

Item 03.07.
No. 2025
03

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Ct 32 CRR 4993 of 2024

rup Timir Baran Biswas
Vs.
The State of West Bengal & Anr.

Mr. Anirban Dutta,
Mr. Abhra Jena,
Ms. Shiba Das
Mr. Yonus Khan
Mr. Swarnadeep Kanyilal ... for the petitioner.

Mr. Saibal Bapuli,
Mrs. Debjani Sahu. ... for the State.

1. Learned counsel appearing on behalf of the petitioner as well as State are present.
2. One report has been submitted by the State showing the intimation to the opposite party No.2. Let it be kept with the record.
3. None appears on behalf of the opposite party No.2.
4. This revisional application has been filed with a prayer for quashing the proceeding in connection with G.R. Case No. 2987 of 2019 corresponding to Baguiati Police Station Case No. 384 of 2019 dated 02.10.2019 under Sections 420/406/34 of the Indian Penal Code.
5. The application under Section 156(3) of the Criminal Procedure Code [corresponding to 175(3) of BNSS] was filed on 02.10.2019. The matter was forwarded to the jurisdictional police station wherein case was registered

as Baguiati Police Station Case No. 384 of 2019 dated 02.10.2019 under Sections 420/406/34 of the Indian Penal Code. However, after investigation chargesheet was submitted under Sections 420 & 34 of the Indian Penal Code.

6. The complaint was lodged contending, inter alia, that the petitioners entered into an agreement with the promoter for construction of flats in place of their old house. Upon receipt of such information on 02.09.2019, the de facto complaint/opposite party No.2 went to the house of the petitioners and inquired about the illegal act of the petitioners, but the de facto complaint/opposite party No.2 was then abused and threatened with dire consequences. On the next date i.e. 03.09.2019 at about 6.30 PM, petitioners came to the house of complainant, hurled abuses and threatened him with dire consequences. Also one purported photocopy of the Will with probate was thrown at the complainant. From that document it was found that mother-in-law executed a Will in favour of her daughter Rita Biswas on 26th April, 1989. Complainant alleged that the said deed is forged just to deprive the complainant.
7. Learned counsel appearing on behalf of the petitioner has drawn my attention to the document, wherefrom it is shown that one Misc. Case being No. 261 of 2019 was filed by the complainant/opposite party No.2 with a

prayer for revocation of alleged probate and subsequently the said complaint/opposite party No.2 herein filed one application under Order 23 Rule 1 read with Section 151 of the Code of Civil Procedure stating, inter alia, that entire dispute between the parties had already been patched up and he subsequently realised that testatrix voluntarily executed the Will which has already been probated by the Learned Court of District Judge, Barasat. Accordingly, complainant/opposite party No.2 expressed his wiliness not to proceed with the instant case (Misc. Case No. 261/2019). Accordingly, learned Judge allowed the application and the Misc. Case being No. 261/2019 was dismissed as withdrawn.

8. Learned counsel appearing on behalf of the State relying on the statement recorded of witnesses under Section 161 of the Code of Criminal Procedure (180 of BNSS) has submitted that the application under Order 23 Rule 1 of the Code of Civil Procedure was filed long after filing of the chargesheet. He raised objection against the prayer advanced on behalf of the petitioner.
9. In this case chargesheet was filed under Sections 420/34 of the Indian Penal Code against two accused and it is reported that out of the two accused one accused Prabir Kumar Biswas died and the other accused is the petitioner of this revisional application.
10. To constitute an offence under Section 420 of the

Indian Penal Code, the following ingredients have to be satisfied:

- (i) the deception of any person,
- (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and
- (iii) *mens rea* or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

11. Here, in this case during investigation no effort was made for ascertaining the credibility of the Will or probate alleged by the complainant. On the other hand, complainant himself filed an application for revocation of that probate which was registered as Misc. Case being No. 261/2019 and subsequently on 24th August, 2022 the petitioner/opposite party no.2 filed an application under Order 23 Rule 1 of the Code of Civil Procedure stating, inter alia, that dispute between the parties with regard to the Will has already been patched up and he realised that actually the testatrix executed the Will and probate was rightly granted and therefore, he showed his inclination to withdraw the proceeding being Misc. Case No. 261/2019. Learned Judge dealing with the case

passed an order thereby dismissing the Misc. Case being No. 261/2019 after accepting the statements made in the application under Order 23 Rule 1 of the Code of Civil Procedure.

12. In the aforesaid view of the matter, I do not find any reason at this stage to allow the proceeding to continue any further as it would be a glaring example of abuse of process of Court.
13. That apart, the allegation made in the complaint has not at all been substantiated by any of the evidence collected during investigation.
14. As a sequel, the proceeding in connection with G.R. Case No. 2987 of 2019 corresponding to Baguiati Police Station Case No. 384 of 2019 dated 02.10.2019 stands quashed.
15. Accordingly, the revisional application stands allowed.
16. All connected applications, if any, also stand disposed of.
17. Case Diary be returned to the learned counsel on behalf of the state.
18. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.
19. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)

