

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

The Hon'ble **JUSTICE SUVRA GHOSH**

**CRR 315 of 2023
With
CRAN 1 of 2024**

Sushil Kumar Mittal

V/s.

State of West Bengal & Anr.

For the Petitioner: Adv. Sandipan Ganguly,
 Adv. Ajoy Kumar Singhanian,
 Adv. Zobaib Raut,
 Adv. Shivam Bhimsaria,

For the State: Adv. Aditi Shankar Chakraborty, Ld. APP,
 Adv. Abhijit Sarkar,

Heard on: 29.04.2024

Date: 02.05.2024

SUVRA GHOSH, J. :-

1. The petitioner has prayed for quashing of the proceedings of G.R. case no. 5467 of 2019 under Sections 406/468/471/419/506/34 of the Indian Penal Code pending before the learned Judicial Magistrate, 2nd Court, Jalpaiguri.
2. It is contended on behalf of the petitioner that the second opposite party lodged complaint before the Rajganj Police Station on 25th December, 2019 alleging one Moksed Alam (co-accused) sold a part of his land measuring about 47 decimals to the petitioner by personating him. The petitioner complied with the notice served upon him under section 41A

of the Code of Criminal Procedure, surrendered before the learned Chief Judicial Magistrate, Jalpaiguri and was granted bail. Charge sheet has been filed in the case on 31st January, 2022.

3. Learned counsel for the petitioner has submitted that the petitioner is a bonafide purchaser of the land in question for valuable consideration of Rs. 2,23,000/- paid to the co-accused, vide registered deed of conveyance dated 3rd January, 2018. There is no allegation against the petitioner in the complaint and even if the contents of the F.I.R. and charge sheet are taken to be true, no offence can be said to have been made out against the petitioner. The allegations are directed against the co-accused only. Learned counsel has placed reliance on the authority in Mohammed Ibrahim and Others v/s. State of Bihar and Another reported in (2009) 8 Supreme Court Cases 751 in support of his contention.
4. Learned counsel for the State respondents has drawn the attention of the Court to the charge sheet which demonstrates that the co-accused Moksed Alam and the petitioner have complied with the notice under Section 41A of the Code. It was found upon investigation that the petitioner and the co-accused cheated the complainant by using forged documents and selling out the land in question.
5. The private opposite party has chosen not to contest the application despite service of notice.
6. I have considered the rival submission of the parties and material on record.

7. The complaint filed by the private opposite party demonstrates that Moksed Alam sold out the plot in question belonging to the private opposite party by posing as the owner thereof. What falls for consideration before this Court is whether the allegations made in the complaint even if accepted to be true disclose ingredients of offence under sections 406/468/471/419/506/34 of the Code.
8. Section 406 deals with punishment for committing criminal breach of trust. Criminal breach of trust is defined in Section 405 as follows:

“Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.
9. There is no allegation against the petitioner of dishonest misappropriation of the property or dishonest use or disposal of the same as required under Section 405.
10. Section 468 prescribes punishment for commission of forgery intending that the document or electronic record forged shall be used for the purpose of cheating. No such allegation has been made against the petitioner in the complaint.
11. Section 471 says “Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to

believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record". The complaint does not contain any allegation against the petitioner that he is guilty of forging any document or electronic record.

12. Section 419 prescribes punishment for cheating by personation. Section 506 deals with the offence of criminal intimidation which is defined in Section 503 as *"Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation"*.
13. In the case in hand, the sale deed was alleged executed by the co-accused in favour of the petitioner claiming that the property conveyed was his property. In the authority in Mohammed Ibrahim and Others (supra), the Hon'ble Supreme Court has held that there is a fundamental difference between a person executing a sale deed claiming that the property conveyed is 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 document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore execution of such document is not execution of a false document as defined under section 464 of the

Code and therefore cannot be said to be forgery. The Hon'ble Supreme Court goes on to say that when a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration.

14. In the present case, the complaint has not been lodged by the purchaser. On the other hand, the purchaser has been made a co-accused.
15. True, jurisdiction under Section 482 of the Code ought to be exercised with extreme care, caution and circumspection and should not be used to stifle or axe down a legitimate prosecution. The test is whether the uncontroverted allegations as made out in the complaint prima facie establish the case and also whether continuation of such complaint shall amount to abuse of the process of law.
16. Herein, the allegations made out in the complaint are directed against the co-accused and do not disclose any criminal offence in so far as the petitioner is concerned. Continuation of such complaint qua the petitioner shall amount to abuse of the process of law.
17. In the light of the observation made hereinabove, the revisional application being C.R.R. 315 of 2023 is allowed.
18. Proceedings of G.R. case no. 5467 of 2019 under sections 406/468/471/419/506/34 of the Indian Penal Code pending before the learned Judicial Magistrate, 2nd Court, Jalpaiguri is quashed qua the petitioner.

19. However, the proceedings shall continue against the co-accused Moksed Alam.
20. Copy of the judgment be sent to the learned Judicial Magistrate, 2nd Court, Jalpaiguri for information and necessary action.
21. There shall however be no order as to costs.
22. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)