

(2009) 04 CAL CK 0008
Calcutta High Court
Case No: C.R.R. No. 999 of 2009

In re: Santanu Sinha

Vs

APPELLANT

RESPONDENT

Date of Decision: April 17, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 190
- Penal Code, 1860 (IPC) - Section 406, 420

Hon'ble Judges: Ashim Kumar Roy, J

Bench: Single Bench

Advocate: Dipanjan Chatterjee, Avirup Chatterjee, for the Appellant;

Final Decision: Dismissed

Judgement

Ashim Kumar Roy, J.

Heard Mr. Dipanjan Chatterjee, learned Advocate, appearing with Mr. Avirup Chatterjee for the petitioner. Perused the impugned order and other materials on record, more particularly, the petition of complaint.

2. The petitioner herein alleging commission of offences punishable under sections 420/406 of the Indian Penal Code against the opposite party No.1 made a complaint before the learned Additional Chief Judicial Magistrate, Uluberia and prayed for sending the same to the concerned police station u/s 156(3) of the Code of Criminal Procedure directing the police to treat the same as FIR and to commence investigation thereupon. However, the learned Magistrate refused to exercise his power u/s 156(3) of the Code of Criminal Procedure as prayed for and took cognizance on the said complaint and transfer the case to another Court for disposal.

3. Hence, this criminal revision.

4. Having regards to the provisions of section 156 (3) of the Code of Criminal Procedure it is abundantly clear that exercise of such power by any Court pre-supposes the Court concerned is empowered to take cognizance u/s 190 of the Code of Criminal Procedure on such complaint. The said provisions only enable a Magistrate, who is already vested with the power u/s 190 of the Code of Criminal Procedure instead of exercising his power u/s 190 of the Code to refer the complaint to the police for investigation. Upon receipt of complaint whether a Court shall take cognizance thereupon or refer it to the police for investigation it depends on the sole judicial discretion of the Court. If on prima facie consideration of the content of any complaint a Court finds the allegations are of such nature that collection of evidence relating to the commission of the alleged offences, identification of the offenders and their apprehension and custodial interrogation is necessary to unearth the real culprit and modus operandi then in that case the Court may always refer such complaint u/s 156(3) of the Code to the police for investigation. However, in a case on the materials already on record, no further investigation by police is required for launching a successful prosecution, the Court has ample power to take cognizance u/s 190 of the Code of Criminal Procedure and proceed with the matter in accordance with the provision of Chapter XV of the Code. The complainant has no choice in this regard nor can insist a Court to take recourse to any particular procedure. The nomenclature under which such complaint is made nor the prayer of the complainant has any relevancy, the Magistrate should not necessarily pass any order for police investigation as a matter of routine and merely because complainant made a prayer for the same.

5. Having gone through the entire allegations made in that petition of complaint, I have no doubt that no wrong has been committed by the learned Magistrate in taking cognizance on the complaint without referring the same to the police u/s 156 (3) of the Code of Criminal Procedure. It is the allegation of the complainant that under an agreement for sale, the accused persons took a total sum of Rs. 44 lakhs from the complainant as an advance for sale of a particular piece of land. It is the further allegation that thereafter in spite of offer for payment of balance amount, the accused persons took no step for execution of the sale deed although in terms of such agreement the accused was supposed to execute the sale deed within the stipulated period and after receipt of the balance amount. Subsequently, after repeated demands, accused finally entered into a Memorandum of Understanding with the complainant and in terms thereof, he issued five cheques covering the entire amount in repayment of the said amount what he took as advance but when those cheques were presented for encashment, the same were returned unpaid. In such circumstances, it was alleged that the accused persons has cheated the complainant. It appears that the case of the complainant based on certain documents viz. the agreement for sale, memorandum of understanding entered into subsequently and the papers relating to the dishonored cheque. Those are the documents which are in the custody of the complainant. Therefore, no police

investigation is necessary either for recovery of the same or for collecting evidence to establish the case of the complainant.

6. In such view of the matter, I am fully satisfied that the learned Magistrate is justified in taking cognizance on the complaint without referring the same to the police for investigation u/s 156 (3) of the Code of Criminal Procedure.

7. This criminal revisional application has no merit and, accordingly, stands dismissed.

8. Criminal section is directed to deliver urgent photostat certified copy of this order to the parties, if applied for, as early as possible.