

**In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Subhasis Dasgupta.

CRR No. 1487 of 2020

**Biswajit Goswami
Vs.
State of West Bengal & Ors.**

For the Petitioner :Mr. Tapas Dutta, Adv.
Mr. Mritunjoy Halder, Adv.

For Opposite Party :Mr. Kallol Mondal, Adv.
Nos. 2 & 3 Mr. Krishan Ray, Adv.
Ms. Amrital Chel, Adv.
Mr. Souvik Das, Adv.

For the State :Ms. Sukanya Bhattacharya, Adv.
Md. Kutubuddin, Adv.

Heard on : 13.01.2021

Judgment on : 27.01.2021

Subhasis Dasgupta, J:-

The impugned order dated 17th August, 2020, passed by learned Chief Metropolitan Magistrate, Kolkata in complaint case no. C-44 of 2020, rejecting

the application under Section 156(3) Cr.P.C. is subject of challenge in this revisional application.

Learned advocate for the petitioner, Mr. Dutta, submitted that private opposite parties no. 2 to 3 had misused their official position with culpable intention by manufacturing fictitious record of right i.e. by creating new khatian in the name of petitioner in connection with mutation proceeding before the Block Land & Land Reforms Officer, Bardhaman-II, Barsul, and Revenue Officer, Bardhman-II, Barsul, Purba Bardhaman, respectively, which ultimately turned out to be fictitious, false, fabricated causing huge financial loss and prejudice to the petitioner.

Assailing the impugned order, learned advocate for the petitioner contended that since the victim/petitioner had his office situated within the territorial jurisdiction of learned Chief Metropolitan Magistrate, Kolkata, petitioner could very well institute a case seeking redressal under Section 156(3) Cr.P.C. being a victim of circumstances.

It was also strenuously submitted by the learned advocate for the petitioner that no sanction under Section 197 Cr.P.C. was required to be obtained so as to prosecute the private opposite parties no. 2 and 3, who might be public officials, on the score that the alleged commission of offence was not necessarily connected with the discharge of official duties of the opposite party nos. 2 and 3. And the observation made by the learned Magistrate, while declining to refer the application under Section 156(3) Cr.P.C. to the concerned police station for investigation, that the offence

attempted to be made out, at best might constitute offence under Section 166 I.P.C., amounted to prejudging the fate of investigation, which was highly illegal.

Upon taking such grounds, learned advocate for the petitioner sought for interference by this court, so that there can be effective investigation in terms of the application under Section 156 (3) Cr.P.C. filed by the *de-facto* complainant/petitioner.

Ms. Sukanya Bhattacharya, learned advocate representing State replied that there left nothing to be interfered with, as the court below had already provided sufficient reasons including the absence of territorial jurisdiction of learned Magistrate to take care of the offence complained of. More so, there left no materials suggestive of transpiring any criminal animosity against petitioner by the private opposite party nos. 2 and 3, and therefore the prosecution sought to be instituted was a product of suspicion, not supported by any tangible materials.

Mr. Mondal, learned advocate representing private opposite party nos. 2 and 3 reacted to the contention raised submitting that in view of the statutory protection, granted under Section 58 (2) of the West Bengal Land Reforms Act, 1955 to public officials, attached with the Land Reforms Department for the due discharge of the function under the said Act, there could not be any criminal prosecution instituted against the public officials in respect of the acts done or performed in good faith or intended to be done, while discharging official duties.

The prohibition clause engrafted in Section 58(2) of the Act referred above, according to Mr. Mondal, would not justify instant prosecution, what was sought to be instituted by the petitioner. Mr. Mondal further submitted that petitioner not being a victim of cheating, nor criminal misappropriation, nor criminal breach of trust, the territorial jurisdiction of the court, before whom the case was instituted, would not be available, referring Section 181 Cr.P.C.

Raising such challenges, learned advocate for the opposite party nos. 2 and 3 proposed for dismissal of the revisional application.

The crux of the allegation, as raised in the instant case is that private opposite party nos. 2 and 3 being public officials under Land Reforms Department misused their position in connection with a mutation proceeding, and thereby manufactured, fabricated records of rights creating new khatians, which ultimately turned out to be false and fake. The petitioner had to incur harassment to get the record of rights corrected.

Before the points raised by the learned advocate for the petitioner referred to above are dealt with, the pertinent point raised by the opposite parties challenging the maintainability of the criminal prosecution, and that too before a learned Magistrate of Kolkata, needs to be addressed and answered first.

Mr. Mondal, for the opposite party nos. 2 and 3 referring Section 58(2) of the West Bengal Land Reforms Act, 1955, contended that in view of the statutory protection, granted to the public officials attached to L.R.

Department, while discharging official duties, thereby ousting jurisdiction of Court, there could not be any legal proceeding instituted simply by taking out a petition under Section 156(3) Cr.P.C. before learned Chief Metropolitan Magistrate, which was highly illegal.

Mr. Dutta, learned advocate for the petitioner proceeded to reply against the point raised by Mr. Mondal submitting that the *non-obstante* clause engrafted therein ousting the jurisdiction of court should not have been precedence to the alleged misuse of official position by public officials attached to the L.R. Department for their culpable intention and such culpability of O.P No. 2 and 3 should have been taken in view for the seriousness of the complaint, before making rejection of a complaint under Section 156(3) Cr.P.C.

