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(1988) CriLJ 62

Calcutta High Court

Case No: None

Musst. Saidunessa Haque	APPELLANT
Vs	
Mrs. Badrunessa Zilani	RESPONDENT

Date of Decision: July 3, 1986

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 406, 467, 471

Citation: (1988) CriLJ 62

Hon'ble Judges: Sudhanshu Sekhar Ganguly, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Sudhanshu Sekhar Ganguly, J.
Late Md. Ziaul Haque, a distinguished citizen of this city created a wakf in respect of his properties orally on 22-5-53 and thereafter by a deed of declaration dt. 8-5-83. Under the terms of this wakf he appointed the opposite party Mrs. Badrunessa as Mutwalli in respect of demarcated 1/4th share of a house situated at No. 18, Ganesh Chandra Avenue. The opposite party ran away with Md. Golam Zeelani, the husband of her second elder sister Jahaeetunessa on or about 19-11-68 and was not in Calcutta till December, 1977. Before that on 8-11-68 the wakeel executed a deed of rectification whereby he appointed his youngest daughter Maherunnessa the Mutwalli of the said property in place of the opposite party under the guardianship of her mother, the present petitioner Saidunnessa. The Wakeef died on 29-5-73.

2. At the petition of Saidunnessa the then Commissioner of Wakf Mr. I. Choudhury rectified the records of the Wakf Estate by replacing the name of the opp. parties with the name of Meherunnissa in respect of the aforementioned property. After her return to Calcutta, the opp. party petitioned the Commissioner of Wakf for review of the rectification and the then Commissioner set aside the previous order of rectification. The present

petitioner has challenged this order of review by initiating C.R.No. 9512(W) of 1980 which is still pending.

3. Thereafter the present opposite party instituted complaint case No. C/154 of 1983 in the court of the learned Metropolitan Magistrate, Calcutta, under Sections 406, 467, 471, 120B of the Penal Code against the present petitioner, another sister of hers of the name of Zebunnissa and an employee of the petitioner of the name of Kanai Lal Hazra. The allegation against them are that on forged receipts manufactured by the petitioner purporting to have been signed by the opposite party rent from the tenants of the portion of the house mentioned above was collected by the said Kanai Hazra and further that with the aid and assistance of the said Zebunnissa, the present petitioner got a bank account opened in the name of the opposite party and encashed cheques there issued by the tenants and misappropriated the money. The learned Chief Metropolitan Magistrate has issued summons and the present petitioner and the aforementioned Kanai Lal have appeared before him.

4. By filing the present application the petitioner wants that the proceeding of the aforementioned Criminal case be quashed or at least stayed till the disposal of the C.R.No. 9512(W) of 1980.

5. The petitioner is opposed from the side of the opposite party.

6. The fate of the aforementioned criminal case depends very much upon the question as to whether the opposite party is or is not the Mutwalli of the 1 /4th portion of the aforementioned house. It is urged from the side of the petitioner that the opposite party could not be validly appointed as Mutwalli of the property in question contrary to the requirements of the law as she was a minor at the time the wakf was created. It is urged further that the rent was collected if at all, at a time when the opposite party was not here. It is also urged that the criminal case was instituted merely for the purpose of pressurising the petitioner to come to terms with the opposite party and not to proceed with C.R. 9512(W)of 1980.

7. Whatever the merits of their submissions, the proceeding of the criminal case cannot be quashed at this stage, for. the law is well settled that a criminal proceeding in its initial stage may be quashed only where the complaint and the initial statements of witness on their face value do not make out a case against the accused, or the complaint does not describe the essential ingredients of the offence alleged against the accused. Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, . The merits of the case are to be decided on the facts revealed by the complaint and the initial statements. From the complaint it cannot be held that the opposite party was a minor when she was appointed as the Mutwalli. The complaint also does not mention C.R. 9512(W) of 1980. From the bare statements of the complaint it becomes difficult to hold definitely either way, if the alleged offences were committed or not.

8. In the circumstances the question of quashing the proceedings of the criminal case in question does not arise at this stage when only the summons have been issued:

Roshanali Burhanali Syed Vs. State of Gujarat, .

9. But I feel, however, that the alternate prayer of the petitioner may be granted. Through C.R. No. 9512(W) of 1980 the petitioner has challenged the review order passed by the learned Wakf Commissioner. If she succeeds the opposite party will hardly have any case and her case against the petitioner based as it is on her claim of being the sole Mutwalli of the l/4th share of the aforesaid house will be very seriously jeopardised. In that view of the matter I am of the opinion that further proceeding in the said criminal case may be stayed till the disposal of C.R. No. 9512(W) of 1980.

10. Hence, the proceeding in case No. C/154 of 1984 pending in the court of the learned Metropolitan Magistrate, 12th Court, Calcutta is hereby stayed till the disposal of C.R.No. 9512(W) of 1980. The parties may petition the appropriate court for early hearing of the said C.R. The rule is made absolute accordingly.

Send the case records back to the court of the learned Magistrate at once.