145 akb

19.03
2025
Ct. No. 237

C.R.R. 2111 of 2023
Smt. Kakoli Dholay & Anr.
Vs.
State of West Bengal & Anr.

Mr. Kajal Ray
Mr. Suman Nandi ...**For the Petitioners**

Mr. Debasish Roy
Mr. Arijit Ganguly
Ms. Debjani Sahu ...**For the State**

Affidavit-of-service filed on behalf of the petitioners is taken on record. Private opposite party is not represented.

This is an application wherein the petitioners have prayed for quashing of proceeding, being Naihati Police Station Case No. 432 of 2022 corresponding to G.R. Case No. 11604 of 2022, presently pending before the learned ACJM, Barrackpore, North 24-Parganas.

The crux of the allegations made in the FIR is that the de facto complainant had entered into an agreement for sale with the petitioners/accused persons for purchase of a property and while executing the *Bayananama* the accused persons have received Rs. 3,00,000/- (three lakhs) but thereafter they did not execute the registered deed within the stipulated period.

Being aggrieved by the aforesaid proceeding, learned Counsel appearing on behalf of the petitioners submits that the allegation leveled in the petitioner at best gives rise to civil cause of action, for breach of agreement and therefore, the remedy available to the de facto complainant was to file a suit for specific performance of contract. But by no stretch of imagination the cause of action mentioned in the FIR can lead to an offence under Section 420 or Section 406 of the Indian Penal Code. He further submits that non-registration of a property within the time limit fixed in the agreement for sale cannot be the subject matter of a criminal case. It is further submitted that by a letter dated 15th September, 2022 the petitioners even requested the de facto complainant to have the deed registered on payment of the rest consideration price but in spite of receiving the said notice, he failed to comply the same. He submitted from the above facts and circumstances of the case, it is very much clear that the de facto complainant has initiated a proceeding with a view to harass the petitioners entangling them in a false criminal case. Therefore further continuance of the case would be an abuse of process of the Court.

Learned Counsel appearing on behalf of the State placed the Case Diary and pointed out the copy of the *Bayananama* and statement of one witness recorded under Section 161 of the Cr.P.C. during investigation.

I have gone through the materials collected in the Case Diary and it appears that the dispute between the parties is purely civil in nature. There is no allegation of initial deception and even learned Counsel appearing on behalf of the petitioners submits today that they are always ready and willing to execute the Deed, if the rest amount is paid to the petitioners.

In this case there is also no allegation that the petitioners made unlawful representation. Even according to complaint, complainant entered into agreement for sale. Grievance seems to be that the petitioners/accused persons failed to discharge obligations under the agreement for sale. There is no allegation that there was fraud or dishonest inducement on the part of the petitioners. Even if there is a dispute between the parties resulting from alleged breach of agreement on the part of the petitioners by alleged non-refunding the amount of advance, the same is essentially a civil dispute and does not continue an offence of cheating.

Supreme Court time and again deprecated these efforts to settle civil disputes and claims, which do not involve any criminal offence by applying pressure through criminal prosecution. Police is only supposed investigate the allegations which discloses a criminal act and they are not expected to be used as a money recovery agent or to act like a Civil Court for recovery of money.

Looking at the allegations in the complaint, on the fact of it, I find that the allegations are also not attracting the ingredients of Section 405 of the Indian Penal Code as from the submissions made on behalf of the petitioners there appears no dishonest intention of the petitioners in retaining the advance amount of consideration to have wrongful gain to themselves or causing wrongful loss to the complainant. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the petitioners, but it must also be shown that the petitioner dishonestly retained the same or dishonestly disposed of the same. The mere fact that the petitioners did not return the advance amount to the complainant does not amount to criminal breach of trust. There are also decisions which hold that the same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously.

The materials so far collected during investigation also suggests that there is hardly any chance of conviction of the petitioners at the end of trial.

In such view of the matter, further continuance of the present proceeding will be mere abuse of process of the Court.

The application, being C.R.R. 2111 of 2023 is allowed. The impugned proceeding, being Naihati Police Station Case No. 432 of 2022 corresponding to G.R. Case No. 11604 of 2022 dated 2.12.2022 presently pending before the learned ACJM, Barrackpore, North 24-Parganas, stands quashed.

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

(Dr. Ajoy Kumar Mukherjee, J.)