

Criminal Revision
Present: **The Hon'ble Justice Ashim Kumar Roy**
Judgment on: 22.02.2010
C.R.R. No. 4068 of 2009
With
CRAN No. 54 of 2010
Dr. Sujit Kumar Roy
versus
State of West Bengal & Anr.

Point:

Quashing: Criminal prosecution whether can be quashed because on the same set of facts a civil suit is pending and one or two ingredients of an offence has not been specifically mentioned in the FIR- Code of Criminal Procedure, 1973-S.482

Fact: Invoking Section 482 of the Code of Criminal Procedure, the petitioner has moved this application for quashing of a charge-sheet relating to an offence punishable under Section 420 of the Indian Penal Code inter alia on the grounds that the charge-sheeted materials do not satisfy the ingredients of the offence punishable under Section 420 of the Indian Penal Code and the remedy of the complainant lie in filing a suit for specific performance and on the same set of facts during the pendency of civil suit no criminal proceeding is maintainable.

Held: Merely because an act has a civil profile that does not sufficient to denude the act of its criminal outfit. The test is to see whether from the materials collected by the police during investigation the offence has been made out or not. At the same time, there is no immunity from a criminal prosecution merely because on the same set of facts a civil suit is pending. It is also no ground for quashing as one or two ingredients of an offence has not been specifically mentioned in the FIR. (Paragraph – 3)_

For Petitioner : Mr. Joymalya Bagchi
For State : Mr. Kashem Ali Ahmed
For O.P. No. 2 : Mr. Debabrata Roy
Mr. Gazi Faruque Hossain

The Court: Invoking Section 482 of the Code of Criminal Procedure, the petitioner has

moved this application for quashing of a charge-sheet relating to an offence punishable under Section 420 of the Indian Penal Code.

2. The grounds on which the prayer for quashing has been made are as follows;

(a) The charge-sheeted materials do not satisfy the ingredients of the offence punishable under Section 420 of the Indian Penal Code and the

remedy of the complainant lie in filing a suit for specific performance.

(b) There was no allegation of dishonest inducement.

(c) The complainant has already filed a suit for specific performance of the agreement allegedly entered by and between the parties and same is the foundation of the criminal case.

(d) On the same set of facts during the pendency of civil suit no criminal proceeding is maintainable.

3. Now, having heard the learned advocates appearing on behalf of the parties and considering the charge-sheeted materials, I find the prayer for quashing has no leg to stand. Merely because an act has a civil profile that does not sufficient to denude the act of its criminal outfit. The test is to see whether from the materials collected by the police during investigation the offence has been made out or not. At the same time, there is no immunity from a criminal prosecution merely because on the same set of facts a civil suit is pending. It is also no ground for quashing as one or two ingredients of an offence has not been specifically mentioned in the FIR.

4. It appears from the charge-sheeted materials that the petitioner who is the proprietor of Basanti Devi Nursing Home, Garia on the strength of an agreement sometime in the first week of June, 2007 obtained a sum of Rs. 20 lakhs from the defacto-complainant on a false pretext of running the said Nursing Home on a joint venture with him, but subsequently he neither registered the said agreement nor refunded the advance amount and has shifted to some other place by shutting down his Nursing Home. During investigation it has further been revealed that on February 6, 2005 the petitioner by keeping the said Nursing Home, in mortgage, obtained a sum of Rs. 1.53 crores as loan from State Bank of India, Alipore Commercial Branch. As per the terms and conditions of loan during the period of mortgage the petitioner was not entitled to create any third party interest in respect thereof. But the accused/petitioner suppressing such facts of mortgage entered into an agreement with the defactocomplainant

for running the Nursing Home on joint venture and obtained a sum of Rs. 20 lakhs from him and misappropriated the said amount of money. On the face of such materials it cannot be said that no offence has been made out against the present petitioner.

This is not a fit case for quashing of the charge-sheet. This criminal revision has no merit and accordingly stands dismissed.

In view of dismissal of the main criminal revisional application, the application for extension of interim order being CRAN No. 54 of 2010 become infructuous and accordingly stands disposed of.

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.*)