IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. – 3346 of 2017
With
IA No. CRAN 7 of 2019 (Old No. CRAN 1909 of 2019)
CRAN 13 of 2022
+
CRAN 14 of 2023

IN THE MATTER OF

Soumyajit Laha & Anr.
Vs.
State of West Bengal

For the Petitioner : Mr. Milon Mukherjee, Sr. Adv.,
Mr. Biswajit Manna, Adv.,
Mr. Samarjit Sarkar Adv

For the OP 2 (in person) : Ms. Banerjee Adv.

For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Imran Ali, Adv.,
Ms. Debjani Sahu Adv.

Heard on : 02.02.2024

Judgment on : 06.02.2024

Subhendu Samanta, J.

1. This is an application u/s 401 read with Section 482 of the Code of Criminal Procedure preferred against an order dated 05.04.2017 passed by the Learned Chief Judicial Magistrate 6th Court, Sealdah GR Case No. 2002 of 2009 arising out of Phoolbagan, Police Station Case No. 161 of 2009 dated 19.06.2009 u/s 120B/467/420 of the IPC thereby rejecting the petitioner's prayer for discharge.

2. The brief fact of the case is that the present OP No. 2 had lodged a complaint with the Phoolbagan PS on 19.06.2009 alleging inter alia for commission of offence by the petitioners and one another punishable u/s 467/468/471/120B/420 of the IPC. It is alleged in the petition of complaint that the father of the OP No. 2 namely Late Manaj Kumar Banerjee was a lessee in respect of the property being CIT Scheme (VI)-M plot No. 99 for 99 + 99 years but due to major cerebral attack in May, 2000 the right side of the father of the OP 2 got paralysed. Subsequently, he died on 29.09.2003.

3. It is further stated in the petition of complaint that Late Manoj Banerjee used to reside stay at 48B, Pike Para Row with the family of his brother, although, OP 2 used to stay separately from her father but she used to visit him regularly. However due to torture inflicted upon her by the family member of uncle, the OP 2 was forced to reside elsewhere. It has been further alleged that Late Manoj Banerjee has several movable and immovable property.

4. Subsequently, the OP 2 came to know that the children of her uncle are trying to grab the said property from her father. Accordingly, she initiated a criminal proceeding against them for which Chitpur, PS Case No. 14 of 2004 was registered. Subsequently after completion of investigation, charge sheet was submitted against the said persons and the said case is still pending before the Learned Magistrate (GR Case No. 1902 of 2004).

5. During the course of said criminal proceeding the OP 2 came to know that the aforesaid property of her father has been transferred in the name of the present petitioner.

6. It has further alleged that the said property was transferred for a consideration of Rs. 10,00,000/- though the property worth much more than that. Although the said consideration amount was paid through cheques and demand drafts but the whereabouts of two out of three cheques and demand drafts could not traced out. The specific allegation in the petition of complaint is that, father of OP 2 could not sold the said property at the relevant property as he was seriously ill and the petitioner managed to procured the property transferred in their name though it is a property of the present OP 2.

7. On the basis of the said petition of complaint the police has conducted investigation and on completion of investigation has submitted a charge sheet No. 142 of 2012 dated 30.05.2012 u/s 120B/467 and 420 of IPC against the present petitioners and one Parthsarathi Banerjee.

8. The present petitioner has appeared before the Learned Magistrate got an order of bail, and submitted a prayer for discharge u/s 239 Cr.P.C.. The Learned Magistrate has heard the petition of discharge and passed the impugned order dated 19.06.2017 thereby rejecting the prayer for discharge of the present petitioner.

9. Hence this instant revision for quashing.

10. Learned Advocate for the petitioner submits that the Learned Magistrate has committed an error in law and failed to appreciate that to bring home the charge u/s 467 IPC it must be proved that the document which purports to be valuable security or Will, has been forged. In the instant case the investigating agency has neither seized the deed in question or forward it before the Government examine of Question Document (GEQD) for verification of the same relating to the allegation of forgery, nor the said document has been proposed to be exhibited by the investigating agency for providing the charge against the present petitioner u/s 467 of IPC.

11. Mr. Milan Mukherjee Learned Advocate appearing on behalf of the petitioner further submits that the Learned Magistrate has also failed to appreciate that the document relating to transfer of the Lease Hold Rights was executed before the Additional District Sub-Registrar, Sealdah on 05.11.2001. There is no whisper in the report of investigating agency that the Additional District Sub-Registrar, who register the Deed, was ever examined by the investigating agency to prove the allegation of forgery. In absence of examination of the said witness, the allegation of forgery as made by the OP got no legs to stand.

12. Mr. Mukherjee further argued that Calcutta Improvement Trust (CIT) is the owner of the property in question. Sri. Manoj Banerjee was a lessee of the said property. The petitioner by virtue of the deed of consignment became

lessee of the said property and the same was duly approved and subsequently affirmed by the CIT. Moreover, after execution of the said deed of consignment was duly accepted the Calcutta Improvement Trust and the names of the petitioner were mutated by the CIT (now KIT). He further argued that no complaint has been lodged by the present OP 2 relating to any deceitful means exercised by the petitioner with regard to the deed of consignment before the CIT.

