

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 4732 of 2022

Alok Agarwal
Vs.
The State of West Bengal & Ors.

For the petitioner : Ms. Ayan Bhattacharjee, Sr. Adv.
Mr. Dilwar Khan
Ms. Apple Mughali Jimo

For the opposite party no.2 : Mr. B. Bhattacharyya
Mr. Monoranjan Mahata

For the State : Mr. Madhusudan Sur, Ld. APP
Mr. Dipankar Paramanick

Heard On : 13.06.2025

Judgment on : 17.06.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Aggrieved by the impugned proceeding being GR No. 8790 of 2022 arising out of Narayanpur P.S. Case No. 124 of 2022, presently pending before ACJM, Barrackpore, this Application has been preferred by the accused no. 4/petitioner, Alok Agarwal.

2. Opposite party No.2 herein filed a complain under section 156 (3) of the Code of the Criminal Procedure (in short Cr.P.C.) on the basis of which the Court below directed to start investigation, treating the petition of complain as FIR, which gives rise to aforesaid criminal proceeding.

3. The gist of allegations levelled in the FIR is that opposite party no.2/FIR maker is the son of Narendara Nath Ghosh koley who died on October, 2 2022 leaving behind the opposite party no.2 as his heir to the property at Mouza Gopalpur, RS plot No.2401 having an area of 1.37 decimal of land. It is alleged that the accused persons executed two deeds on 27th September, 2018 and started fencing the said plot of land of opposite party No.2 without executing deed of sale, and without knowledge and consent of opposite party No.2/FIR maker. It is further alleged that opposite party No.2 failed to restrain them in making fencing the land of opposite party No.2, as they tried to the grab the said land with the help of muscle man. FIR maker's specific case is that the property is an undivided property and the opposite party no.2 /complainant has two uncles, who sold the land adopting fraudulent means, depriving the opposite party no.2 and his father, from their share.

4. On the basis of said complaint the said accused persons including petitioner herein were booked under sections 420/406/467/463/471/120B of the IPC. However after conclusion of investigation, police submitted charge-sheet against the accused persons including the present petitioner under sections 420/406/120B IPC with a clear noting that complainant on being asked failed to produce any document related to the case and from the statement of the complainant and the witnesses, nothing has been reflected

regarding forgery for the purpose of cheating and as such the prosecution has omitted section 467/468/471 of IPC from the charge sheet.

5. Being aggrieved by the impugned proceeding Mr. Ayan Bhattacharjee learned senior Counsel appearing on behalf of the petitioner /accused No.4 submits that the instant proceeding has been orchestrated by the opposite party no.2 herein, in order to spite the petitioner to tarnish the goodwill of the company and further to expose the petitioner to the chilling effect of threat of arrest, persecution and harassment. He further submits that from the contents of FIR, it is evident that no offence is disclosed therefrom and the criminal proceeding has been initiated only for the purpose of harassment. He further submits that the order passed by Id. ACJM for starting investigation by the police is absolutely a non-reasoned order. He further submits that the allegation in the FIR do not disclose commission of any offence against the petitioner.

6. Petitioner's case in a nutshell is that accused No.1 Partha Mazumder along with accused No.2&3 Sk Imtiaz and Kamal Ali Sanpui approached the petitioner herein who is accused No.4 representing that one Shyamapada Ghosh Koley was the absolute owner of abovementioned land measuring 1.37 acre, who by virtue of a registered deed of conveyance dated July, 02, 2003 had transferred and conveyed land measuring an area of 6 cottah, 12 chittak and 28 sq.ft. in favour of accused No.1 Partha and thereafter Partha was in urgent need of money and as such he agreed to sell the said land to accused No.2&3 by virtue of agreement of sale dated 10th, April, 2018 for a total consideration of Rs 28,00,000/-. Subsequently said accused No.1,2 & 3 namely Partha, Imtiaz and Kamal expressed their intention to sell the

property to the petitioner and to instill further confidence of the petitioner, they had shown one mutation certificate in the name of Partha. Being convinced by the documents produced by aforesaid accused No. 1 to 3, with regard to the right, title, interest and possession of the said land, petitioner herein/accused no.4 on behalf of M/S PCS Forms Pvt. Ltd. purchased the said land by dint of a registered deed of conveyance dated 25th September, 2018, executed by accused No.1 where accused No.2 & 3, as above put signature as confirming parties, for total consideration of Rs. 83,85,000/- paid by petitioner. Petitioner's further case is that a civil suit being TS 479 of 2022 is pending in connection with same dispute, though petitioner herein have not been made party in the said suit and no relief has been sought for against him and as such injunction order passed in said suit is not binding upon petitioner. By this time he has also sold the said property to a third party.

7. Mr. Bhattacharjee therefore, submits that the petitioner has purchased the land in a *bonafide* manner after paying substantial consideration to the other co-accused persons and therefore even if all the allegations made in the FIR are taken to be true, the petitioner by no stretch of imagination can said to be in conspiracy with the other co-accused persons.

8. Mr. Bhattacharya further argued that from the contour of the allegations levelled in the impugned FIR, it is evident that the grievance of the opposite. Party no.2 is essentially and predominately civil in nature. Ld. Magistrate even failed to consider that in the instant case the provision of section 154(3) of Cr.P.c. has not been complied and the FIR was filed

without making proper verification and the affidavit attached to the said FIR is absolutely a defective one. Accordingly he prayed for quashing of the aforesaid criminal proceeding quo the petitioner/accused No.4.

