(2010) CriLJ 4034

Calcutta High Court

Case No: C.R.R. No. 775 of 2008

Kalpana Bhowmick		APPELLANT
	Vs	
Manashi Roy Burman and Others		RESPONDENT

Date of Decision: June 24, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 401, 482
- Penal Code, 1860 (IPC) - Section 120B, 34, 406, 420

Citation: (2010) CriLJ 4034

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Joydeb Das, Arijit Das and Asish Kr. Ra., R.S. Chatterjee, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Prasenjit Mandal, J.
This application u/s 401 read with Section 482 of the Code of Criminal Procedure, 1973 is at the instance of the de-facto complainant of the G. R. Case No. 879 of 2007 and is directed against the order dated 19-12-2007 passed by the learned Additional Chief Judicial Magistrate, Sealdah in the said G. R. Case No. 879 of 2007 thereby accepting the Final Report submitted by the I. O. in Manicktala P. S. Case No. 101 dated 1-6-2007.

2. The short fact is that the opposite party No. 1 is the owner of a plot of land at 46/C/ 45, Biplabi Barin Ghosh Sarani under the P. S. Maniktala. She engaged the opposite party No. 2 to construct a building on the said plot measuring about 2 cottah, 14 chittak and 13 square feet. The Petitioner booked the flat No. 1A on the first floor of the said premises, and as a part of the consideration money, she paid Rs. 3,20,000/- by cheques, out of the total consideration money of Rs. 4,00,000/-. Possession was handed over to the

Petitioner but the opposite party Nos. 1 & 2 were making delay in execution of the deed of sale in favour of the Petitioner. Later, it revealed that the opposite party Nos. 1 & 2 had sold the said flat to the opposite party No. 3 by a registered deed of sale. It also revealed that opposite party No. 4 obtained a loan in respect of the said flat from the ICICI Bank. Thus, the Petitioner had been cheated by the opposite parties. So, she filed an ejahar under Sections 420/406/120B/34 of the I. P. C. with the Manicktala P. S. Police investigated the case as usual and submitted the Final Report. Before accepting the Final Report, a notice was issued upon the Petitioner, and then the Petitioner filed one Naraji petition. Upon hearing both the sides, the learned Additional Chief Judicial Magistrate, Sealdah accepted the Final Report thereby discharging the accused persons from the said case by the impugned order dated 19-12-2007. Being aggrieved, the de-facto complainant has preferred this revisional application.

3. Having considered the submission of the learned Advocate of both the sides and on perusal of the materials on record, I find that the Petitioner booked the flat No. 1A on the first floor of the premises No. 46/C/45, Biplabi Ghosh Sarani under the P. S. Manicktala and she paid Rs. 3,20,000/- by cheques, out of the total consideration money of Rs. 4,00,000/- for the said flat. Thus, she paid 80% of the full consideration money but the execution of the sale deed had not been done by the opposite party Nos. 1 & 2. So execution of the deed of sale is to be made in favour of the applicant by the opposite party Nos. 1 & 2. This is a pure civil dispute.

4. So far as the opposite party No. 3 is concerned, I find from the materials on record that the opposite party No. 3 got one flat bearing No. 101 having area of 750 square feet on the first floor of the said premises by a sale deed executed by the opposite party Nos. 1 & 2. It is pertinent to mention here that the flat of the Petitioner is having an area of 720 square feet only which is different from the area of the flat of the opposite party No. 3. The number of the flat is not also the same.

5. So far as the opposite party No. 4 is concerned, I find that the opposite party No. 4 obtained a loan from the ICICI Bank against the flat No. 1A of the first floor of the said premises at 46/C/45, Biplabi Barin Ghosh Sarani under P. S. Manicktala. No deed was executed in favour of the opposite party No. 4 in respect of the flat of the applicant. The Petitioner has no concern with the opposite party No. 4 at all though it appears that the opposite party No. 4 obtained a loan from bank in respect of the flat which is the flat number of the Petitioner to be sold. The opposite party No. 4 may take separate steps as advised. The area and the number of the flat which was sold to the opposite party No. 3 being completely different from the one which is to be sold to the Petitioner, I am of the view that the learned Additional Chief Judicial Magistrate has rightly observed that the dispute between the parties is civil in nature and he did not find any cogent ground for submission of chargesheet against the accused persons under any provision of the law. I find that the learned Additional Chief Judicial Magistrate has assigned reasons in support of his conclusion for acceptance of the Final Report. Before accepting the same, the learned Magistrate issued notice upon the de-facto complainant. Upon due consideration

of the submission of both the sides, the learned Magistrate passed a reasoned order which is not, at all, perverse or without any basis. I am, therefore, of the view that there is nothing to interfere with the order impugned.

6. Accordingly, this revisional application fails to succeed and it is dismissed.

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

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