

Criminal Revision

PRESENT: The Hon'ble Justice Ashim Kumar Roy

Judgment On: 01-02-2010.

C.R.R. No. 4091 of 2009

Rakesh Singh

versus

The State of West Bengal & Anr.

Point:

Quashing: Mere fact that offence was committed during a commercial transaction whether sufficient for quashing of a criminal case- Code of Criminal Procedure, 1973-S.482

Fact: Invoking Section 482 of the Code of Criminal Procedure the petitioner moved this Court, seeking quashing of an FIR, for commission of offences punishable under Sections 406/402/465/467/468/471/120B of the Indian Penal Code, on the ground that entire deal between the complainant and the accused arose out of a purely commercial transaction and as such the same would only amount to a civil breach of contract and no criminal offences.

Held: Mere fact that offence was committed during a commercial transaction is not sufficient for quashing of a criminal case. Even if it is accepted that the act of the petitioner has a civil profile that is not sufficient to denude it of its criminal outfit when the allegations made in the FIR and materials collected during investigation clearly shows commission of criminal offences. (Paragraph – 5)

For Petitioner: Mr. Shiv Shankar Banerjee

For State: Mr. Swapan Kumar Mullick

The Court: 1. Invoking Section 482 of the Code of Criminal Procedure the present petitioner moved this Court, seeking quashing of a FIR, registered at Bowbazar Police Station in which he along with two others have been arraigned for commission of offences punishable under Sections 406/402/465/467/468/471/120B of the Indian Penal Code.

2. Mr. Shivshankar Baerjee appearing in support of this criminal revision urged the following points;

- (a) The allegations in the FIR made no case against the petitioner.
- (b) The entire deal between the complainant and the accused arose out of a purely commercial transaction and as such if there is any dispute, the same would only amount to a civil breach of contract and no criminal offences.
- (c) The entire deal was entered into out of an agreement therefore dispute, if any, is civil in nature.
- (d) Long delay in lodging FIR makes the case of the complainant totally un-reliable.

The Learned Counsel for the State Mr. Swapan Kumar Mullick vehemently resisted this application for quashing and by producing the Case Diary submitted that sufficient materials have been collected by the police during investigation which clearly shows the complicity of the petitioner in the commission of the offences.

3. Heard the Learned Counsels appeared on behalf of the parties. Perused the impugned First Information Report as well as the Case Diary containing the evidentiary materials collected by the police during investigation and other materials on record.

4. It is the case of the complainant, who is a promoter and developer and engaged in developing lands and constructing buildings thereon, was looking for some suitable lands in connection with his said business. At that time the accused Rakesh Singh, the petitioner herein contacted the complainant and represented that the premises No. 16, Paddapukur Lane, Kolkata – 700 020, was at his disposal and if the complainant is interested to purchase the said premises, he would arrange the same for him at a very suitable price. Thereafter, the accused gave the particulars of the said property and stated to the complainant that the aforesaid premises which was a two storied building standing on a plot of land measuring an area of about 3 Cottahs and 4 Chittaks belonged to one Swapna Mukherjee and she was the absolute owner of the same, which she inherited from her parents. It was further told that the said Swapna Mukherjee had already entered into a memorandum of understanding with the present petitioner and thereby the accused/petitioner had been authorized to negotiate the deal on her behalf. It was also told that the said property was free from all encumbrances and had a good marketable title and ready for sale. It was further stated that the said building was lying vacant and there was no occupier. Thereafter, the complainant when made an enquiry, he found that the said premises was occupied by the tenants and not vacant. On being asked the accused further told that he was negotiating with those tenants and they have

agreed to vacate their respective portions against consideration. The accused further told that he had already paid substantial amount to the said tenants and immediately after receiving the balance amount they would vacate the building and there would be no difficulty in getting the vacant possession. The accused persons offered to sell the said property at a total price of Rs. 90 lakhs and all through assured that peaceful vacant possession would be given to the complainant but such representation was false and fraudulent and made to dishonestly induced the complainant to enter into a memorandum of understanding and to obtain a sum of Rs. 45 lakhs as advance. Thereafter, the complainant entered into a memorandum of understanding with the accused persons and paid a total sum of Rs. 45 lakhs. Out of the said amount Rs. 10 lakhs was paid by an Account Payee cheque in the name of Swapna Mukerjee and Rs. 25 lakhs was paid by an Account Payee cheque in the name of Arian Concrete Private Limited, a company of the accused persons and balance amount of Rs. 10 lakhs in cash. In the said memorandum of agreement it was specifically stipulated that a sum of Rs. 25 lakhs would be utilized by the accused, the petitioner herein to get the tenanted portion of the said building vacated by making payment to one Babi Kaur and one Haro Prasad Banerjee. It was also told that already Rs. 5 lakhs have been paid to Babi Kaur and balance would be paid after getting the money from the complainant and he also produced a receipt given by the said Babi Kaur. At the same time, the accused also produced a memorandum of understanding executed by one Kamaljit Singh relinquishing her interest in respect of one room situated on the ground floor of the said premises and making over the peaceful and vacant possession of the said room to the accused no. 1 against receipt of a sum of Rs. 15 lakhs. The complainant made the payments in August, 2008 to the accused persons in terms of a memorandum of understanding executed on the self-same day and also promised to complete the registration of the sale deed and handing over the vacant possession of the said property within 45 days but in spite of repeated demands he delayed the same in one pretext or other. In the meantime, the complainant made an enquiry and came to learn that nothing has been paid to Babi Kaur and the memorandum of agreement shown to him was forged and the said Babi Kaur is an illiterate lady and could not sign. It was also found the alleged declaration of one Smt. Kamaljit Singh is also a forged one as the original tenant was not at all staying there and she received no amount from the accused persons. The other tenant Haro Prasad Banerjee when was contacted he flatly refused to vacate his portion and also denied that he had any talk with the accused about the vacating the flat against receipt of any consideration money. During the course of investigation the police examined Babi Kaur, Tony Singh, the son of Babi Kaur, who has denied to have received any amount of money from the accused Rakesh Singh and the execution of the said receipt and claimed that she could not even sign her name.

5. Now, having regards to the allegations made in the First Information Report it cannot be said that no offence has been made out as against the present petitioner. Moreover, from the Case Diary I find that during preliminary investigation the police has collected sufficient materials in support of the allegations made in the FIR against the petitioner and the witnesses so far examined supported the case of the complainant. Thus, the question of quashing of the FIR and the investigation does not at all arise. Even it is accepted that the deal involved in this case was outcome of a commercial transaction still same is no ground for quashing of the First Information Report, when the facts narrated in the FIR and the materials collected by the police during investigation clearly disclosed commission of criminal offences. Mere fact that offence was committed during a commercial transaction is not sufficient for quashing of a criminal case. Even if it is accepted that the act of the petitioner has a civil profile that is not sufficient to denude it of its criminal outfit when the allegations made in the FIR and materials collected during investigation clearly shows commission of criminal offences.

This criminal revision has no merit and accordingly stands dismissed.

Interim order, if any, stands vacated.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)