13. He further argued that the OP 2 with the sole intention of the harassing the petitioner, to make them bow down to her illegal demands, had lodged the instant proceeding. The Learned Magistrate has not considered the entire matter properly and passed an illegal order by refusing the prayer for discharge of the present petitioner. He argued that the impugned order is illegal in the eye of law and if the criminal proceeding is allowed to be continued against the present petitioners; it would be tantamount to be an abuse of process of court. So, he prayed for quashing of the said application.

14. Learned Advocate appearing on behalf of the state submits that on the basis of the specific written complaint, the police has conducted the investigation of the case and during the investigation, several documents were seized by the police; the statement of several witnesses were obtained by the IO and after completion of investigation the IO has submitted charge sheet against the present petitioner and one another. There are

prima facie materials against the present petitioner thus at this stage the prayer of quashing cannot be entertained.

15. The de-facto complainant i.e. OP 2 Smt. Sibasree Banerjee appeared in person before this court to argue this matter. Smt. Banerjee submits that there were conflicts in relationship between her father and her mother. Accordingly she used to reside with her mother and her father used to reside with the uncle. She had a good terms with her father and she used to visit her father regularly. However due to the torture inflicted upon her, by the family of her uncle's; she could not contact with her father during his last stage. Her father never intended to transfer the property in question to any person. The son of uncle's is one of the accused has committed conspiracy with the petitioners to do the crime..

16. In this case she purportedly created a will which was challenged her before the Hon'ble High Court in a separate proceeding. She further argued that the present petitioners in collusion with Parthasarthi Banerjee has committed fraud upon her father and thereby making a purported false signature of her father, has transferred the property in favour of the present petitioners by executing a forged deed of transfer. He lodged a separate complaint against her relatives vide Chitpur PS Case No. 141 of 2004 which is now still pending.

17. Smt. Banerjee argued that the Learned Magistrate has committed no error and on the basis of the Police Report

the Learned Magistrate correctly refused to discharge the present petitioner so, the instant criminal revision is liable to dismissed.

18. Heard the Learned Advocates and the de-facto complainant in person.

19. It appears that in this case the charge sheet has been submitted u/s 120B/467/120 of IPC and the present petitioners and one Parthsarathi Banerjee were arraigned as accused. The petitioners were before the Learned Magistrate for discharge. It is true that a criminal proceeding is set in motion by virtue of a petition of complaint, wherein the police has submitted charge sheet against the present petitioner after completion of investigation. The High Court must not exercise his jurisdiction for quashing a criminal proceeding unless it is found that the continuation of the proceeding would be a sheer abuse of process of court.

20. Admittedly it is clear that a deed of transfer has been registered in favour of the present petitioner by the father of the de-facto complainant Late Manoj Kr. Banerjee. It has been alleged that the deed was fraudulently executed by Late Manoj Kr. Banerjee. It is evident from the document annexed with the revisional application as well as from the CD that, on 23.04.2001 Manoj Kr. Banerjee sought for permission from the Secretary, CIT to assign the Lease Hold Right over the property in favour of the petitioners. The CIT in response to such prayer, granted permission vide letter No. Misc-VIM-240/S-800 dated

05.09.2001 to transfer the said plot of land within 06 months in favour of the petitioners subject to payment of Rs. 20,000/- as processing and service charge and submission of draft of assignment before execution to the office of the CIT. Thereafter, on 05.11.2001 Late Manaj Kumar Banerjee transferred is Lease hold rights by executing deed of consignment for lease which was registered with the Additional Sub-Registrar, Sealdah and the said deed was registered in Book No. 1, Volume No. 2, page- 157 to 166 being No. 48 of 2002.

21. So in this criminal proceeding a registered deed in favour of the present petitioner was challenged with the ground that the present petitioner has forged the register deed. A charge was levelled against the present petitioner u/s 467 of IPC along with 120B and 420 of IPC

> ***467. Forgery of valuable security, will, etc. –*** *Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acuittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

22. The offence of 467 IPC has the essential ingredients; as follows:

(1) Accused committed forgery.

(2) He did so by preparation of forged document or electronic record in the manner provided in Section 463 and 464 of IPC/Section- 463 of IPC defined offence of forgery.

Section- 464 IPC have clarified the definition of making a false document as follows:

> ***464. Making a false document.---****[A person is said to make a false document or false electronic record---*
> *First.—Who dishonestly or fraudulently—*
> *a) makes, signs, seals or executes a document of part of a document;*
> *b) makes or transmits any electronic record or part of any electronic record;*
> *c) affixes any [electronic signature] on any electronic record;*
> *d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature].*
> *With the intention of causing it to be believed that such document or part of document, electronic record or[electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed executed or affixed; or*
> *Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alerts a document or an electronic record in any material part thereof, after it has been made, executed or affixed with[electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or*
> *Thirdly.—Who dishonestly of fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]*

23. The preparation of false document in this case is actually the deed of transfer alleged to be executed by Late Manaj Kumar Banerjee in favour of the present petitioner. The fact goes to show that the present petitioner are in possession of the said property in question and their name has been

correctly recorded in the record of right issued by the CIT (now KIT). The ownership of the land in question belongs to KIT which was leased out to Late Manoj Kumar Banerjee and later on transfer in favour of the petitioners by deed of consignment; but since 2006, no complaint has been made by the OP 2 before the KIT for any fraudulent transaction. It has been alleged that the entire consideration amount was siphoned by another accused Partha Sarathi Banerjee. Thus there is no allegation against the present petitioner that they had not paid the consideration amount.

