

## CRIMINAL REVISION

**C.R.R. No.4362 of 2008**Present : The Hon'ble Mr. Justice **Prasenjit Mandal**

Judgement On: June 23, 2010.

Javed Ahmed Khan

Versus

State of West Bengal &amp; Ors.

## POINTS

QUASHING – The Learned Additional District & Sessions Judge observed that forgery had been committed in a proceeding under Section 340 of the Cr.P.C. and lodged complaint– Chief Judicial Magistrate issued summons against the applicant -Whether the case pending in The Chief Judicial Magistrate's Court can be quashed– Code of Criminal Procedure 1973, S 340, 401.

**FACTS**

Appellant produced one forged deed by practicing fraud upon the Court and thus he had obtained the order. Therefore, he committed an offence punishable under Section 193 of the I.P.C. Thereafter the appellate court, i.e., the learned Additional District & Sessions Judge, Fast Track Court, Seventh Court, Alipore, District – 24 Parganas observed that she should proceed against the defendant/appellant under Section 340 of the Cr.P.C. Accordingly, he lodged one petition of complaint bearing no. C-6679 of 2008 under Section 193/463/465/471/420 of the I.P.C. and the learned Magistrate had taken cognizance of the offence. On that basis of that petition of complaint from the learned Additional District & Sessions Judge, Fast Track Court, Alipore, the learned Chief Judicial Magistrate, Alipore took cognizance of the offence. Being aggrieved by the said order,

accused/Javed Ahmed Khan has preferred this application for quashing the petition of complaint no.C-6679 of 2008.

#### HELD

The petition of complaint lodged by the learned Additional District & Sessions Judge, Fast Track Court lays down that the complainant, i.e., the learned Judge was of the opinion that for the interest of justice an enquiry should be made into the offence. After holding an enquiry the complainant was satisfied that a strong prima facie case under Sections 193/463/465/471/420 of the I.P.C. had been made out against the applicant and thereafter he filed the petition of complaint. On the basis of that petition of complaint, the learned Chief Judicial Magistrate issued summons against the applicant under the above noted Sections in accordance with law. Therefore, the learned Chief Judicial Magistrate, Alipore did not commit any irregularity or illegality in passing the order dated 15.09.2008 with regard to the petition of complaint filed by the learned Judge as the order no.48 dated 11.07.2008 passed by the learned Additional District & Sessions Judge in Misc. Case.7 of 2006 arising out of Misc. Appeal No.335 of 2008 is not under challenge before this Court. Para 7

#### CASES CITED

1. Sachida Nand Singh & Anr. Vs. State of Bihar & Anr. Reported in 1998 SCC (Cri) 660,
2. Iqbal Singh Marwah & Anr. Vs. Neenakshi Marwah & Anr. Reported in (2005) 4 SCC 370,
3. Santosh Singh Vs. Izhar Hussain & Anr. Reported in (1973) 2 SCC 406,
4. K. Karunakaran Vs. Eachara Warriar & Anr. Reported in AIR 1978 SC 290,

5. Paramananda Mohapatra Vs. The State reported in AIR 1968 Orissa 144 and
6. Amzad Ali Vs. Marfat Ali Biswas and Ors. Reported in 1997 Cri.L.J. 4148 judgment of a Single Bench of this Court.
7. 1979 Cri.L.J. 1473

For the petitioner: Mr. Ganesh Shrivastava,  
Mr. Sukanta Das.

For the State: Mr. Sudipto Moitra.

For the added O.P. Nos.3,4,5,6 & 7: Mr. Mohan Pututunda.

**Prasenjit Mandal, J:** 1.This application under Section 482 of the Code of Criminal Procedure, 1973 has been filed praying for quashing of the complaint case no.C-6679 of 2008 pending in the Court of the learned Chief Judicial Magistrate, District – South 24 Parganas at Alipore.

2.The facts of the case leading to the filing of this application are that one Salim Khan filed a Title Suit No.347 of 2004 against Aquil Ahmed Khan and others before the learned Civil Judge (Junior Division) at Alipore for declaration and injunction. He filed a petition under Order 39 Rules 1 & 2 of the Code of Civil Procedure for injunction. The learned Civil Judge (Junior Division) granted interim injunction against the defendants. Being aggrieved by that order of interim injunction, defendant / Javed Ahmed Khan preferred Misc. Appeal 335 of 2004 stating, inter alia, that the suit property was purchased by his father late Karim Bukh Khan along with others from Musst. Najibunnessa Bibi through whom the plaintiff claimed his right, title and interest over the same. In support of his contention the copy of the deed of sale was filed. On the strength of that deed the entire order was vacated. The said deed of sale bearing no.4835 of 1955

bears a reference of the Title Suit No.107 of 1927 filed in the Subordinate Judge, 24 Parganas at Alipore alleged by Musst. Farrok Begum, one of the wives of late Golam Jilani Khan for partition of the estate left her deceased husband and the said suit was compromised according to the recitation of the deed of sale. But on search it appeared that the Title Suit No.107 of 1927 arose between one Akshaya Paul versus Hari Prasad Paul. The alleged deed had no bearing with the Money Execution Case No.188 of 1945 of the Court of Munsif, Second Court at Alipore arising out of the Money Suit No.37 of 1945. Therefore, it is the contention of the plaintiff that the appellant produced one forged deed by practising fraud upon the Court and thus he had obtained the order. Therefore, he committed an offence punishable under Section 193 of the I.P.C. Thereafter the appellate court, i.e., the learned Additional District & Sessions Judge, Fast Track Court, Seventh Court, Alipore, District – 24 Parganas observed that she should proceed against the defendant/appellant under Section 340 of the Cr.P.C. Accordingly, he lodged one petition of complaint bearing no. C-6679 of 2008 under Section 193/463/465/471/420 of the I.P.C. and the learned Magistrate had taken cognizance of the offence. On that basis of that petition of complaint from the learned Additional District & Sessions Judge, Fast Track Court, Alipore, the learned Chief Judicial Magistrate, Alipore took cognizance of the offence. Being aggrieved by the said order, accused/Javed Ahmed Khan has preferred this application for quashing the petition of complaint no.C-6679 of 2008.