9. Private opposite party No.2/FIR maker is not represented. Mr. Sur, learned counsel representing the state placed the case diary and leaves the prayer of petitioner to the discretion of the court.

10. I have mentioned above that charge sheet has been submitted against the accused persons including petitioner herein under section 406/420/120B IPC. Now to punish a person for criminal breach of trust under section 406 of IPC, it is necessary that an act of criminal breach of trust must take place in accordance with definition given in section 405 of the IPC. Here according to contents of FIR petitioner herein was not entrusted with any property, rather he submitted that he purchased the said land being convinced by the documents produced by other three accused persons with regard to the right title interest and possession of said land and therefore the question of entrusting with any property, in the presence of aforesaid registered deed of sale in favour of petitioner, by which he is claiming ownership, does not arise at all.

11. Let me now consider whether ingredients of an offence of cheating punishable under section 420 of IPC has been made out or not in the instant proceeding against the petitioner. The essential ingredients of cheating are as follows:-

- (i)** Deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission.

(ii) Fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and

(iii) Such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

12. It is apparent from the case record that the present petitioner/accused no.4 is the purchaser of the property with alleged valuable consideration. The vendor of the petitioner/accused no.4 namely accused no.1 had never lodged any complaint that the said registered sale deed which stands in the name of present petitioner/accused no.4 herein is a fraudulent deed. It is further submitted that the complainant herein has already filed a suit for declaration and injunction in respect of the self same property being T.S. no. 479 of 2022 and also enjoining order of injunction, where they have not made present petitioner as a party.

13. In such circumstances though the locus for initiation of criminal proceeding is usually unknown for a criminal case but in the instant case it is not understandable when the dispute is primarily civil in nature, what is the locus of the complainant to initiate criminal proceeding against *bonafide* purchaser for value. From the essential ingredients to constitute offence under section 420 IPC there should not only be cheating but as a consequence of such cheating, the accused should have dishonestly induced the person deceived. There is no allegation that the vendor has cheated the purchaser by making a false representation of ownership or fraudulently

induced the purchaser to part with the sale consideration. In the present case the complainant/FIR maker is not the purchaser but the complainant has made the purchaser/petitioner a co accused. It is not the case of the complainant that the present petitioner /accused no.4 deceived him or tried to deceive him either by making a false or mis leading representation or by any other action or omission nor it is his case that the present petitioner offered him any fraudulent or dishonest inducement to deliver any property or to consent the retention thereof by any person or to intentionally induced him to do or omit to do anything which he would not do or omit to do if he were not so deceived, so that allegations may constitute offence under section 420 IPC.

14. It is also not the case of the complainant that the accused No.1 pretended to be the complainant, while executing the sale deed. Therefore, it is hard to believe that the accused no.4/petitioner herein by purchase with valuable consideration through registered sale deed has deceived the complainant in any manner. In fact, the ingredients of cheating as stated in section 415 are completely absent in the allegation levelled in the FIR. It is not even the allegation of the petitioner/accused no.4 herein that accused no.1 had sold any property which he does not belong or thereby he has defrauded the accused no.4/ company who purchased the property.

15. Undoubtedly the opposite Party no.4/ accused could have lodged complaint against accused no.1 alleging that the vendor committed the fraudulent act of cheating but how the complainant who is a third party to the deed and who is not the purchaser by dint of such deed can make such complain against present petitioner, who appears to be purchaser for value.

It is also not understandable as to how the present petitioner/ accused no. 4 has deceived the FIR maker and how the act of execution of sale deeds by the accused no.1 in favour of petitioner caused any damage or harm to the complainant/opposite party no.2 herein in body, mind reputation or property. It is nowhere stated that the accused no.1 has executed the sale deed on behalf of the complainant nor it is anybody's case that the accused no.1 has purported to transfer the rights of the complainant nor it is alleged in the FIR that the petitioner herein deceived the complainant to transfer or deliver the subject property.

16. From the four corners of the allegations it does not appear that there were any meeting of minds among the accused persons in the matter of commission of offence of cheating or criminal breach of trust. To prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between present petitioner and the other three accused persons to commit an offence. Here petitioner's specific case is that he paid Rs. 83,85,000/- to the other accused person and had purchased the property in question through registered sale deed as a *bonafide* purchaser for value, which statement appears to have not dislodged during investigation.

17. In fact if the entire allegation levelled in the FIR is taken to be true, it does not constitute any offence under section 406 or 420 or 120B of the IPC against the present petitioner. I have also gone through the contents of the case diary, including the statements recorded under section 161 of the Cr.P.C. and I find that the materials collected during investigation also does not suggest that any allegation under section 406 or 420 or 120B of the IPC

can be levelled against the present petitioner/purchaser. The other important aspect of the matter is that the FIR has been lodged against the representative of the company namely accused no.4 without impleading the company as an accused who is the purchaser of the property.

18. Having considered the aforesaid facts and circumstances of the case, I have no other option but to conclude that the further continuance of the present proceeding against the present petitioner will be a mere abuse of the process of the court as the chance of conviction of the present petitioner at the end of trial with the aforesaid materials is bleak.

19. In such view of the matter the impugned proceeding being Narayanpur P.S. case no. 124 of 2024 dated September, 8th 2022 corresponding to GR Case no. 8790 of 2022 presently pending before ACJM, Barrackpore is hereby quashed qua the petitioner ***Aloke Agarwal***.

20. CRR 4732 of 2022 thus stands allowed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)