24. Let me consider whether the impugned order passed by the Learned Magistrate is improper or illegal in the eye of law. In passing the impugned order in pursuance to prayer u/s 239 Cr.P.C., the Learned Magistrate is of opinion that the standard of prove about the documents and materials collected by the police can only considered at the final stage during trial. He further opined that the probative value of materials on record cannot be go into and the materials brought on record by the prosecution has to be accepted as true at the stage of discharge.

25. The finding of Learned Magistrate and legal acumen is quite correct but the provision u/s 239 Cr.P.C has given the Magistrate a clear direction to look into the materials in the CD and to find out whether the charge against the accused persons are groundless or not. The existence of ground of charge in the CD against an accused person is the necessary

ingredients which a Learned Magistrate must look into before framing charge.

26. A criminal proceeding set on motion by virtue of a petition of complaint thereafter the investigating agency investigated the matter at length and collected the materials, thereafter the materials were placed before him the Learned Magistrate, on the basis of which, required to frame a charge. At the time of framing of recharge the Learned Magistrate has to look into whether the allegation in the FIR has actually substantiated by collecting materials against any of the accused person. The probative of the materials as well as the correctness of the materials cannot required to look into by the Magistrate at the time of framing charge, but it is only required whether any materials in respect of the allegation against particular accused persons are collected in the investigation of the investigating agency.

27. In this case the Learned Magistrate has shut his eyes to the materials collected by the police.

28. The entire CD has been placed before this court.

29. After perusing the entire materials. Though it has appeared that FIR contained specific allegation against the present petitioner that they have prepared a false deed of transfer to defraud the OP 2, but the police during the course of investigation has not collected any materials, wherever it can be revealed that the present petitioners have ever committed any act or overtact upon the CIT (owner of the land in question)

or Late Manoj Kumar Banerjee to transfer the property in question in favour of themselves. Though it has been alleged in the FIR that Manoj Kumar Banerjee had a cerebral attack in the year 2000, but the materials does not suggest the deed in question was managed to be forged or the permission from the KIT received by the said Late Manoj Kumar Banerjee was done in furtherance of deceitful means or fraud upon Manoj kumar Banerjee.

30. It is the entire case, the present de-facto complainant argued that by virtue of the said fraudulent deed of transfer, the present petitioner managed to grab the property to which she is the legal owner. The right and title upon the properties in question; and also to set aside the Registered Deed of Transfer, the civil court is appropriate forum according to the provisions of Specific Relief Act. By the dint this criminal proceeding the right title and interest of the present de-facto complainant upon the property in question cannot be determined.

31. The Honble Supreme Court in **Md. Ibrahim Vs. State of Bihar** reported in **(2009) 8 SCC 751** has held that:

> ***8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same time, it should be***

noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See Sgar Suri v. State of UP and Indian Oil Corpn. V. NEPC India Ltd.) Let us examine the matter keeping the said principles in mind.

15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundaments difference between a person executing a sale deed claiming that the property conveyed in his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is

> ***not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complaint that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such compliant.***

32. Considering the ratio of Hon'ble Supreme Court in **Md. Ibrahim (supra)** it appears to me that the Learned Magistrate has committed error in not considering the grounds of not framing charge which were actually placed against the present petitioner in the CD. Learned Magistrate should have perused the materials and find out which are the grounds levelled against the present petitioner justifying the allegations u/s 120B/467/ and 420 IPC. On perusing the CD, is appears to me that, the I.O. could not collect any prima facie materials against the present petitioner for commission of offence u/s 120B/467 and 420 of IPC. Accordingly, it appears to me that the impugned order passed by the Learned Magistrate is improper and illegal in the eye of law. The instant criminal proceeding if allowed to be continued against the present petition it would tantamount to an abuse of process of court.

33. I find merit to entertain the instant criminal revision and accordingly the same is allowed. The impugned order passed by the Learned Magistrate dated 19.06.2017 refusing

the prayer of discharge by the present petitioner u/s 239 Cr.P.C. is hereby set aside.

34. The petitioners are hereby discharged from the criminal proceeding being GR Case No. 2002 of 2009 pending before the Learned Magistrate 6th Court Sealdah.

35. The Learned Magistrate is directed to continue the proceeding against the rest accused person.

36. CRR is disposed of. Connected CRAN Applications if pending, are also disposed of.

37. Any order of stay passed by this court during the pendency of the instant criminal revisions is also vacated.

38. CD be returned.

39. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)