It would be profitable here to refer the relevant Section of W.B.L.R. Act 1955, which may be mentioned as hereunder:

“58. Protection of action taken under this Act.— (1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) No suit or other legal proceeding shall lie against the State Government for any damage caused or likely to be caused or for any injury suffered or likely to be suffered by virtue of any provisions of this Act or by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.”

Upon reading the *non-obstante* clause, engrafted in Section 58 of the West Bengal Land Reforms Act, 1955, thereby providing immunity to the public officers like O.P. No.2 and O.P No.2 from legal proceedings, against the discharge of public functions in good faith under the Act referred to above, there is strong force in the submission of Mr. Mondal. The Court is not persuaded by the submission of Mr. Dutta that prohibition clause of Section 58 of the Act conferring immunity from prosecution attached to officials of L.R. Department is without any significance.

Learned Magistrate was thus statutorily prohibited to proceed with a complaint, alleging illegality therein in the official discharge of the duties, entrusted to O.P. No.1 and O.P. No.2 under the W.B.L.R. Act, 1955.

As regards the points raised surfacing over the lack of territorial jurisdiction, as observed by the learned Magistrate in the impugned order, Mr. Dutta had challenged the same referring a decision reported in **(2020) 10 SCC 92** rendered in the case of ***Kaushik Chatterjee Vs. State of Haryana & Ors.***, in order to establish that the ratio laid down in such case would be applied over this case so as to confer territorial jurisdiction to learned court below. The complainant instituted a criminal prosecution claiming himself to be a victim of circumstances.

Learned advocate for both the opposite parties reacted to such decision submitting that it would hardly find any application in the given context of this case, as the same might be applicable in a case based on the allegation of

criminal breach of trust, cheating and criminal misappropriation under Section 181 Cr.P.C.

Upon perusal of such judgment, it appears that three loans were sanctioned in connection with such loan transactions, where there was allegation of having committed offence under Section 406/420 Cr.P.C. etc. An attempt was made to transfer all such cases arising out of three loans transactions already sanctioned, leading to submission of three charge-sheets, and in connection therewith, the Apex Court proceeded to decide the ratio on the question of territorial jurisdiction of court, both in civil and criminal cases, the reference of which may be found in Para-17 of such decision. It would be profitable here to refer Para-17 of such judgment, which is mentioned as hereunder:

“17. As seen from the pleadings and the rival contentions, the petitioner seeks transfer, primarily on the ground of lack of territorial jurisdiction. While the question of territorial jurisdiction in civil cases, revolves mainly around (i) cause of action; or (ii) location of the subject-matter of the suit or (iii) the residence of the defendant, etc., according as the case may be, the question of territorial jurisdiction in criminal cases revolves around (i) place of commission of the offence or (ii) place where the consequence of an act, both of which constitute an offence, ensues or (iii) place where the accused was found or (iv) place where the victim was found or (v) place where the property in respect of which the offence was committed, was found or (vi) place where the property forming the subject-matter of an offence was required to be returned or accounted for, etc., according as the case may be.”

The jurisdiction of the criminal courts in inquiries and trials has been covered in Chapter-XIII of the Code of Criminal Procedure. Since the instant case was never founded on the allegation of having committed criminal breach

of trust, nor criminal misappropriation, nor cheating, the ratio of judgment, so referred above, would be without any significance.

As regards the point raised by the petitioner pertaining to the non-requirement of the sanction, so as to prosecute private opposite party nos. 2 and 3, reliance was placed on a decision reported in **(2019) 6 SCC 111** rendered in the case of **S.K. Miglani Vs. State (NCT of Delhi)**.

The point so raised, needs only to be answered in a case when the criminal prosecution itself is very much maintainable in a criminal court having its territorial jurisdiction therefor. But upon sensing presence of prohibition clause ousting the jurisdiction of a criminal court, as mentioned above, this court desists from answering the issue being irrelevant one, even at the cost of academic exercise.

Reliance was further made by Mr. Dutta to a constitutional Bench judgment delivered in the case of **Lalita Kumari Vs. Government of Uttar Pradesh & Ors.** reported in **(2014) 2 SCC 1**, so as to establish that the learned court below made some gross illegality, while refusing the prayer for Section 156 Cr.P.C.

When the magisterial discretion appears to have been appropriately exercised judiciously, reasonably and rationally supplying reasons therefor behind the rejection of petition under Section 156(3) Cr.P.C., such discretion of the learned Magistrate can hardly be doubted any more. By the order impugned the Magisterial Authority has been rightly discharged adhering to

the established principle of law requiring no interference, as proposed by petitioner.

More so, the petition previously filed addressed to the Officer-in-Charge of the concerned police station expressing the self same grievance has already been forwarded to the Superintendent of Police, Purba Bardhaman on the point of jurisdiction, what is found available from a report, submitted by Officer-in-Charge, Hare Street Police Station on 21.12.2020, through learned advocate representing the State.

Having considered the rival submission of the parties, as mentioned in the discussion hereinabove, the instant revisional application is without any merits.

The impugned order will, thus go uninterfered with.

The criminal revisional application accordingly stands dismissed.

Office is directed to communicate this order to the concerned Court below without making any delay.

Urgent photostat certified copy of this judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.

(Subhasis Dasgupta, J.)