasat in G.R. case no. 3377 of 2017 is hereby set aside.

The petitioner herein is discharged from the impugned proceeding being G.R. case no. 3377 of 2017, which is presently pending before the court of learned Chief Judicial Magistrate, North 24 Parganas, Barasat.

CRR 3267 of 2022 is accordingly allowed.

Connected application being CRAN 4 of 2024 is also disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)