3.Mr. Shrivastave contended that in order to lodge a petition of complaint under Section 340 of the Cr. P.C., 1973, the learned Magistrate is required to observe that she was of the opinion that it was expedient in the interest of justice that an enquiry should be made into any offence referred to Clause (b) of Sub-Clause (1) of Section 195 of the Cr.P.C. which appears to have been committed in or in relation to a proceeding of that Court. He contended that the so-called deed of

sale was executed in 1955 when the petitioner herein was only one year of age and so the question of committing forgery, etc. could not arise at all against the applicant. The learned Additional District & Sessions Judge nowhere recorded that it was expedient in the interest of justice to hold an enquiry in the order no.48 dated 11.07.2008 in Misc. Case No.7 of 2006 arising out of Misc. Appeal No.335 of 2004. Therefore, cognizance taken is bad and not sustainable. The proceeding if allowed to continue would be nothing but an abuse of the process. Mr. Shrivastava also contended that the so-called allegation did not take place during the pendency of the suit or appeal. The contents of the said sale deed might lay down one incorrect statement for which the applicant herein could not be held liable at all. In support of his contention, Mr. Shrivastava referred to the following decisions:-

1. Sachida Nand Singh & Anr. Vs. State of Bihar & Anr. Reported in 1998 SCC (Cri) 660,
2. Iqbal Singh Marwah & Anr. Vs. Neenakshi Marwah & Anr. Reported in (2005) 4 SCC 370,
3. Santosh Singh Vs. Izhar Hussain & Anr. Reported in (1973) 2 SCC 406,
4. K. Karunakaran Vs. Eachara Warriar & Anr. Reported in AIR 1978 SC 290,
5. Paramananda Mohapatra Vs. The State reported in AIR 1968 Orissa 144 and
6. Amzad Ali Vs. Marfat Ali Biswas and Ors. Reported in 1997 Cri.L.J. 4148 judgment of a Single Bench of this Court.

4. On the other hand, Mr. Pututunda submits that the learned Additional District & Sessions Judge had taken proper steps after observing the formalities for lodging a petition of complaint. The learned Chief Judicial Magistrate on the basis of that petition of complaint proceeded with the matter and issued a process in accordance with law. Moreover, there is a provision for appeal, if

any person feels aggrieved by the order under Section 340 of the Cr.P.C., he might have sought the recourse of appeal as provided in Section 341 of the Cr.P.C. The applicant having not availed of such opportunity of appeal is debarred from claiming such contention.

5.Mr. Moitra, the learned Advocate appearing for the State, refers to the decision reported in 1979 Cri.L.J. 1473 and he supported the judgment.

6.Now the point for consideration is whether the learned Chief Judicial Magistrate, Alipore was justified in taking cognizance of the offence and issuing a process against the applicant.

7.Having considered the submission of the learned Advocate of both the sides and on perusal of the materials in support of the application, I find that the alleged incident of forgery, etc., if any happened in the year of 1955 in the deed produced by the applicant before the Appellate court. That deed of sale was produced by the applicant at the time of hearing the misc. appeal. Then an enquiry was held by the learned Additional District & Sessions Judge in a proceeding under Section 340 of the Cr.P.C. and by the order no.48 dated 11.07.2008 the learned Additional District & Sessions Judge observed that forgery had been committed. This order of the learned Additional District & Sessions Judge is not, at all, under challenge before this Court. The applicant would have challenged the same by preferring an appeal but he did not do so. The challenge under this application is to the order dated 15.09.2008 passed by the learned Chief Judicial Magistrate in complaint case No.C-6679 of 2008. On perusal of the petition of complaint and the order impugned, I find that the petition of complaint lodged by the learned Additional District & Sessions Judge, Fast Track Court lays down that the complainant, i.e., the learned Judge was of the opinion that for the interest of justice an enquiry should be made into the offence. After holding an enquiry the complainant was satisfied that a strong prima facie case under Sections 193/463/465/471/420 of the I.P.C. had been made out against the applicant and thereafter he filed the petition of complaint.

On the basis of that petition of complaint, the learned Chief Judicial Magistrate issued summons against the applicant under the above noted Sections in accordance with law. Therefore, I am of the opinion that the learned Chief Judicial Magistrate, Alipore did not commit any irregularity or illegality in passing the order dated 15.09.2008 with regard to the petition of complaint filed by the learned Judge as the order no.48 dated 11.07.2008 passed by the learned Additional District & Sessions Judge in Misc. Case.7 of 2006 arising out of Misc. Appeal No.335 of 2008 is not under challenge before this Court.

8.As regards contention that no offence was committed during the pendency of the suit / appeal, I am of the opinion that this is nothing but a sort of defence which could be taken only at the time of trial. At present, there is no scope of going into the defence that may be available to the applicant at the time of trial. This matter is, therefore, is to be decided at the time of trial.

9.So, I am of the view that I have no other way but to support the order passed by the learned Chief Judicial Magistrate, Alipore in accordance with law. Accordingly, this application under Section 482 of the Cr.P.C. fails to succeed and it must be dismissed.

10.Therefore, the application is dismissed.

11.Considering the circumstances, there will be no order as to costs.

12.Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

( Prasenjit Mandal, J. )