

(2009) 01 CAL CK 0005

Calcutta High Court

Case No: C.R.R. No. 4143 of 2006

Farid Mallik

APPELLANT

Vs

State of West Bengal and
Another

RESPONDENT

Date of Decision: Jan. 29, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 403, 405, 406, 420

Citation: (2010) 6 RCR(Criminal) 1863

Hon'ble Judges: Arunabha Basu, J

Bench: Single Bench

Advocate: Jaymalya Bagchi and S. Bhagat, for the Appellant; Ranjit Ghosal, for the Respondent

Judgement

Arunabha Basu, J.

The Judgment of the Court was delivered by:

1. The revisional application u/s 482 of the Code of Criminal Procedure is directed to quash proceeding in connection with Case No. 155 of 2005 arising out of Contai Police Station Case No. 66 of 2005 u/s 406/4711468/420 of the Indian Penal Code, now pending before the Court of learned Additional Chief Judicial Magistrate, Contai.

2. It appears from the documents filed along with the application, that police officer after conducting investigation submitted charge sheet against the petitioners herein for commission of offence punishable u/s 406 of the Indian Penal Code. The First Information Report in this case was lodged by one Inspector, DIO-III, Contai, on the basis of allegation of execution of power-of-attorney in favour of the petitioner herein by the opposite party No. 2. The said power-of-attorney was executed by the

O.P. No. 2 in favour of the petitioner herein, in view of the relationship between the petitioner with the opposite party No. 2. Under the said power-of-attorney a copy of which is annexed along with the revisional application, petitioner herein was entrusted over certain immovable properties of the O.P. No. 2. The said property was mortgaged by the petitioner with the Co-operative Bank while raising loan of Rs. 80,000/-, the amount could not be repaid and the matter is now pending with the Co-operative Tribunal.

3. The short question that arises is whether in respect of immovable property, an offence of criminal breach of trust punishable u/s 406 of the Indian Penal Code can at all be substantiated.

4. Learned Advocate for the petitioner submitted that the petitioner herein was empowered to deal with the property, which is detailed in the schedule of the power-of-attorney. In terms of clause 6 of the aforesaid power-of-attorney, he was empowered to lease or to mortgage or to hypothecate or to transfer in any way for any term or terms of years upon such condition as the petitioner may think fit and proper.

5. So, even if the property was given in mortgage while raising loan from the bank, the same was authorised in terms of the clear provisions of the power-of-attorney. As such the petitioner cannot be said to have committed any offence within the meaning of section 406 of the Indian Penal Code.

6. It is further contended that after the death of the wife of the petitioner, the criminal case was instituted only to harass the petitioner and as such the further continuation of the said proceeding will be an abuse of the process of Court.

7. In support of his contention learned Advocate for the petitioner relied on the decision of the Division Bench of this Court in [Jugdown Sinha Vs. Queen-Empress](#), . In this case the Hon"ble Supreme Court held as follows:

"2. We are ourselves inclined to the opinion that the property referred to in section 405 of the Indian Penal Code must, as in section 403, be moveable property, and that, as it has been ruled in Reg. vs. Girdhar Dharamdas, 6 Born HC Cr. 33, criminal breach of trust cannot be committed in respect of immoveable property"

8. Similar view was expressed by learned Single Judge of M.P. High Court in [Dhulji Vs. Kanchan](#), .

9. From the decisions as referred to above, it is clear that immovable property cannot be a subject-matter of criminal breach of trust. But in this case the mortgage of the immovable property is the subject-matter of offence and as such, in my view, the entire proceeding against the petitioner is not maintainable.

10. On consideration of the entire matter and following the decisions of this Court in *Jugdown Sinha vs. Queen-Empress (supra)*, I am of the view that the further continuation of the proceeding will be an abuse of the process of Court.

11. The revisional application is disposed of with the direction that the above mentioned proceeding pending before the learned Court below stands quashed so far as the petitioner is concerned.

12. There shall be no order as to costs.

13. Criminal Section is directed to forward a copy of the order to the learned Court below.

14. Criminal Section is further directed to supply urgent photostat copy of the order to the learned Advocate for the petitioner as and when applied for.

15. Case diary be returned.